

# **THE BANGLADESH EXPERIENCE**

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**Abstract:** *The state's failure to protect the rights of its citizens is one of the major justifications for the establishment of national human rights institutions. This paper discusses, in brief, the current human rights situation in Bangladesh. It highlights concerns over human rights abuses, the judiciary, national human rights institutions in the country. Annexed to the paper are: a list of international human rights instruments that Bangladesh is party to; a list of human rights abuses in a year and a list of various pieces of anti-terrorist legislation.*

The state's capacity to protect its disadvantaged and minority population is a litmus test of good governance. It is also a powerful indicator of the human rights situation in the country. Although no state can realistically secure for every citizen every single right under international and domestic law, it must ensure that there is a safe and peaceful environment and legal protection. Ensuring that these conditions exist helps citizens enjoy their rights.

The Constitution of the People's Republic of Bangladesh guarantees the rights to life, liberty and security, equality before the law, a fair trial, and the presumption of innocence; the Constitution also prohibits arbitrary arrest, retroactive criminal legislation, torture and degrading treatment. Bangladesh is a party to a noteworthy number of international human rights instruments (Annex-1) including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (5 Oct.1998), and the International Criminal Court (ICC).

But these have not produced convincing changes. There are laws with the stated objectives of suppressing terrorism and maintaining law and order, but which in practice are vehicles for the abuse of human rights. These instruments have been criticised as providing justification for detention, physical torture, and suppression of the government's political opponents. The government's human rights record remains poor. Police routinely use torture, beatings, and other forms of abuse while interrogating suspects and frequently beat demonstrators. The Ministry of Home Affairs controls the police and paramilitary forces, and is primarily responsible for internal security. But security forces committed extra-judicial killings and deaths in custody, which doubled between 2001 and 2003 (Country report for 2002 by the US State Department 2001:2). The government is often criticized for being reluctant to pursue investigations against people affiliated with the ruling party and for using police for political purposes.

Black laws still exist and continue to be used (Annex-3). The government continues to arrest and detain persons arbitrarily, and to use the Special Powers Act (SPA) and section 54 of the Code of Criminal Procedure, which allows for arrest without warrant and preventive detention. Prison conditions are extremely poor. According to the United States Department of State Country Reports on Human Rights Practices for Bangladesh, in 2002 Dhaka Central Jail housed approximately 11,500 prisoners despite only having the capacity for approximately 2,600. Irregularities and corruption are common. Judicial logjams and lengthy pretrial detention are still major problems. Police continue to search homes without warrant; the government has numerous records of forcibly relocating

illegal slum dwellers in squatter settlements, and commercial sex workers in several red light locations, without providing adequate rehabilitation facilities.

Journalists practice some sort of self-censorship subconsciously, if not cautiously. Political party activists continue to kill, attack and intimidate journalists. Religious and ethnic minority communities often experience threats in daily life, particularly in land and property related matters. Forest dwelling communities in different areas are rendered homeless and are often evicted due to development activities, destruction of forests and other initiatives. To ensure donor projects get established new laws are promulgated and old ones amended.

### **The Court System:**

The court system has two levels: the lower courts and the Supreme Court. Both lower and higher courts hear civil and criminal cases. The Supreme Court is divided into two sections: the High Court and the Appellate Court. The lower courts consist of magistrates, who are part of the executive branch of the government (and are subject to its influence), and session and district judges, who belong to judicial branch. The higher levels of judiciary displayed a significant degree of independence and often ruled against the government; however, lower judicial officers have been reluctant to challenge government decisions and have been subject to allegations of corruption.

One answer to this problem would be to completely separate the judiciary from the executive. In June 2001, the Supreme Court confirmed a 1997 High Court order mandating the separation of the judiciary from the executive. Some of the elements of the order were supposed to be implemented within eight weeks without constitutional amendment (US 2002:13). But the then government did not implement the order, and the present elected government has done little regarding this. The period of implementation has expired and it was extended repeatedly (at the request of the government) without any progress.

