

## **Online Human Rights Defenders (OHRDs): Recognition, Challenges and Prospects**

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### **Abstract**

*In recent years, the power balance in several countries including Bangladesh has been shifted in different ways due to internet penetration. Online activities by emerging Human Rights Defenders (HRDs) such as cyber dissidents, bloggers, online activists and journalists have thrown challenges against the authoritarian regimes, perpetrators of human rights violations, and also promulgation of repressive laws and policies. In Bangladesh, online activities by HRDs have unleashed a great potential by using digital technologies and also increased visible but less vibrant power and change within the society, which has consequences in offline as well. Perhaps, this is one of the major reasons that the existing power gamblers in local and national politics are very much reluctant to ensure internet freedom and digital rights of people. On the other hand, different non-state actors along with state apparatus are also targeting HRDs for their online and offline activities in Bangladesh which clearly hamper freedom of speech, thought and expression. Therefore, there is strong need to protect and promote HRDs activities online and offline to bring positive and rights based changes into society. The legal system of Bangladesh is yet to recognize formally the term HRDs. Being the signatory to the UN Charter, Bangladesh also should recognize the “United Nations Declaration on Human Rights Defenders”, adopted by the United Nations General Assembly Resolution in 1998. According to the Declaration, anyone working for the promotion and protection of human rights, from their personal or organizational capacity is called a Human Rights Defenders. This broad definition includes non-state actors such as volunteers, journalists, lawyers, activists, students, academia and anyone else carrying out their activities on human rights field. This declaration also recognizes some rights to the human rights defenders, e.g. freedom of expression, right to privacy, freedom of assembly, right to be protected, the right to develop and discuss new human rights ideas and to advocate for their acceptance, the right to criticize government*

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*bodies and agencies and to make proposals to improve their functioning, the right to provide legal assistance or other advice and assistance in defense of human rights, the right to unhindered access to and communication with non-governmental and intergovernmental organizations, and international bodies; and so on. Due to the increasing ostensible and repressive measures by the state and non-state actors to the human rights defenders, the time has come to adopt Declaration in our local context in order to secure their activities as well as the human rights defenders. On the other hand, there have been recent developments to deal with the increasing online activities worldwide by the bloggers, online activists, journalists and citizens themselves. The Council of European Union Member States adopted the “EU Human Rights Guidelines on Freedom of Expression Online and Offline” in Brussels on 12 May, 2014. The declaration emphasizes on protection of all the human rights online, which are already existing offline, in respect the right to freedom of opinion and expression. Therefore, we should also bring the academic intervention with the term “Online Human Rights Defenders” in Bangladesh. Recognition of this term Online Human Rights Defenders (OHRDs) in academic arena and insertion of this term in our existing laws and policies could be one of the strategies to protect OHRDs from ostensible government measures or repressions by non-state actors. Also, reformation of existing laws regarding Information and Communication Technology or Cyber Crime with the special focus on OHRDs, can provide some judicial safeguards to the OHRDs more and will encourage more human rights activities in future. Lastly, liberal application the concept of “Freedom of Speech, Thought and Conscience” in online activities will create more space to mingle the different ideologies regarding online activities and regarding the OHRDs.*

**Keywords:** Data Protection, Freedom of Expression, Mass Surveillance, Online Activism, Online Human Rights Defenders, Right to Privacy.

**Research Methodology:** Qualitative research.

## **Introduction**

Due to the gradually increasing movements of the *Human Rights Defenders (HRDs)* on internet, the traditional power nexus between the state and citizen has been shifted in different ways in several countries including Bangladesh. Emerging cyber dissidents, bloggers, online activists and journalists have thrown challenges to the perpetrators of human rights violations and curtailed the repressive power of authoritarian governmental actions and policies. As a result, under the veil of national security, telecommunication safety, data protection, anti-terrorism and so on government is restricting internet freedom and online privacy.

