

12 October, 2008

ODHIKAR REPORT ON TWENTY ONE MONTHS OF STATE OF EMERGENCY

Emergency and General Election Incompatible Election only way out: Doubts persist No blanket ratification

Elections under emergency cannot be fair, credible and legitimate:

The Chief Adviser Fakhruddin Ahmed and other senior officials of the Government have made it clear that the stalled national elections will be held under the State of Emergency. The State of Emergency, as has been enforced in Bangladesh, essentially encroaches upon the space that the people need to make such choices. It suspends basic human rights enshrined in the Constitution. It empowers the Government with unrestricted powers of arrest without due process. Emergency also contravenes permissible limits under the International Covenant of Civil and Political Rights (which Bangladesh subscribes to) that Emergency could be during a time that “threatens life of the nation”.

Grounds adduced by the President to impose State of Emergency back in 11 January 2007, were that the security and economic life of Bangladesh was threatened by internal disturbances. 21 months on, the ‘internal disturbances’, which were stated as the reason for the proclamation of Emergency, no longer exist. As such, Emergency is no longer meeting its legal threshold and continuation thereof violates both domestic and international laws. Major political parties and others also demand lifting of Emergency.

Odhikar strongly believes that the State of Emergency should be lifted in its entirety and on the whole territory of Bangladesh in order to create a climate conducive to free and fair elections.

Odhikar also maintains that human rights are indivisible and it is neither possible nor permissible to relax or suspend some rights while others are still being denied. Human rights should be upheld and respected under all circumstances. Therefore,

attempts to hold a general election under the Emergency cannot offer a congenial atmosphere for a credible polls and transition to an elected government.

Election only option:

A free, fair and participatory popular election is the only legitimate way to form a government in an electoral democracy. The government has finally announced that parliamentary elections will be held on 18 December 2008 but there are still doubts about it. It stems from persisting doubts about real intentions of the Government, preparedness of the Election Commission and its insistence to hold upazila elections within a week of the parliamentary one, etc.

Odhikar believes, only through a widely participatory, credible general election can the nation make a transition to representative governance from the current extra-constitutional administration.

No blanket ratification:

Odhikar feels it is time to think about the post election situation too, and this gives rise to the question of ratification by the next elected Parliament of the deeds performed by the present regime that, instead of acting as a Caretaker one, exceeded its constitutional authority and as a regular Government.

The question of ratification or legalisation of the activities of the Government will arise soon after the election is held. Odhikar maintains in this general election, voters will vote for an elected Government but not necessarily to ratify or otherwise legitimise actions and measures of the current Government.

Human Rights Commission won't safeguard human rights:

Over the last 21 months, Odhikar did not notice any improvement to or securing of basic human rights. In this regard, the yet to be operational National Human Rights Commission would not make any difference. It is highly paradoxical that the Government has proceeded to establish the National Human Rights Commission, while keeping all basic rights suspended and denied!

The Selection Committee formed to recommend people for the appointment as the Chairman and Members of the Human Rights Commission by the Government is unlikely to select independent and acceptable candidates, in that except an Appellate Division Judge, the five other members — the Attorney General, Comptroller and Auditor-General and the Chairman of the Public Service Commission — are in fact political appointees of the government, and the remaining two, viz. the Cabinet Secretary and Law Secretary, are bureaucrats. There is no representation from noted human rights organisations or other independent experts in the Committee.

In Odhikar's view, the recommendation of such a Selection Committee comprising the political appointees and bureaucrats, and in absence of independent rights experts, cannot be free of the government influence and the Commission to be formed with the people selected by such a Committee will not be able to safeguard human rights in Bangladesh.

'Right to information law' not to ensure the right to know:

The interim cabinet on September 20, 2008 approved of the Right to Information Ordinance. Odhikar owes it to accuracy to express concern over certain disingenuous aspects of the new law. At the very outset, right to information goes hand in hand with freedom of expression in a democratic dispensation. Suspicions about the sincerity of the Government stems from the fact that the law has been passed under Emergency that suppresses ordinary people's rights to dissent or discuss it in public forums.