**Law Commission:** The Bangladesh Law Commission was established by the Law Commission Act 1996. The Act empowers the Commission to scrutinize and recommend reforms in law making on its own initiative; but it has also become customary for the Commission to scrutinizes draft laws referred to it by the Ministry of Law and Parliamentary Affairs (Gain, Hossain, Dunn, Hubert: 2000). This, too, has often been very subjective.

**Public Inquiry Commissions:** Public Inquiry Commissions have been provided with some scope for independent inquiry into human rights abuses. The Commissions are headed by a retired High Court judge. On some occasions independent inquiries have been appointed, but most often the reports have not been published or made public (Gain, Hossain, Dunn, Hubert: 2000).

**National Human Rights Commission:** The process of setting up the Human Rights Commission started in 1994. The Institutional Development of Human Rights in Bangladesh (IDHRB) project under the Ministry of Law and Parliamentary was formally launched in 1995. Between 1996 and 2001 the legislation drafting process continued. Human rights groups advocated and monitored the process, but were excluded from the process. According to newspaper reports one cabinet member expressed concern that

there was no-one eligible to head the Commission who would be acceptable to all parties and claimed that the notion of a Commission was a western notion that was not applicable in Bangladesh and that the constitution was enough to protect human rights. The Draft Bill was placed before the cabinet, which sent the Bill to cabinet committee for scrutiny, where it remains (Hasnat: 2003; Prothom Alo: 2002).

**Ombudsman:** According to Article 77 of the Constitution of Bangladesh the Parliament has the capacity to establish the office of the Ombudsman. The Parliament passed the Ombudsman Act in 1980, and the government was to enforce it through official gazette notification (BLAST: 1998). As yet no government has appointed an Ombudsman.

### **Advocacy for Change:**

The existing framework within national human rights institutions is very weak, lacks independence and suffers from nepotism. Some structures are drafted and yet not implemented or established. This shows the lack of commitment within the government.

However, civil society organizations, human rights groups, research organizations and NGOs in Bangladesh have been advocating and actively cooperating to ensure protection of human rights, monitoring and reporting on abuses and seeking remedies to such abuses. Some of these NGOs also advocated and gathered public opinion on institutions like the Ombudsman and the National Human Rights Commission. Some of the Dhaka based organisations that have been active in protecting human rights include the Society for Environment and Human Development (SEHD), the Bangladesh National Woman Lawyers' Association (BNWLA), the Bangladesh Legal Aid and Services Trust (BLAST), Ain O Shalish Kendra (ASK), the Coordinating Council for Human Rights in Bangladesh (CCHRB), the Bangladesh Environmental Lawyers' Association (BELA), Odhikar, Bangladesh Poribesh Andolon (BAPA), and UBINIG.

These groups are engaged in a variety of activities, including documentation, reporting cases of abuses, providing legal assistance, organising protests, providing shelter to victims, providing practical legal education at the community level and conducting advocacy at different levels for framing human rights institutions.

There has been international advocacy as well. Amnesty International, the European Union, Transparency International, and different foreign agencies and donor agencies have been active time and again in their advocacy in favour of human rights protection.

### **Conclusion**

The role of national human rights institutions in monitoring the use of national security legislation has been minimal in Bangladesh. The proposed Human Rights Commission and the Office of the Ombudsman are two examples that show the institutional bottleneck that often acts as a stumbling block to justice and the equal protection of rights of the citizens of Bangladesh. The procrastination in drafting, scrutinizing and processing the bills of such institutions or instruments has made it clear that the committee(s) concerned cannot act independently because they have an interest in not doing so or they are forced not to do so.

It is also obvious that one of the main reasons behind this situation is the failure of the government to separate the Judiciary from the Executive, which allows the government to be inactive in establishing such bodies. There is actually no body to be fully accountable to. This is very natural where the police enjoy impunity and the military actions are indemnified after committing extra-judicial killing. Unless the judiciary is independent it is sure to act under pressure and influence of the executive branch. Therefore, independence of judiciary is the foremost need to ensure the existing human rights institutions act effectively.