In this critical situation, safety and security of the HRDs has become one of the major challenges in Bangladesh. There is strong need to protect and promote HRDs activities online and offline to bring positive and rights based changes into society. Unfortunately, The legal system of Bangladesh is yet to recognize formally the term HRDs. Being the signatory to the UN Charter, the time has come for Bangladesh to recognize the “United Nations Declaration on Human Rights Defenders”<sup>1</sup>, which was adopted by the United Nations General Assembly Resolution in 1998. According to the Declaration, anyone working for the promotion and protection of human rights, from their personal or organizational capacity is called a Human Rights Defender. This broad definition includes non-state actors such as volunteers, journalists, lawyers, activists, students, academia and anyone else carrying out their activities on human rights field. Due to the increasing ostensible and repressive measures by the state and non-state actors to the human rights defenders, the time has come to adopt Declaration in our local context in order to secure themselves as well as their activities. On the other hand, there have been recent developments to deal with the increasing online activities worldwide by the bloggers, online activists, journalists and citizens themselves. The new academic intervention with the term “Online Human Rights Defenders (OHRDs)” already popped up in academic arena based the above Human Rights Defenders Declaration.

Therefore, Bangladesh needs to adopt this idea in its existing socio-legal framework, which could be one of the strategies to protect OHRDs. For that purpose, there need to recognize the term OHRD through sorting out the challenges and emphasizing on the prospects to it. Also, reformation of existing laws regarding Information and Communication Technology or Cyber Crime with the special focus on OHRDs, can provide with some judicial safeguards to the OHRDs more and will encourage more human rights activities in future. This paper is an attempt to recognize the term “Online Human Rights Defender (OHRD)” through finding out the challenges and prospects to it. The aim of the paper is to broaden the horizon for the OHRDs so that they can do the liberal application of the concept of “Freedom of Speech, Thought and Conscience” to mingle the different ideologies in order to create a peaceful just society.

### **Who is a Human Rights Defender?**

In a layman’s word, a Human Rights Defender is a person whose action promotes globally recognized principles of Human Right. However, there

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<sup>1</sup> The full title of the Declaration is “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”.

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is a formal definition of Human Rights Defender given by the United Nations through its “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”.<sup>2</sup> According to the Declaration, the definition of the Human Rights defender is<sup>3</sup>-

*“Human rights defender” is a term used to describe people who, individually or with others, act to promote or protect human rights. Human rights defenders are identified above all by what they do and it is through a description of their actions and of some of the contexts in which they work that the term can best be explained. The examples given of the activities of human rights defenders are not an exhaustive list.*

The term “Human Rights Defender” is a contemporary one that was not known to the world before 90s. According to the United Nations Office of the High Commissioner for Human Rights-

*“The term “human rights defender” has been used increasingly since the adoption of the Declaration on human rights defenders in 1998. Until then, terms such as human rights “activist”, “professional”, “worker” or “monitor” had been most common. The term “human rights defender” is seen as a more relevant and useful term”<sup>4</sup>.*

Another definition we can get from the international recognized organization The Front Line Defenders. According to them-

*“Human rights defenders are people who, individually or collectively, work peacefully on behalf of others to promote and defend internationally recognised human rights.*

*They are defined by their actions rather than by their profession, job title or organization. They can be community leaders, journalists, lawyers, trade unionists, students or members of human rights organizations. They can defend women's rights, environmental rights, indigenous peoples' rights, children's rights, minority rights, refugee rights or the rights of Lesbian, Gay, Bisexual and Transgender (LGBT) people. In many countries they*

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<sup>2</sup> United Nations General Assembly Resolution A/RES/53/144n.d., *Declaration on Human Rights Defenders*, viewed 2 December 2014, from <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>.

<sup>3</sup> *United Nations Office of the High Commissioner for Human Rights n.d., Who is a defender*, viewed 2 December 2014, from <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>.