The Information Commission, to be formed under the law, will not have financial autonomy. In Odhikar's view, the Commission will eventually help the authorities to evade the responsibility of giving out information. Such a Commission may be effective in acting against the secretive vested interests of a government if its funding is ensured through a parliamentary allocation rather than a line ministry. The absolute exemption of six security and intelligence agencies from the remit of the new Ordinance, given that many of these agencies are often accused of overstepping their legal jurisdiction, is not consistent with the exercise of right to know. Also, the financial irregularities; the budgetary indiscipline; the lack of accountability; and the alleged political machinations of many of the other agencies, cannot be brought under democratic public oversight under the new Ordinance. Like the journalists and many experts, Odhikar also believes that the draft Ordinance will curb rather than extend press freedom and the people's right to know.

The right to life:

It has been reported in newspapers on September 16, 2008, that labour leaders from state-owned jute mills in Khalishpur attempted to burn themselves as a protest against the failure of the mill authorities to meet their rightful demands. Some workers had not been paid their due wages for several months. They stated that their families had to go half-fed, their elderly parents were dying without medical treatment and their children had stopped going to school. The state-owned enterprises have gradually taken the course of permanent shutdown without payment of due arrears to the workers.

The reported incident compels Odhikar to ponder over the current state of livelihood across the country. The Government's failure to rein in price hike of essential foods endangers right to life to many, in particular, the downward trend of the economy - especially in terms of employment generation — which would require substantial investment both from the government and the private sector, have been further aggravated by political uncertainty, incoherent decisions and lack of legitimacy of the Government.

Workers rights flouted with impunity:

Workers rights have routinely been ignored by their employers as well by the Government. In a recent incident, at least 20 people, including five lawmen, were injured and scores of vehicles damaged as workers of a garment manufacturing factory, who were yet to get their salaries and festival allowances, clashed with the law enforcers blocking the Dhaka-Sylhet highway at Kanchpur point in Narayanganj on September 28. A number of similar incidents were observed throughout September, 2008.

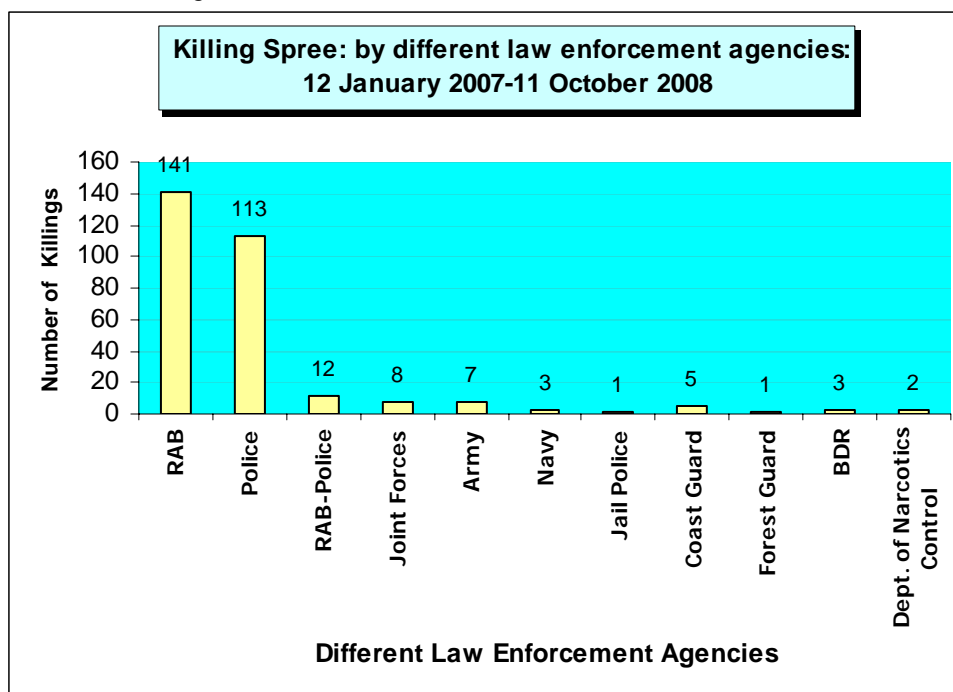
A leading English daily, the New Age, reported on September 30 that at least a half of the country's garment workers had to spend Eid-ul-Fitr without festival allowance while some of their fellows were lucky enough to get meagre amounts. The Bangladesh Garment Manufacturers and Exporters Association president Anwarul Alam Chowdhury admitted that many garment factories might not have been able to pay festival bonus. The factory owners who cannot make reasonable profits throughout the year struggle to pay workers their regular wages, and extra payment becomes quite difficult for them, the BGMEA leader argued and said that the law did not oblige employers to pay festival bonus.