#### **ANNEX-1:**

##### **International Human Rights Instruments Bangladesh is party to**

1. International Convention on the Elimination of All Forms of Racial Discrimination, 1966: June 11, 1979: a
2. International Convention on the Suppression and Punishment of the Crime of Apartheid, 1962: February 5, 1995: a
3. Convention on the Elimination of All Forms Discrimination Against Women, 1979: November 6, 1994: a
4. Optional Protocol to the Convention on the Elimination of All Forms Discrimination Against Women, 6 October 1999: September 6, 2000: a
5. Slavery Convention, 1926: January 7, 1985: a Protocol Amending the Slavery Convention: January 7, 1985: a
6. Slavery Convention as Amended by the Protocol: January 7, 1985: a
7. Supplementary Convention on the Abolition of the Slave Trade, and Institutions and Practices Similar to Slavery, 1956: February 5, 1985:a
8. Convention on the Rights of the Child, 1989: August 3, 1990:a  
Amendment to Article 43(2) of the Convention on the Rights of the Child, 1995: April 23, 1997
9. Optional Protocol to the Convention on the Rights of the Child on Sale of Children, Child Prostitution and Child Pornography
10. Optional Protocol to the Convention on the Rights of the Child on Children in Armed Conflict (25 May 2000): September 6, 2000: a
11. International Covenant on Economic, Social and Cultural Rights, 1966: October 5, 1998: a
12. Convention on the Political Rights of Women, 1953: October 5 1998: a
13. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962: October 5, 1998: a
14. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984: October 5, 1998: a

15. The Convention on the Protection of the Rights of Migrant Workers and Members of their Families, 1990: October, 5 1998: s
16. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others, 1950: January 11, 1985: a
17. International Covenant on Civil and Political Rights, 1966: September 6, 2000: a

**Registration, Ratification, Accession: (a)**

**Succession: (d)**

**Signature: (s)**

**Source: Rahman, Dr. Mizanur (Ed), *Human Rights and Empowerment. Empowering through Law of the Common People (ELCOP)*, 2001.**

## **ANNEX-2:**

### **Findings on Human Rights Abuses by Odhikar (Human rights organization)**

From nine National Newspapers

#### **Dowry Related Violence**

Killed: 190

Suicides: 28

Tortured: 90

Divorced: 1

Acid Victims: 14

#### **Acid Victims**

Acid Victims:400

#### **Incidents of Rape**

Rape: 1350

#### **Violence Against Journalists**

Injured: 102

Killed: 3

Arrested: 30

Abducted: 3

Acid Victims:1

Assaulted: 39

Threatened: 147

Filed Cases: 139

**Human Rights Violations in the CHT**

Killed: 75

Injured: 167

Arrested: 89

Abducted: 163

Hijacked: 2

**Human Rights Violations in the border areas**

Killed: 105

Injured: 54

Arrested: 110

Abducted: 118

Missing: 30

Hijacked: 12

**Victims of Political Violence**

Injured: 8741

Killed: 420

Arrested: 5717

**Deaths in Thana, Prison and Court Custody**

Deaths: 104

**Killings by Law Enforcing Agencies**

Killings: 83

**Source:** *Annual Report: 2002*, Odhikar, Pages 12-16

**ANNEX-3**

**Anti-terrorists Acts**

**Special Powers Act, 1974 (SPA)**

The Special Powers Act is enacted by AL government on 9 February in 1974.

