



## Asylum and Immigration Tribunal

### (Immigration and Asylum Chamber)

**Appeal Number: PA/01033/2020**

## THE IMMIGRATION ACTS

Heard at Manchester CJC (via Skype)	Decision & Reasons Promulgated
<p>1. The applicant is a 28-year-old male who was born on [redacted] and is currently residing at [redacted].</p> <p>2. The applicant was charged with [redacted] on [redacted] and was found guilty of [redacted] on [redacted].</p> <p>3. The applicant was sentenced to [redacted] on [redacted].</p> <p>4. The applicant was released on [redacted] and is currently residing at [redacted].</p> <p>5. The applicant has been charged with [redacted] on [redacted] and is currently on [redacted].</p> <p>6. The applicant has been charged with [redacted] on [redacted] and is currently on [redacted].</p> <p>7. The applicant has been charged with [redacted] on [redacted] and is currently on [redacted].</p> <p>8. The applicant has been charged with [redacted] on [redacted] and is currently on [redacted].</p> <p>9. The applicant has been charged with [redacted] on [redacted] and is currently on [redacted].</p> <p>10. The applicant has been charged with [redacted] on [redacted] and is currently on [redacted].</p>	<p>1. The applicant is a 28-year-old male who was born on [redacted] and is currently residing at [redacted].</p> <p>2. The applicant was charged with [redacted] on [redacted] and was found guilty of [redacted] on [redacted].</p> <p>3. The applicant was sentenced to [redacted] on [redacted].</p> <p>4. The applicant was released on [redacted] and is currently residing at [redacted].</p> <p>5. The applicant has been charged with [redacted] on [redacted] and is currently on [redacted].</p> <p>6. The applicant has been charged with [redacted] on [redacted] and is currently on [redacted].</p> <p>7. The applicant has been charged with [redacted] on [redacted] and is currently on [redacted].</p> <p>8. The applicant has been charged with [redacted] on [redacted] and is currently on [redacted].</p> <p>9. The applicant has been charged with [redacted] on [redacted] and is currently on [redacted].</p> <p>10. The applicant has been charged with [redacted] on [redacted] and is currently on [redacted].</p>

**On 26 March 2021**

## On 23 April 2021

## Before

## UPPER TRIBUNAL JUDGE HANSON

## Between

**MOHAMMAD CHOWDHURY**  
(Anonymity direction not made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Jorro instructed by Lawmatic Solicitors

For the Respondent: Mr Tan Senior Home Office Presenting Officer.

## DECISION AND REASONS

- 1.** The appellant is a citizen of Bangladesh born on the 3 March 1990 who entered the UK on the 24 September 2009 with entry clearance as a student valid to 30 June 2013.
- 2.** On 30 November 2017 the appellant claimed asylum. That application was refused and the appeal against the refusal dismissed by a judge of the First-tier Tribunal in a decision promulgated on the 9 June 2020.

3. In a decision promulgated on 9 December 2020 the Upper Tribunal found the First-tier Tribunal had erred in law and set that decision aside, albeit with the findings of the First-tier Tribunal Judge in relation to the appellant's identity, immigration history, and nature of his political activities both in Bangladesh and in the UK, including level involvement in such activities and Facebook activities, being preserved findings.
4. In relation to his political activity in Bangladesh, the appellant claimed before the First-tier Tribunal to have been a member of the BNP since 2003 or 2004 [23]. The First-tier Tribunal Judge accepted that the appellant became a member of the BNP, in particular the JCD, and undertook political activity for the BNP [26]. The First-tier Tribunal also record at [27] that the appellant claimed to have led a rally to a monument to those who gave their lives fighting for Bangladeshi independence when they were attacked by members of the Awami League (AL). The appellant's evidence was also that he campaigned for the BNP in the general elections in 2008. The First-tier Tribunal Judge found that notwithstanding these activities it was not made out the appellant was of any interest to the AL or the authorities as claimed [35].
5. In relation to political activities in the United Kingdom, the appellant joined the UK-BNP in 2011 being appointed to the position of Vice President of the London City Branch, for whom he has been an active member by attending conferences, seminars, demonstrations and other events [37].
6. The First-tier Tribunal Judge did not accept the evidence that UK-BNP is an extension of the BNP in Bangladesh, finding the group was no more than "friends of BNP" [40]. The Judge did accept, however, that the appellant is a member of the UK-BNP and that he had carried out low-level political activities in the UK in support of the BNP [41].
7. It was also found the appellant had joined various other organisations in the UK, including the Bangladeshi Students Union UK ('BSU') in 2010 and Voice for Bangladesh in 2017, for whom he was appointed as an Executive Member of the Central Committee in 2018 [44].
8. The First-tier Tribunal accepted the evidence that the appellant was one of the core organisers of an international conference held in the House of Lords on 17 January 2017 and accepted the evidence that the BSU and Voice for Bangladesh are interrelated. The First-tier Tribunal also accepted the appellant's role within these organisations [45].
9. The First-tier Tribunal also noted the appellant was involved in events involving the Law Society, Amnesty International, Human Rights Watch, the Foreign and Commonwealth Office, and others, although did not find such involvement created a real risk to the appellant if returned to Bangladesh [48].
10. The First-tier Tribunal refer to the appellant's Facebook posts, including criticism of AL, the Prime Minister of Bangladesh Sheikh Hasina, and encouraging BNP supporters to vote in the general elections of December 2018 in Bangladesh.