While the authorities have been saying the 'attitude' of the garment factory workers and their protests are a 'conspiracy' hatched by 'Bangladesh's enemies', Odhikar believes it might have more to do with denial of basic human rights of workers, 14-hour workdays, abysmal working conditions and growing economic anxiety of the workers.

Industrial relations in the ready-made garments sector (RMG sector) is sadly one of mistrust, with factory owners often prone to believe that a section of workers are intentionally sabotaging their business at the behest of outsiders, and workers fearful of the violence and abuse that a bulk of factory management perpetrate as policy to cow them into submission. Without restoring rule of law and respecting workers rights, the existing conditions look set to cause more divisions and mistrust in the industry, jeopardising its future in the long term.

Extrajudicial killings continue with impunity:

Since the proclamation of the State of Emergency between 12 January 2007 and 11 October 2008, a total of 296 persons were allegedly extra judicially killed by law enforcement agencies.



Circumstances of the Deaths: 12 January 2007 to 11 October 2008

Circumstance Reported	Number of Deaths
"Crossfire"/encounter/gunfight/shootout	234
Tortured to death	37
Shot dead in circumstances other than "crossfire"/encounter/gunfight/shootout	14
Other circumstances	11
Total	296

No respite from corruption:

Corruption results from absence of rule of law, which has persisted, despite the government's all-out anti-corruption drive, used also as a pretext to prolong its time in office. The 'drive' saw scores of businessmen and politicians jailed in the past 21 months had little impact on the country's state of corruption.

This year, the Berlin-based organisation Transparency International has ranked Bangladesh the 10th most corrupt nation in its global corruption perception index. While this ranking might be interpreted as an improvement in the country's

corruption combatting scenario compared to past years, the reality is far less rosy. According to the TIB, the reason is that the government has failed to reform institutions and processes, opting to target individuals instead.

Though Bangladesh falls three places from last year's ranking of 7th in the TI index, it is understandably because some countries fared worse than past years, while Bangladesh's own score remained largely static. Nonetheless, almost all of the other corrupt nations ranked near Bangladesh are emerging from or are still in the stranglehold of unelected regimes that thrive on political instability and abhor press freedom. This empirical evidence can only reinforce the idea that non-representative governance and lack of democratic accountability are at the heart of a culture of corruption within society. Odhikar believes that only a rule-based, transparent, democratic society can address corruption, which has serious human rights consequences.

Conclusions:

1. Odhikar demands that since the State Emergency has lost its justification, legal and otherwise, and continue to pose serious threats to enjoyment of basic human rights, Emergency must be lifted immediately.
2. It believes that general election to restore parliament and elected government cannot be held while Emergency is in place, even if some rights are relaxed or even restored. Human rights cannot be picked and chosen by the government. These are inherent rights of the people.
3. It maintains that there cannot be any other form but a freely held election as the only legitimate means of governance and that elections so held must not only be participatory, but free, fair and credible.
4. It demands that nothing should be done by the Government to jeopardise or put at risk holding of the general election on the set date.
5. It insists that the Parliament so elected through free and fair the election should not extend blanket immunity to this government.

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Notes:

1. Odhikar seeks to uphold the civil, political, economic, social and cultural rights of the people.
2. Odhikar documents and records violations of human rights and receives information from its network of human rights defenders and monitors media reports in twelve national daily newspapers.
3. Odhikar conducts detailed fact-finding investigations into some of the most significant violations. Odhikar is consistent in its human rights reporting and is committed to remain so.