<sup>4</sup> *Ibid*

*face considerable personal risk because they stand up for the rights of others against powerful interests.*"<sup>5</sup>

### **Rights and protections of a Human Rights Defender:**

According to the declaration, the HRDs enjoy following the rights and protections-

*Articles 1, 5, 6, 7, 8, 9, 11, 12 and 13 of the Declaration provide specific protections to human rights defenders, including the rights: 1. To seek the protection and realization of human rights at the national and international levels; 2. To conduct human rights work individually and in association with others, 3. To form associations and non-governmental organizations; 3. To meet or assemble peacefully; 4. To seek, obtain, receive and hold information relating to human rights; 5. To develop and discuss new human rights ideas and principles and to advocate their acceptance; 6. To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impede the realization of human rights; 7. To make complaints about official policies and acts relating to human rights and to have such complaints reviewed; 8. To offer and provide professionally qualified legal assistance or other advice and assistance in defence of human rights; 9. To attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations; 10. To unhindered access to and communication with non-governmental and intergovernmental organizations; 11. To benefit from an effective remedy; 12. To the lawful exercise of the occupation or profession of human rights defender; 13, To effective protection under national law in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights; 14. To solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad).*<sup>6</sup>

The Declaration does not only confer rights and protections on the HRDs, it also defines the role of the State towards the HRDs. Under the articles 2, 9, 12, 14 and 15 of the Declaration, State has a responsibility and duty:

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<sup>5</sup> Front Line Defenders n.d., *Who are human rights defenders?*, viewed 2 December 2014, from <http://www.frontlinedefenders.org/about-human-rights-defenders>.

<sup>6</sup> Declaration on Human Rights Defenders, *supra note 2*

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*1. To protect, promote and implement all human rights; 2. To ensure that all persons under its jurisdiction are able to enjoy all social, economic, political and other rights and freedoms in practice; 3. To adopt such legislative, administrative and other steps as may be necessary to ensure effective implementation of rights and freedoms; 4. To provide an effective remedy for persons who claim to have been victims of a human rights violation; 5. To conduct prompt and impartial investigations of alleged violations of human rights; 6. To take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration; 7. To promote public understanding of civil, political, economic, social and cultural rights; 8. To ensure and support the creation and development of independent national institutions for the promotion and protection of human rights, such as ombudsmen or human rights commissions; 9. To promote and facilitate the teaching of human rights at all levels of formal education and professional training.<sup>7</sup>*

Also, since the adoption of the Human Rights Defenders Declaration, the UN Commission on Human Rights unanimously adopted Resolution 2000/61 to appoint a Special Representative to deal with human rights defenders. Ms Hina Jilani, a noted human rights attorney from Pakistan, was appointed as the first Special Representative. In 2008, the name of the post was changed to Special Rapporteur. However, to protect human rights defenders, this is the first international mechanism that has been assigned to monitor the rights enshrined in the Declaration. The Special Rapporteur, who works in complete independence of any State, is mandated to conduct the following main activities:

*To seek, receive, examine and respond to information on the situation and rights of defenders; to establish cooperation and conduct dialogue with governments and other actors on the promotion and effective implementation of the Declaration; to recommend effective strategies to better protect human rights defenders and follow up on these recommendations.<sup>8</sup>*

Subsequently, following international mechanisms came out that particular deal with the HRDs-

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<sup>7</sup> Declaration on Human Rights Defenders, *supra* note 2

<sup>8</sup> International Service for Human Rights, 2008, *UN Special Rapporteur on Human Rights Defenders*, viewed 2 December 2014, from <http://www.ishr.ch/news/un-special-rapporteur-human-rights-defenders>.

1. The Human Rights Defenders Unit of the Inter-American Commission on Human Rights in 2001,
2. The mandate of the Special Rapporteur of the African Commission on Human and Peoples' Rights on human rights defenders in 2004, and 3. The European Union Guidelines on human rights defenders 2004.

Moreover, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights are also the core sources of the rights and protections for the Human Rights Defenders.