- 11.** The First-tier Tribunal also note the appellant's claim to have been targeted by the AL on one specific occasion when he was part of a demonstration in front of the Bangladesh High Commission in London which the appellant claimed resulted in the Prime Minister ordering government agencies to take action against him and some political colleagues when they protested against her when she visited London in 2016 and 2017. The First-tier Tribunal noted reference to the demonstration by UK-BNP against AL during the Prime Minister's visit, in which some individuals broke into the High Commission and to the UK police becoming involved and one arrest, not of the appellant, being made.

## **Discussion**

- 12.** It was submitted by Mr Jorro, and not contested by Mr Tan, that the two key issues to be considered at this hearing are:
- a. On the basis of the FTT Judge's positive findings as to A's political actions, including in respect to his protesting as a BNP-UK member against Bangladeshi Prime Minister Sheikh Hasina's visits to the UK, and in light of the up-to-date background country evidence, such accepted actions would put him at real risk of being persecuted on return to Bangladesh, and / or
  - b. In light of that up-to-date background country evidence and on the basis of the FTT Judge's acceptance that A was an active (albeit 'low level') member of the BNP student organisation in Bangladesh and has been active (albeit 'low level') as a member of the BNP-UK and in other organisations in the UK in demonstrating his opposition to the current AL regime, A would be at real risk of being persecuted were he to continue to peacefully express his pro-BNP and anti-AL political opinions inside, and anywhere inside, Bangladesh as he is entitled to do and as he would – on the evidence accepted by the FTT Judge – wish to do on return to Bangladesh but for the risk of being persecuted for so doing: cf. *MSM (Somalia) v SSHD* [2016] EWCA Civ 715 at [3], [18], [24]- [29], [33]-[46] (with reference to the principles in *HJ (Iran) v SSHD* [2010] UKSC 31, [2011] 1 AC 596).
- 13.** Both advocates placed reliance upon the Secretary of States Country Policy Information Note (CPIN) Bangladesh: Political parties and affiliation, Version 3.0, September 2020. Consideration has been given to this document, together with the CPIN: journalists, publishers and internet bloggers, Bangladesh, January 2021.
- 14.** The climate of politics in Bangladesh is summed up by the entry in the CPIN relating to political parties and affiliations where it is written:
- 2.4.1 Bangladesh is a parliamentary democracy (see Parliament, President and Prime Minister). The two main parties that dominate politics and have a longstanding rivalry are the Awami League (AL – the ruling party since 2009) and the Bangladesh Nationalist Party (BNP), both said to have several million members. Other major parties include the Jatiya Party and the Jamaat-e-

Islami (JI or Jamaat), a BNP ally, albeit deregistered as a political party in 2013.

- 2.4.2 The incumbent AL swept to victory in the December 2018 elections, with the party's coalition securing 288 out of a possible 300 directly elected seats in parliament, and officially winning 96% of the popular vote. The Jatiya Party won 22 seats and became the official opposition despite being allied with the AL coalition during the election campaign. The Jatiya Oikya Front (aka National Unity Front – NUF), the main opposition alliance led by the BNP and also included JI members, was left severely weakened. It won 8 seats: 6 for the BNP and 2 for the Gono Forum Party (see National elections 2018).
- 2.4.3 Foreign and domestic analysts assessed that the election was neither free nor fair. There have been accusations of ballot-box stuffing, voter intimidation and harassment including voters and opposition polling agents being denied access to polling places and ruling party activists occupying polling places and casting ballots in the place of voters. Over 10,500 BNP and JI party activists were arrested in the run up to the election (see Election violence and irregularities and Politically-motivated harassment, arrests and detentions).

**15.** The type of adverse activities experienced by opposition groups at the time of elections is amply illustrated by the entry at 2.4.5 of the CPIN where it is written:

- 2.4.5 BNP and JI officials claimed mass arrests and detentions of their supporters pre-2018 election, with thousands facing 'trumped up' charges or under the Digital Security Act for posting/liking posts against ruling party members on social media. The leader of the BNP, Khaleda Zia, was jailed for 17 years in early 2018 on charges of corruption. Filing cases against the opposition is common although, on many occasions, cases are reportedly dismissed by courts for being without merit. There are reports of police extortion, whereby numerous arrested activists and leaders are routinely released on condition of payment. There are also reports of torture in police custody, extra-judicial killings and disappearances and restrictions on movement.