**Intends to:** Allow the government to detain on suspicion of involvement in a "prejudicial act" which is intended or likely (i) to prejudice the sovereignty of defense of Bangladesh; (ii) to prejudice the maintenance of friendly relations of Bangladesh with foreign states; (iii) to prejudice the security of Bangladesh or to endanger public safety or maintenance of public order; (iv) to create or excite feelings of enmity or hatred between different communities, classes or sections of people; (v) to interfere with or encourage or incite interference with the administration of law and order; (vi) to prejudice the maintenance of supplies and services essential to the community; (vii) to cause fear or alarm to the public or to any section of the public; (viii) to prejudice the economic or financial interests of the state;"

**Noteworthy features:** Two authorities can invoke it-- government and the district magistrate or additional district magistrate, has status of warrant in all parts of the country. Invoked by govt.-the order remains in force for indefinitely subject to confirmation by an Advisory Board, invoked by DM or ADM it remains in force for 30 days, unless in the meantime it has been approved by the government. A detention order can be modified or revoked any time by the government. Govt. can determine place and conditions of detention.

34. Bar of Jurisdiction of Courts-- "Except as provided in this act, no order made, direction issued or taken, as the case may be, shall be called in question in any Court, and no suit, prosecution or other legal proceedings shall lie against the Government or any person for anything in good faith done or intended to be done under this act."

34B. Act to override all other laws-- "The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Code or in any law for the time being in force."

**Persons arrested:** According to a parliamentary sub-committee studying the use of the SPA from its inception till 1998 December, at least 69,010 had been detained under the SPA. Of those 68,195 (98.8%) were eventually released after the detention was declared by the High Court on ground that: the order has been vague, issued by unlawful authority, not placed before the AB within 120 days, different reasons for detention were mentioned at the time of detention, the detaining authority failed to communicate the grounds for detention to the detainee within 15 days, failed to produce necessary papers to the court, delay in ordering an extension of detention.

**Criticized for:** Preventive detention become a tool to extend the term of detention and disallowing bail; for harassing political opponents and general people; securing detention of someone whose release might threaten the commission

### **Law: Public Safety Act, 2000**

**Passed on:** 30 January 2000 by AL government of Sheikh Hasina

**Intends to:** Provides for trials by special tribunal for offenses like toll extraction, kidnapping, ransom, and damaging vehicles

**Noteworthy features:** The inquiry officer (IO) will have to complete investigation within 30 days of getting information of the incident or receiving orders from the magistrate. The time frame can be extended by 15 days. Then by another 30 days. If s/he fails, another IO will be appointed to complete the task within 15 days. Bailable under

certain situation. Trial would have to be completed within 90 days. Or extend the time by 30 days.

**Persons arrested:** According to Barrister Moudud Ahmed (in 2002) the PSA had arrested 32,743, of them 26,000 were BNP activists.

**Punishment:** 14 years imprisonment at the highest.

**Criticised for:** Similar laws exist but the implementation is a far cry. Code of Criminal Procedure, 1898 was to be amended, not a new law introduced. To hold general elections unilaterally throwing its opponents in jail, said Khaleda Zia instantly. Jatiya Party chairman commented, it was not for public safety rather, Awami League's safety. Jurists commented it as an improved version of the Anti-terrorism Act of BNP in 1992. According to Barrister Moudud Ahmed (in 2002) the PSA had arrested 32,743, of them 26,000 were BNP activists.

**Repealed by:** Four-party Alliance Government under BNP with Khaleda Zia as Prime Minister on 2 April, 2002. Noteworthy that in 2000 KZ said that when we come to power we will repeal the law. *This law was replaced by the Law and Order Disruption (Summary Trial), 2002. The on going cases under this law were withdrawn selectively.*

### **Law and Order Disruption Crimes (Speedy Trial) Act, 2002**

The Law and Order Disruption (Summary Trial) Act, 2002 was passed by the parliament on 9 April 2002 for two years with stated objectives such as: (i) Speedy or summary trial of those (individuals, agency or organization--be it embassy or foreign organization) involved in causing hindrance to normal movements of air, road, rail or water transport; mugging; illegal toll collection; vandalism; obstruction to the government officers/employees in discharging their duties and so forth; and (ii) Improvement in law and order situation in short time.