### **Who is an Online Human Rights Defender?**

Ancient Greek philosophy introduced us with the word “Citizen”. Now, in this twenty first century, the internet introduced us with the word “Netizen”<sup>9</sup>. On the other hand, concept of human rights is gradually realizing as universal value for the HRDs irrespective of any race, color, sex and religion. That means, HRDs and Internet users have created their virtue and space which is not limited by any nation state boundary and Netizens or HRDs are considered free from any dogma out of ostensible national interests or security. Through online activities, online human rights defenders only speak for unity and promote human rights of mankind.

Therefore, Human Rights Defenders are beyond any national territory while acting as Netizens and freedom of expression online or internet freedom became their motto to bring qualitative changes into the society. Now, even a single person can cause a revolution within couple of moments in Internet community. Endeavor by a single person can spread up through online in the blink of eyes that already brought political changes in Middle East and North African (MENA) region. Or, a little girl Malala in Pakistan leads the world now against Islamists by her voice echoed through online media worldwide, or a single video footage of massacrings on Rohingya people compelled United Nation to raise its voice to defend these ‘Stateless Community’ in the Globe.

So, anyone with access to internet can certainly play a role of Human Rights Defender in online that has consequences in offline as well. In this sense, if any online activity by someone promotes human rights norms and if that activity complies with the principle of UN Human Rights Declaration, the person can be said Online Human Rights Defender (OHRD).

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<sup>9</sup> Netizen = A person who actively uses the Internet especially in a proper and responsible way or an active participant in the online community of the Internet, Merriam Webster Dictionary, viewed 2 December 2014, from <http://www.merriam-webster.com/dictionary/netizen>.

Not only this, the recent development from European Union clearly emphasizes on access to information and internet freedom as essential foundations for peace, stability, democratic values and sustainable development, which are completely human rights defending activities. The Article 33 of “EU Human Rights Guidelines on Freedom of Expression Online and Offline” says-

*“Information and communication technologies (ICT) are now part of everyday life and provide new opportunities for the fulfilment of human rights and for social and economic development. Non-discriminatory access to information and freedom of expression for all individuals, both online and offline must be ensured and protected.”<sup>10</sup>*

The declaration, adopted in Brussels on 12 May, 2014 says-

*“all human rights which exist offline must also be protected online, in particular the right to freedom of opinion and expression.”<sup>11</sup>*

So, it is clearly evident that anyone promoting human rights principles and performing his responsibilities as a human rights defender in online falls under the category of Online Human Rights Defender. The classic example can be bloggers’ community who monitor and share stories about the government’s ostensible legal and administrative measures with a vision to improve human rights situations through providing food for thought that might bring socio-legal and political change in the society. In 2013, Bangladesh experienced one of the massive social protests after the independence that is the Shahbag Movement demanding death penalty for war crimes committed during Bangladesh's liberation from Pakistan in 1971. The whole movement was started just by a Facebook call by Bloggers and Online Activists Network (BOAN) to occupy Shahbag and demand capital punishment for the secretary general of the Islamist party Jamaat-e-Islami Abdul Quader Mollah, hours after he was sentenced to life in prison on 344 counts of murder, rape and torture committed during 1971.<sup>12</sup> Or, a single fact finding report on government mass killing on a

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<sup>10</sup> Council of the European Union, 2014, EU Human Rights Guidelines on Freedom of Expression Online and Offline, viewed 2 December 2014, from [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/142549.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/142549.pdf).

<sup>11</sup> Intellectual Property Watch, 2014, New EU Human Rights Guidelines On Freedom Of Expression, Offline And Online, viewed 2 December 2014, from <http://www.ip-watch.org/2014/05/13/new-eu-human-rights-guidelines-on-freedom-of-expression-offline-and-online/>.