**16.** It is not disputed that the attack upon the appellant in 2008 occurred when he was a member of the student wing of the BNP in Bangladesh. Such attacks and disruption of political opponents by members of the AL are common. The current situation, recorded in the CPIN is as follows:

- 10.1.1 The DFAT report provided an overview of the political rivalry between the AL and BNP, noting: 'The relationship between the two parties is characterised by a longstanding political and dynastic rivalry, which has increased over time. Both parties derive their legitimacy from their claim to be the true heirs of Bangladeshi nationalism: the AL led the independence movement before and during the 1971 civil war, while the BNP holds as its institutional basis the ideology of Bangladeshi nationalism. The rivalry between the two parties is also deeply personal at the highest levels: the AL's leader, Sheikh Hasina, is the daughter of the 'Father of the Nation' Sheikh Mujibur Rahman and the BNP's leader, Khaleda Zia, is the widow of the party's founder, former General and President Ziaur Rahman. Sheikh Mujibur Rahman and Ziaur Rahman were both assassinated in office, and their respective parties view them as martyrs.'
- 10.1.2 The DFAT report added, 'Since independence, the two parties have, for the most part, alternated in the roles of ruling party and opposition. The ruling party's affiliated organisations have historically controlled all public institutions while that party has been in power, and both the AL and BNP

have used the state machinery against government opponents while in office.'

- 10.1.3 Jackman noted in the ESID Working Paper: 'Following the return to parliamentary democracy in 1990, Bangladeshi politics has been characterised by intense competition between the country's two major political parties, the Awami League and Bangladesh Nationalist Party. In practice, parliament has been largely boycotted by the opposition ..., with competition instead taking place on the streets through violent mobilisation and demonstrations of strength, particularly within urban areas. When in office each party has typically politicised state institutions and directed them against the opposition, while exploiting privileged access to the state and market to support party infrastructure.'
- 10.2.1 The BTI 2020 Report noted 'There is complete intolerance for any point of view that is seen as being in opposition to the government.' According to the Freedom House report, Freedom on the Net 2019, covering the period 1 June 2018 to 31 May 2019, 'The ruling Awami League (AL) has consolidated political power through sustained harassment of the opposition and those perceived to be allied with it [...].'
- 10.2.2 The DFAT report noted that, since the AL came into power in 2008, it had considerably restricted the activities of opposition parties, particularly the BNP and JI, by '... using police and other security forces to arrest thousands of opposition political party members and supporters, often in conjunction with political demonstrations; using police and other security forces to prevent opposition parties from holding meetings and demonstrations; and pressuring opposition candidates to withdraw from local and municipal elections, including through preventing them from submitting election nominations.'
- 10.2.3 According to Human Rights Watch (HRW), since the 2013 protests by the BNP and other opposition parties, who demanded the reinstatement of a caretaker government to oversee elections: '[T]he Awami League government has cracked down on the political opposition. Law enforcement authorities have illegally detained scores of opposition activists and held them in secret without producing them before courts, as the law requires. In most cases, those arrested remain in custody for weeks or months, before being formally arrested or released. Torture in police custody, including mutilations such "knee-capping" has been widely practiced. Others have been killed in so-called armed exchanges, and many remain "disappeared." Many of these cases appear to have been politically motivated, sometimes targeting the relatives of political opponents.'
- 10.2.4 The HRW report also noted 'While the police promptly launched investigations and made arrests in attacks on the ruling party, it ignored complaints from the opposition.'
- 10.2.5 The FCO's human rights report for 2019 noted 'Violence by organisations associated with political parties continued throughout 2019. In October, a student from the Bangladesh University of Engineering and Technology was beaten to death by members of the student wing of the Awami League, allegedly for posting material online which was critical of the government.'
- 10.2.6 The USSD HR Report 2019 stated 'Human rights activists claimed police falsely constructed cases to target opposition leaders, workers, and supporters, and that the government used the law enforcement agency to crack down on political rivals.'
- 10.2.7 The same report added: 'Political affiliation often appeared to be a factor in claims of arrest and prosecution of members of opposition parties, including through spurious charges under the pretext of responding to national security threats. The opposition Bangladesh Nationalist Party (BNP)

maintained that thousands of its members were arrested arbitrarily throughout the year, often in connection with planned and preauthorized political rallies in an attempt to both intimidate and prevent activists and political leaders from participating.'

