

Report on 17 Months of Emergency in Bangladesh

Let the law take normal and transparent judicial course Mass Arrest violates human rights Concentrate on election

Odhikar monitors the status of human rights situations according to the rights available in the existing Constitution of Bangladesh as well as in various international instruments. For the last 17 months, since the State of Emergency was imposed on January 11, 2007, Odhikar paid special attention to 'Emergency', an extraordinary measure in itself that poses a major challenge to human rights. Odhikar believes emergency powers of the state are inherently contradictory to human rights and as such, focuses on monitoring the applications and impacts of 'Emergency' from a human rights perspective. Odhikar also keeps track of the government actions relating to the restoration of full democratic rights to the citizens.

1. Fast track judicial processes for political objectives and discriminatory outcomes

Interference in Judiciary to design certain political goals, worse even, for differential and discriminatory outcomes, has become a serious human rights threat to the people of Bangladesh and people's perception of such apparent events have further increased political tension and instability.

The way the caretaker government has fast tracked the judicial process by getting courts issuing similar orders in a day exempting the former Prime Minister Sheikh Hasina from personal appearance and return of her seized passports to purportedly facilitating her treatments, have exposed, yet again, use of judicial process for extraneous purposes.

This preceded the simultaneous formation of medical boards and their examinations of two detained former Prime Ministers, Bangladesh Nationalist Party Chairperson Khaleda Zia and the Awami League President Sheikh Hasina. At the same time, separate medical boards, examined Khaleda Zia's two sons. All the reports were sent to the Home Ministry in two days.

These hurried decisions have seriously undermined the judiciary and the judicial process in the people's perception. The political pitfalls of such perceptions may diminish the expectations of an independent role played by the judiciary in time of crisis and create alienation of the people from

rule of law and constitutional politics - a precondition to precipitate the serious deterioration of constitutional and human rights in general.

In fact, at the time of releasing this report, Sheikh Hasina has been released on parole for 8 weeks on medical grounds and is on her way to the United States of America. It is obvious that political calculation has overwritten both the emergency and the ordinances by which the regime is ruling the country, but most importantly the normal process of the judiciary.

Difference in judicial determination with regard to Sheikh Hasina, seeking treatment for her ear on the one hand and the serious health condition of Arafat Rahman and Tareq Rahman, the two sons of Khaleda Zia, on the other may add fuel to the public perception since it may be interpreted as discrimination.

2. Blanket arrests: new tools for political repression

Political repression has been intensified.

Mass arrests of about 25,500 people in two weeks, many of whom are principally grassroots political leaders and activists, during the special drives of the joint forces launched on May 30, indicates the inability of the government to manage political dissent. Explanation from the government for such drives has so far failed to show evidence that it has been conducted purely to improve the law and order situation and not repression of the political opponents.

The government claims it is a drive against miscreants, criminals and those wanted by law, but most observers, including international human rights organisations, political parties and the media have identified this move as a tactic of political repression and intimidation. Failure of the government to initiate 'dialogue' mainly due to the refusal of the major political parties to engage in with the government, unless political leaders are released, is perhaps the reason for political repression. Some parties are raising issues about the constitutional legitimacy of the government and see no necessity to engage in dialogue. They are; however, open to election, and demanding all that the government should do is go for election, preferably by October 2008.

It is regrettable that a government that was formed to set 'positive examples' has resorted to the old practice of mass arrests that has been routinely used by successive governments in the past, to serve their own crude political ends. Still, the accused then had recourse to legal relief in the form of bail and interventions by higher courts to check such abuses but

the carrying out of such arrests under Emergency law have all but denied such recourse.

3. Freedom of expression and Press:

The recent formation of a Committee to Protect Freedom of Press and statements of veteran journalists are ominous signs of the state of affairs. Freedom of expression and the freedom of press is routinely violated, as reported by reputed journalist.

Journalists are protesting against 'overt and covert restrictions imposed on the mass media' and demanding that the government should exempt publications of all news items, commentaries and reports from restrictions contained in the Emergency Powers Rules.