Four-party Alliance Government that came to power with absolute majority after the 2001 national elections passed the legislation against the backdrop of a deteriorating law and order situation.

**Actions to execute the law:** To execute speedy trial the government is to establish one or more courts (regarded as first class magistrate court) in all the districts and metropolitan areas through gazette notification under this law. The courts will try the offenses under the Code of Criminal Procedures, but in a summarized process The Police will submit the primary investigation reports within hours of arrest and crime investigation report within seven days. The court will deliver judgement within 30 working days after taking the case. This law is bailable.

Speedy Trial Tribunal Ordinance, 2002 was promulgated by the President on 24 October to cover murder, rape, possession of illegal arms, narcotics and explosives.

**Punishment:** Fine and two-five years of imprisonment; person assisting is also subject to similar punishments

**Criticized for:** The Law and Order Disruption (Summary Trial) Act, 2002 is criticized for containing repressive elements that were present in the Public Safety Act, 2000, passed on 31 January by the then Awami League Government and repealed by the Four-party alliance government on 2 April 2002; and the Suppression of Terrorism Act 1992.

Political victimization and failure to improve law and order situation. Violated Article 116 of the constitution for appointing magistrates for setting up of Speedy trial tribunals without consulting the Supreme Court. The government is powered to transfer any pending case under the five charges to this tribunal. This *ultra vires* article 27 of the constitution, which promises the equal protection of rights of every citizen.

The government replaced the Public Safety Act (PSA) which lacked bail provisions, with Speedy Trial Act (STA), which provided for quicker disposal of cases and bail.

### **Section 54 and 167 Code of Criminal Procedures, 1898**

Sections 54 and 167 of the Code of Criminal Procedures, 1898 are two much misused provisions for arrest without warrant (on nine grounds) and preventive detention. The detention can be extended under provision of the Special Powers Act, 1974 that also disallows bail.

**Misuse:** Government is criticized for using it frequently to harass and intimidate members of political parties and their families. Prior to and during demonstrations police detain demonstrators until the demonstration ends. After originally arresting under section 54, the government can file charges against a detainee and prolong his detention.

**Recent Developments:** High Court directed the government in April 2003 to reform the law within six months in order to ensure security in the police custody but the government continued to do so and after the government's direction 30 detainees died in police custody. Even the security measures have not improved. But the Law minister denied this allegation (Hossain: 2003).

### **The Official Secrecy Act:**

The Official Secrecy Act of 1923 can protect corrupt govt. officials from public scrutiny, hindering the transparency and accountability of all government levels.

### **The Joint Drive Indemnity Ordinance 2003**

On January 9 President Iajuddin Ahmed issued this ordinance, which was later passed by the Parliament.

This provided impunity to the "members of the joint forces and any person designated to carry out responsibilities in aid of civil administration during the period between 16 October 2002 and 9 January 2003". This Ordinance ensured that no civil or criminal procedure could be invoked against "disciplinary forces" or any government official for "arrests, searches, interrogation and [other] steps taken "during this period (Amnesty International: 2003).

### **Operation Clean Heart: The Joint Force Drive**

Apart from bills/laws passed by the parliament there have been efforts to identify and arrest terrorists, and most wanted criminals through operations with joint drives of Army-Police-BDR (Bangladesh Defense Rifles), Ansar and VDP (Village Defense Party). One such effort in recent times was Operation Clean Heart from 16 October 2002. This was a response to growing concern home and abroad about deteriorating law and order. Within the period 5,000 terrorists were arrested in a month and more than 900 firearms were seized (Rahman: 2002). According to official statement of the US State Department

fifteen died during the army led Operation Clean Heart and 31 died during interrogation after arrest.

Although there had been pressure from within and outside Bangladesh to withdraw the ordinance and investigate the deaths, the Principle Information Officer of the government stated "that there had been no deaths in army custody (as of that date death toll was 36) and on November 24 he alleged that some newspaper reports on deaths related to Operation Clean Heart were baseless" (US State Department: 2003: 3).

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