- 10.2.8 Reporting on allegations of false criminal cases being filed by police against opposition party members and supporters, a March 2019 VoA article noted: 'Police in Bangladesh have filed criminal complaints against tens of thousands of people for violence-related cases in recent years. But the opposition and rights activists say most of the cases, allegedly involving bombing and rioting, were made up. Opposition parties claim most of those targeted were their leaders, workers and supporters, and that the government used the law enforcement agency to crack down on its political rivals.'
- 10.2.9 Human Rights Watch (HRW) noted in its annual report covering events in the election year of 2018: 'Bangladesh continued a harsh crackdown to suppress those that disagree or are critical of the ruling Awami League. These included members and supporters of the political opposition, journalists, prominent members of civil society, as well as students, and even school children. [...] Thousands of opposition supporters, including senior leaders, faced trumped-up cases. Newspapers reported that even names of individuals who are dead or critically ill in the hospital were included in these arbitrary actions.'
- 10.2.10 An article in the Dhaka Tribune, dated 30 December 2019, stated: 'The BNP claimed the government filed at least 4,098 cases against nearly 300,000 BNP members and arrested at least 4,300 activists before the 11th election alone [December 2018 election]. 'Before the election, BNP sent a list of 1,046 "false cases" against its members to the Prime Minister's Office, Prime Minister Sheikh Hasina promised to see the issue of false cases before election. But no progress was made.'
- 10.2.11 Human Rights Watch explained that: 'Since the beginning of 2018, the authorities have dramatically increased the practice of filing false or fictitious cases against the government's democratic opponents, primarily from the BNP. Typically, a single case accuses a list of named individuals, sometimes more than 100, of participating in a crime, plus an unspecified number of "unknown" perpetrators. Other people can then be added to the case later, if the police claim that they were among the earlier "unknown accused".'
- 10.2.12 Despite the claims that cases were filed against persons who were dead, disabled, absent from the country or in jail at the time of the reported offences, the government insisted such cases were not politically motivated.
- 10.2.13 Freedom House noted in its Freedom in the World 2020 report, 'The main opposition BNP has been weakened by regular harassment and arrests of key members that have significantly harmed its ability to challenge the AL in elections. The 2018 election campaign was characterized by a crackdown on dissent that saw thousands of people and several political candidates arrested. There were also a number of acts of violence committed against opposition figures.'
- 10.2.14 In its concluding observations, dated August 2019, the UN Committee against Torture (UNCAT) noted: 'The Committee is concerned at reports that in January and February 2018, the authorities arrested almost 5,000 supporters of the opposition Bangladesh Nationalist Party, including ordinary persons suspected of being opposition sympathizers, ahead of the verdict in the corruption case against the leader of the party, Khaleda Begum Zia. It is also concerned about allegations of thousands of arrests of opposition supporters around the time of the elections and that many of these persons remain in detention.'

- 10.2.15 The DFAT report noted: 'BNP figures allege that they have been subjected to enforced disappearance after raids on private homes and party offices [...]. While such allegations typically involve houses being raided at night, daylight raids on party offices have also been reported. The BNP claims that authorities have frequently arrested their supporters during protests for alleged criminal damage or assault on police with little supporting evidence, while alleging that violence against BNP supporters perpetrated by AL members occurs with impunity.'
- 10.2.16 Jackman noted in the ESID Working Paper, that as well as arrests, 'BNP activists and human rights groups allege that many activists face torture, in a strategy seemingly designed to both extract information, but also destroy the morale and motivation of the opposition to contest the ruling party. A college-level Chattra dal leader relayed the torture of fellow Chattra dal members, which occurred whilst on remand in local police stations (thanas), saying '[Police] are inserting sticks into their backside, they are clipping your tongue and giving you electric shocks, and pulling out all ten nails. It is a very common practice nowadays, very frequent.'
- 10.2.17 Jackman also described the use of extortion by police as a means of controlling the opposition: 'Following a round of arrests (during a political protest, for example) activists described first hand how police divide those arrested into different camps. Some face police cases and possible imprisonment, and others are simply threatened with the plan of extorting them. A large number of activists and leaders arrested are thus routinely released on condition of payment.'
- 10.2.18 On 8 February 2018, Khaleda Zia was sentenced to a 5-year prison term for corruption. Zia's son and vice-chairman of the BNP, Tarique Rahman, living in exile in the UK, was also sentenced to 10 years in prison alongside former legislator Quazi Salimul Haq, former principal secretary to Zia, Kamal Uddin Siddique, Zia's nephew Mominur Rahman and businessman Sharfuddin Ahmed. Zia's sentence was increased to 10 years in October and in the same week she received an additional 7 years for another corruption case.
- 10.2.19 An October 2018 article by Deutsche Welle (DW) stated, 'Filing cases against members of the opposition is a common practice in Bangladesh. On many occasions, courts dismiss cases for lack of legal merit. BNP leaders have claimed that the lawsuits against their leader Khaleda were "intentionally designed" to harass and undermine her political career, a claim denied by Hasina's Awami League.'
- 10.2.20 Jackman noted in the ESID Working Paper that Khaleda Zia's conviction in 2018 '... led to a brief escalation in political mobilisation, with the BNP announcing hartal [strikes], street protests, marches and hunger strikes, most of which were met with a huge number of arrests, violence from Awami League activists, truncheon charges, water cannons, beatings and arrests by the police; and all with relatively little impact on daily life in the city [Dhaka] compared to previous protests.'
- 10.2.21 Reuters reported on 24 March 2020 that Khaleda Zia's prison sentence was suspended for 6 months on humanitarian grounds due to ill health. The suspension was on the condition that she remain in Dhaka to receive treatment for diabetes and arthritis.
- 10.2.22 The DFAT report noted in respect of the Jamaat-e-Islami (JI): 'Authorities have particularly targeted for arrest the JI's senior leadership, few of whom remain free and active. Other targets have included prominent leaders, ICS [Islami Chhatra Shibir - student wing] members and, in some cases, family members. Lower-level JI members have reportedly been able to avoid the attention of authorities either through the paying of bribes to AL leaders or by physically relocating. DFAT assesses as credible reports that the situation is better for JI members in villages than in cities.'