<sup>12</sup> Global Voice, 2014, *Bangladesh's #Shahbag Protests*, viewed 2 December 2014, from <http://globalvoicesonline.org/specialcoverage/2013-special-coverage/bangladeshs-shahbag-protests/>.



political procession, which is published in internet, challenges the perpetrators of human rights violations and compels them to harass human rights defender.<sup>13</sup>

### **Recognition of Online Human Rights Defenders in our local context**

Being the Member Party to the Charter of the United Nations, under the Article 56, Bangladesh has already pledged itself to take joint and separate action in co-operation with the United Nations for the achievement of the purposes set forth in Article 55 (c) to the United Nations Charter.<sup>14</sup>

The Preamble of the Universal Declaration of Human Rights says-

*“...Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,..*

*..Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,...”<sup>15</sup>*

Article 19 of the Universal Declaration of Human Rights says-

*“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>16</sup>*

The preamble of the International Covenant on Civil and Political Rights says-

*“.....Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,*

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<sup>13</sup> FORUM-ASIA, 2013, *Urgent Alert-Bangladesh: Release human rights defender AdilurRahman Khan immediately*, viewed 2 December 2014, from <http://www.forum-asia.org/?p=16360>.

<sup>14</sup> Article 55 (c) says “With a view to the creation of conditions of stability and well being which are necessary for a peaceful and friendly relations among nations base on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:.... c) universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language or religion”

<sup>15</sup> United Nations n.d., *The Universal Declaration of Human Rights*, viewed 2 December 2014, from <http://www.un.org/en/documents/udhr/>.

<sup>16</sup> *Ibid.*

*Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,.....”<sup>17</sup>*

The preamble of the Constitution of the People’s Republic of Bangladesh emphasizes on maintaining international cooperation with the progressive aspirations of mankind in the following way-

*“...Affirming that it is our sacred duty to safeguard, protect and defend this Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh so that we may prosper in freedom and may make our full contribution towards international peace and co-operation in keeping with the progressive aspirations of mankind....”<sup>18</sup>*

The Article 25 of the Constitution of the People’s Republic of Bangladesh compels the State to respect the international law and principles enunciated in the United Nations Charter.<sup>19</sup>

From the above international and national legislations, it is clearly evident that Bangladesh has the duty upon it to recognize the United Nations Declaration on Human Rights in order to respect the solemn expression of the will of the people, as well as the promotion of peace and human rights with the progressive aspirations of mankind. The above international and national legislations also provide with directive to the local courts to recognize the Online Human Rights Defenders based on the internationally well settled human rights norms and principles. The judicial recognition could be one of the vital safeguards to protect the Online Human Rights Defenders while being engaged in real life situations.

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<sup>17</sup> International Covenant on Civil and Political Rights, viewed 2 December 2014, from <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<sup>18</sup> The Ministry of Law, 2014, *The Constitution of the People’s Republic of Bangladesh*, viewed 2 December 2014, from [http://bdlaws.minlaw.gov.bd/pdf\\_part.php?id=367](http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367).

<sup>19</sup> Article 25.(1) The State shall base its international relations on the principles of respect for national sovereignty and equality, non interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter, and on the basis of those principles shall – .....

- b. uphold the right of every people freely to determine and build up its own social, economic and political system by ways and means of its own free choice; and
- c. support oppressed peoples throughout the world waging a just struggle against imperialism, colonialism or racialism.

## **Conclusion**

Once we will be successful to make people aware of the online activities as human rights defending activity by introducing the term “Online Human Rights Defenders”, it will initiate “bottom-up” pressure upon the power gamblers. In the long run, this will help to build up social movements to ensure the Fundamental Freedoms that are ensured in the Constitution of Bangladesh. The bottom up pressure will also led to creation of adaption of new laws, rules and regulations regarding the promotion and protection of the Human Rights activities online and offline. This will strengthen the capacity of HRDs online and offline to monitor government’s ostensible legal and administrative measures with a vision to improve socio- legal and political changes on human rights discourse inside the country. The academic intervention with the recognition of the Online Human Rights Defenders will have greater impact and applicability to enhance social movement and digital democratization of Bangladesh.