- 10.2.23 The same source added, 'People who are perceived as being supporters of JI have reported being followed or intimidated, including when abroad [see Sur place activities]. Some government critics with no affiliation with JI have reported that they have been accused of having such links as a means of attacking their credibility.'
- 10.2.24 The Freedom House Freedom in the World 2020 report noted 'A JI spokesman said more than 1,850 party members were arrested ahead of the 2018 elections, and some party members claimed they had been subject to torture while in custody.' forces reportedly used torture to gather information from alleged militants and members of political opposition parties.'
- 10.2.25 Odhikar reported that 'In 2019, attacks and suppression on the opposition political parties and dissidents by the government became alarming. During this period, there were reports of fictitious cases filed against leaders and activists of the opposition political parties (especially BNP leaders and activists) arrests and re-arrests from the jail gate after a person had been released on bail. Women leaders and activists of the opposition were also arrested during internal meetings.'
- 10.2.26 Odhikar reported that during January to March 2020, 'the right to freedom of expression has been massively violated' and 'Dissidents, opposition leaders, activists and ordinary citizens and even a Baul artist have been sued under the Digital Security Act 2018 and sent to jail for allegedly writing on social media or posting a "like / share" on a post against high level persons of the ruling party or their family members, the ministers, parliamentarians and even Indian Prime Minister Narendra Modi; and for hurting "religious sentiment". The same source also described with regards to violence against women that 'there have been reports of the ruling party leaders making large amounts of money by reconciliation through mediation'.
- 10.2.27 In August 2020 Amnesty International reported that: "'There is a disturbing pattern of enforced disappearances emerging in Bangladesh in recent years, mainly targeting people who express their dissenting political opinions. Ashraf Uddin Mahdi [a student activist] was forcibly disappeared from the centre of the capital as a brazen tactic to silence him," said Sultan Mohammed Zakaria, South Asia Researcher at Amnesty International. Student activists have also faced violence from groups closely associated with the ruling party to silence criticism of the authorities. On 8 August, members of Chattro League, the student wing of the ruling party Awami League, beat Saleh Uddin Sifat, a law student of Dhaka University, in the Sitakunda area of Chattogram district after accusing him of "anti-government activities" on social media. The attackers left Sifat in critical condition. He had to be transferred to a hospital where he is currently undergoing medical treatment.

- 17.** Not only is there evidence of a real risk to those deemed to be in opposition to the ruling AL at times of increased tension, such as elections, but there also appears to be a deliberate targeting of those who express what are perceived as dissenting political opinions within Bangladesh at other times. Local elections are being held in phases in Bangladesh during 2021, the final phase being April 2021, with the next national government elections due in December 2023. In light of the country information and past performance it is likely there will be an increased risk to those deemed to express opposition views contrary to the interests of the ruling party, whether in person or on social media.

- 18.** There was much discussion about whether the appellant's activities in the United Kingdom mean he has sufficient profile to create a real risk for him on return, per se. This is not a case of an individual who comes before the Tribunal purporting to do little else but attend a couple of demonstrations with a very low or non-existent profile, but of a person who has been found to be involved in a number of credible activities. I do agree with the submissions of Mr Tan that a lot depends upon the profile of an individual and the appellant's activities indicate he is an ordinary member of the BNP-UK without evidence of holding a high profile or leadership role within the United Kingdom sufficient to have brought him to the adverse attention of the authorities in Bangladesh for that reason alone to date.
- 19.** I accept there is evidence that members of the AL are present in the United Kingdom who may provide intelligence to those in Bangladesh of individuals openly expressing adverse views sufficient to create a risk profile and of more concern in relation to this appellant was his attendance at the demonstrations against the leader of the AL, the Prime Minister of Bangladesh, during her visits to the United Kingdom as noted above. The appellant claims that he has been named in a media publication as one of those present at those demonstrations and it was not disputed that another individual, a British citizen, was arrested when he returned to Bangladesh on a visit and faces charges in connection with his attendance at those demonstrations in the UK and for other reasons. The profile of that individual is greater than that of this appellant as he is recorded as being the Vice-President of the BNP in the UK who will face a greater risk on return in light of the prevailing political climate in Bangladesh, although he must have thought it was safe for him to enter Bangladesh.
- 20.** If the authorities in Bangladesh are aware of the appellant's name and activities in attending the demonstration against the Prime Minister of Bangladesh there is a real risk to him of being detained and suffering ill-treatment on return. Despite this particular aspect being known to the Secretary of State insufficient evidence to counter the appellant's claim of his attendance and activities at that demonstration has been provided.
- 21.** In relation to the appellant's Facebook activities, the CPIN: journalists, publishers and internet bloggers, Bangladesh, January 2021, is relevant. In relation to his sur place activities it is written:

#### 7.1 Legal context

7.1.1 Section 4, Chapter 1 of the DSA 2018 provides for extrajudicial application and states:

- '1) If any person commits any offense within this Act outside Bangladesh which would be a punishable offense if committed inside Bangladesh, then the provisions of this Act would be applicable in such a manner as if those Acts were committed in Bangladesh
- '2) If any person commits any offense in Bangladesh within this Act from outside Bangladesh using any computer, computer system, or computer, then the provision of this Act will be applicable in such a manner as if the whole process of the offense was committed inside Bangladesh

'3) If any person commits any offense outside Bangladesh within this Act from inside Bangladesh, then the provisions of this Act will be applicable in such a manner that the whole process of committing the offense occurred inside Bangladesh.'

7.1.2 In its analysis of the DSA, Article 19 expressed concern that section 4 was 'overbroad' and that it would lead to 'the extraterritorial application of provisions, which are in breach of international human rights law.'

## 7.2 Blogging from abroad

7.2.1 Freedom House noted that 'The government has also targeted expatriate Bangladeshis for criticizing the government online. According to a senior officer of the Criminal Investigation Department (CID) of the Bangladesh Police, cases were filed against at least 12 expatriates in the United Kingdom, Malaysia, Saudi Arabia, Qatar, Australia, and Oman for allegedly spreading anti-state rumors on social media.'

7.2.2 Reporting on bloggers living in exile, HuffPost India referred to atheist blogger, Camelia Kamal and her blogger-husband, Subrata Adhikary, who fled Bangladesh in 2015, but continue to write on social media. HuffPost noted 'Though they have lived in Sweden for the past five years, the distance from Bangladesh has not made them feel safe. Emails and phone calls that claimed familiarity with their whereabouts made the couple move homes several times. "We try not to live in the same place for more than 6-7 months," Kamal told HuffPost India.'

7.2.3 Other bloggers told HuffPost India of the threats and insults they frequently received. Whilst largely ignoring the threats, Shammi Haque, who left Bangladesh in 2015, said "'Religious fundamentalism has no borders. Their ideological brethren could be living next to me. I try to closely guard information related to my movements and whereabouts. I am not completely safe anywhere," said Haque, who has been working with a German language newspaper for the past two years.'

7.2.4 HuffPost added 'Five years on, these bloggers see hardly any possibility of going back ever again. "I will either be jailed by the government or killed by Islamic fundamentalists," said Haque. "Democracy, secularism, and freethinking have died in Bangladesh. The government has struck a deal with fundamentalist forces".'

7.2.5 According to the same source, 'Bangladesh's largest religious organization Hefazat-e-Islam's Narayanganj district unit president Abdul Awal said on July 24 [2020] at a gathering to offer namaaz [prayer], "We would have torn the atheists into pieces and soothed the pained hearts of the Muslims, only if we could reach them. Unfortunately, we are not being able to reach them at present".'

7.2.6 HuffPost mentioned Asad Noor, living in hiding following death threats (see Critics of Islam), and stated 'Following the recent harassment of his family members, Noor said, "The police also dialed my number, and threatened me against continuing my activities online".'

**22.** The reference above to the "DSA" is to the Digital Security Act 2018, which came into force in October 2018. An article by Reuters, 'Factbox: Bangladesh's broad media laws', 13 December 2018, states that:

'The law allows police to arrest anyone without a warrant if they believe that an offense under the law has been, or is being committed, or they believe there is a possibility of a crime and risk of evidence being destroyed. The law carries prison sentences of up to 14 years for any person trying to secretly

record information inside government buildings. Critics say this makes investigative journalism into any government corruption almost impossible.

**23.** The use of the Act to suppress opposition appear to be part of the general crackdown by the AL on freedom of expression in Bangladesh. In relation to the application of the Act in practice, it is written in the CPIN:

5.4 Arrest, detention and charges brought under media laws.

- 5.4.1 The DFAT report stated, 'Defamation charges are commonly brought against journalists and others who criticise the government.' The same source added 'Sedition laws can also be applied broadly, and penalties range from fines to life in prison or even the death penalty if the accused is found to have undermined the Constitution.' Similarly Freedom House noted that 'Online activists, journalists, and other users regularly face civil and criminal penalties for online expression. ... During the COVID-19 pandemic, arrests for online speech alarmingly increased.'
- 5.4.2 There have been hundreds of arrests under the ICT Act and DSA although the exact number in any given time varies from source to source.
- 5.4.3 The USSD HR Report 2019 noted that: 'Libel, slander, defamation, and blasphemy are treated as criminal offenses, most commonly employed against individuals speaking against the government, the prime minister, or other government officials. The DSA provides for sentences of up to 10 years' imprisonment for spreading "propaganda" against the Bangladesh Liberation War, the national anthem, or the national flag. As of July [2019] a total of 420 petitions requesting an investigation had been filed under the act with more than 80 individuals arrested.'
- 5.4.4 Amnesty International reported on 8 October 2020 that: 'Nearly 2000 cases have been filed under the DSA since its enactment on 8 October 2018, according to data from the Bangladeshi government's Cyber Crime Tribunal. This includes more than 800 cases filed in the first nine months of 2020 alone, with many of the country's most prominent editors and senior journalists being increasingly targeted... In 2020, at least 10 editors of national and regional dailies and online news platforms have faced legal charges under the DSA, following critical reporting on leaders of the ruling Awami League party.'<sup>97</sup>
- 5.4.5 According to data collected by the human rights NGO, Odhikar, in 2019, 42 people were arrested under the DSA and 6 under the ICT Act.
- 5.4.6 Reporting on the number of arrests in 2019 into 2020, Prothom Alo, a major daily newspaper, noted in September 2020 that according to police data, 'A total of 1,135 people were arrested in 732 cases filed under the DSA across the country in the last year... In the first two months of 2020, another 339 people were arrested in 165 cases filed under the act...'
- 5.4.7 According to data collated by Odhikar, between January and September 2020, a total of 111 people, including ordinary citizens, teachers and imams, were arrested under the DSA, for criticising individuals or leaders of the government and the ruling party. Freedom House recorded that 'During the first six months of 2020, authorities recorded 113 cases impacting a total of 208 people, including 53 journalists. They arrested 114 people, the majority of whom were still in detention awaiting bail as of June 2020. Sixty cases had already been filed against over 100 people, including 22 journalists. Such numbers are a significant increase from 63 cases in 2019 and 34 in 2018, when the act came into force.' Odhikar also reported that, whilst working in a professional capacity, 5 journalists were arrested during the same period and 55 were prosecuted under the DSA.

- 5.4.8 DFAT noted some prominent cases in recent years: ‘There have been a number of legal cases against individual journalists in recent years, notably against those at mainstream outlets: • ‘In February 2016, the editor of the Daily Star was served with 67 defamation and 16 sedition lawsuits, mostly lodged by AL members, after he admitted to publishing unsubstantiated information about the Prime Minister. The lawsuits were lodged in districts nationwide, thus requiring the editor to spend weeks travelling across the country to make bail applications. While the High Court dismissed two of the cases, the remainder are unresolved and could be reactivated at any time. • ‘In August 2018, a prominent photojournalist was arrested under the provisions of the DSA for making “false” and “provocative” statements on Al-Jazeera and on Facebook about the Road Safety Protests... • ‘Authorities charged a reporter for the Dhaka Tribune newspaper and the Bangla Tribune news website with offences under the DSA for calling the legitimacy of the December 2018 election into question by pointing out irregularities in the vote count. Another journalist who reported the same irregularity went into hiding after the same charge was brought against him. If convicted, the two journalists face up to 14 years’ imprisonment.’
- 5.4.9 The photojournalist, Shahidul Alam, cited above, said he was beaten and tortured whilst in police custody. He was released on bail in November 2018, after spending more than 100 days in jail.
- 5.4.10 In January 2019, the Committee to Protect Journalists (CPJ) reported on the arrest of journalist Hedait Hossain Molla after he was accused of violating the DSA after reporting that the number of votes cast from a constituency in Khulna district was higher than the number of voters. Although the figure was later corrected by election officials, Molla was arrested for reporting ‘false information’ as the story was already published. According to the USSD HR Report 2019, ‘Although Molla was released on bail, he was obliged to appear regularly before the court, since the case remained active.’
- 5.4.11 The DFAT report noted ‘In March 2019, authorities arrested a senior Bangladeshi member of football’s world governing body after she said on a televised talk show that the Prime Minister was neglecting football.’ The FIFA official, Mahfuza Akhter Kiron, who was accused of making derogatory remarks against the Prime Minister, was granted bail on medical grounds but, according to the USSD HR Report 2019, ‘the charges against her were not dropped.’
- 5.4.12 Deutsche Welle (DW) reported on Bangladeshi journalist, Shafiqul Islam Kajol, who disappeared in March 2020 the day after being charged under the DSA for making defamatory comments against an Awami League. Nearly 2 months after his disappearance Kajol was ‘found’ in a field with his arms and legs bound and taken into custody. Civil society groups believe Kajol was a victim of enforced disappearance by the security forces and, in August 2020, called for his immediate release. As at October 2020, Kajol remained in pre-trial detention.
- 5.4.13 Article 19 voiced alarm at the government’s crackdown on freedom of expression since the start of the coronavirus pandemic. It reported on 19 May 2020: ‘Since the coronavirus pandemic hit Bangladesh, there has been a surge in arrests of journalists, activists and others who criticised the Bangladesh Government for its lack of preparedness and poor response to the pandemic. Since the start of the pandemic, 16 journalists have been arrested. ‘Many have been charged under the 2018 Digital Security Act. It is becoming increasingly difficult for journalists and bloggers to report about the crisis. As well as the arrests outlined below, in April, journalists’ movements were restricted to allegedly stop the spread of coronavirus. ‘On 6 May, 11 people – including a cartoonist, two journalists and a writer were charged under the Digital Security Act with “spreading rumours and carrying out anti-government activities”. They were alleged to have posted about,

“the coronavirus pandemic to negatively affect the nation’s image and to create confusion among the public through the social media and cause the law and order situation to deteriorate”. Four were remanded in prison; the others are bloggers and journalists who live outside Bangladesh.’

5.4.14 Freedom House similarly noted that ‘Amid the COVID-19 pandemic, users were frequently arrested and charged for their online speech. For example, 11 people were charged in May 2020 under the Digital Security Act allegedly for their participation in the “I am Bangladeshi” Facebook page.’

5.4.15 The CPJ also cited numerous cases of journalists arrested under the DSA, relating to charges for reporting on alleged government misappropriation of food aid during the coronavirus pandemic or for publishing so-called false reports on political officials. CPJ noted ‘Between March 10, 2020, and May 21, 2020, authorities detained at least six journalists in Bangladesh and opened investigations into at least nine more under the country’s Digital Security Act, according to news reports and CPJ interviews with journalists.

5.4.16 Reporting on 3 July 2020, Article 19 stated its concern at the arrest of a 15-year-old boy, for allegedly insulting the Prime Minister on Facebook, and of 2 university teachers, who were arrested for criticising the previous health minister’s mismanagement of the health care system and the subsequent negative effect on the care of coronavirus patients.

5.4.17 In March 2020, CPJ reported on Dhaka Tribune journalist, Ariful Islam, who was arrested by men in paramilitary uniform for alleged drug offences, which Ariful claimed were planted in his home. The men assaulted the journalist and broke his arm and it was reported he was stripped, blindfolded and tortured whilst in police custody. That night he was sentenced to prison by a mobile court though was later released on bail by another court. Ariful had reported on corruption among local officials. The government launched a departmental case against 4 officials for their alleged involvement.

5.4.18 Amnesty International reported the case of Ashraf Uddin Mahdi, a student and online activist, who was disappeared by unknown men in Dhaka in August 2020. Mahdi told the NGO that he was released by his abductors after 48 hours on the condition that he cease posting critical commentary on social media about people connected to the government.

5.4.19 On 7 September 2020, RSF reported on the arbitrary detention of a journalist in Cox’s Bazar in the southeast of Bangladesh<sup>132</sup>. According to RSF, Faridul Mostafa was held for nearly a year after reporting on local government corruption<sup>133</sup>. The Officer in Charge (OC), who was the subject of Mostafa’s report, accused him of extortion. In fear of his life, Mostafa fled to Dhaka but was located by the OC via his mobile phone signal and, in September 2019, was brought back to Cox’s Bazar by whom the RSF described as the OC’s ‘thugs’<sup>135</sup>. Even after a high court ordered his release in August 2020, charges against him remained for the illegal possession of drugs, alcohol and firearms, which were reportedly planted in his home during a police raid. Mostafa also claimed he was tortured whilst in police custody.

- 24.** Notwithstanding the evidence showing the security services in Bangladesh have purchased equipment to allow them to monitor posts made online, it is not made out the material the appellant has posted to date in the UK will have come to the attention of the authorities in Bangladesh, such as to create a real risk for him on return.
- 25.** Where I find the appellant does face a real risk of harm giving rise to an entitlement to a grant of international protection is in relation to the issue of whether he will continue his political activities in

Bangladesh or whether he will cease such activities as a result of facing a real risk of harm if he did not; the HJ (Iran) point.

- 26.** The First-tier Tribunal found that the appellant's political activities and expression of opposition political views on behalf of the BNP is genuinely held. This is therefore not a case of a person not holding genuine views. In such a scenario that person can be expected not to express them if questioned in relation to them. The appellant has been found to be a person who continued his political interests and activities both in Bangladesh and in the United Kingdom, which is a preserved finding. It is contrary to the finding of the Supreme Court in HJ (Iran) that a person who holds a fundamental belief should be required to hide or deny the same solely to avoid persecution. The appellant's entries on his Facebook account, even if they create no real risk in isolation and were posted in the United Kingdom, are also matters that the appellant could not be expected to deny if asked about the same on return to Bangladesh. If the authorities on return ask the appellant to open his Facebook page to show his entries and posts, even if the majority just repost other articles or comments, that could bring him to the adverse attention of the authorities, resulting in a real risk of ill treatment contrary to article 3 ECHR.
- 27.** The core of this case is, however, that the appellant is a person who has been found to be politically active and who wishes to continue to be so. Such acts will put him in the spotlight in Bangladesh giving rise to real risk, and he cannot be expected to act discretely. In light of the country material recordings that those perceived by the agents of persecution, whether state agents or members of AL are intent on quashing any opposition activity, by whatever means, and in light of the evidence of a further increase in such activities and real risk of increasing political tension with a forthcoming parliamentary election, it is credible that the appellant would not want to involve himself in activities such as those he has undertaken in the past in Bangladesh when the likely consequences of the same will be that he will face a real risk of persecution or harm.
- 28.** The appellant's profile will be further increased in a negative sense if his attendance at the demonstrations against the Prime Minister of Bangladesh in the United Kingdom becomes known to those who are questioning him, which the appellant cannot be expected to deny if he is asked about his activities in the United Kingdom, which represent genuinely held opposition political views. Indeed, it is arguable that on return to the airport should such questions be asked of him he cannot be expected to lie which will create a real risk of detention, torture, abuse, charges, and possible disappearance in accordance with the country information.
- 29.** I find, to the lower standard applicable to an appeal of this nature, that the appellant has established that he is entitled to a grant of international protection on the above basis, and accordingly allowed the appeal.

## **Decision**

**30. I allow the appeal.**

Anonymity.

The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

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Signed.....  
Upper Tribunal Judge Hanson

Dated 13 April 2021