As reported by the member of the Committee to Protect Freedom of Press and Statements, different military and non-military agencies of the government are routinely interfering in the day-to-day activities of the media. Media organisations working under an atmosphere of fear reported forced exercise of self-censorship, denying their readers access to free flow of information.

4. Anti-Terrorism Ordinance:

Odhikar is deeply concerned about the reported draft of the Anti-Terrorism Ordinance, approved by the Council of Advisers.

Its been reported that the Ordinance contains a new definition of 'acts of terrorism' in a broader spectrum, including any act that poses a threat to the sovereignty, unity, integrity or security of Bangladesh or creates panic among the general masses or obstructs official activities.

Odhikar deplores the way the government has drafted this important piece of law with serious consequences of individual freedoms and rights, without broader consultation. It also questions why the draft text has not been made available despite its approval.

Terrorism cannot be addressed as a law and order or legal problem without taking into account the economic, social, political, cultural context. Anti-terrorist law that extricates citizens from their constitutional and human rights can not be acceptable. Criminal activities identified in the proposed ordinance can very well be addressed under the existing penal laws, if applied impartially and properly.

Odhikar apprehends the proposed Ordinance may be a handy tool for persecution of political opposition, human rights defenders, trade unionists and other activists in the name of ensuring security of the state. It is deeply concerned at some reported provisions of the proposed law, which

would allow the rulers to punish the working class people and human rights defenders, who would be staging demonstrations with right causes, by identifying them as terrorists. The broad remit of the law defining terrorism would provide unrestricted power to the executive branch of the state to curtail fundamental freedom of the people.

5. Denial of Justice:

Supreme Court lawyers have reportedly been lamenting the High Court's advice for seeking justice from the almighty Allah as the Appellate Division barred the High Court from hearing any bail petitions under the Emergency Powers Rules and was yet to deliver the full verdicts detailing the grounds for such a stand of the highest court.

Rejecting a petition filed by the Jamaat-e-Islami secretary general, Ali Ahsan Mujahid, seeking bail in the Barapukuria coalmine graft case, the High Court on May 26 advised Mujahid's counsel to seek justice from the almighty Allah saying that the hands of the judges were tied and they could not go by the oath they took under the Constitution.

The Appellate Division of the Supreme Court on June 3, 2008 finally accepted hearing the petition which sought elucidation of its judgement regarding the High Court's jurisdiction over hearing bail petitions in cases under the Emergency Powers Rules. The full court of all seven Appellate Division judges on April 23, 2008 delivered the judgement, striking down the ruling that had asserted the High Court's power to hear bail petitions in cases filed under the Emergency Powers Rules.

The courts must, in all circumstances, have the authority to independently evaluate the situation before depriving a person of his/her freedom and this right cannot be taken away. It's equally worrying when High Court Judges, failing to dispense justice, reportedly ask lawyers to seek justice from the almighty Allah. Evoking theology in the court of law has serious consequences both for law as well as for the state. Judiciary should act responsibly and prudently.

6. Workers rights

Freedom of association has been systematically denied, workers brutally repressed for demanding legitimate wages.

During the 17 months of State of Emergency, freedom of association, in particular, rights of the workers in jute mills and garments factories were ignored and often received brutal response from the government. For demanding full payment of wages and rights under labour laws, many of these workers have been arrested for violating the State of Emergency. A number of cases were filed against jute mill and garments factory workers for violating the State of Emergency.

Although in most cases garments workers' unrest is due mostly because of the violation of their rightful demands, to which factory managements remain apathetic, there have been a few cases when unrest among the workers flared based on apparent rumours. However, in almost every case, the police had to be called in to reach a settlement and bring the situation to normalcy. The trend quite plainly points out that there is no effective means of negotiations between the workers and the management.

There is ample evidence that an elected group of workers' representatives at garment factories provide the management with an effective means to negotiate and settle disputes, since generally, workers are equally committed to keep the factory running and more or less aware of the uncertainties of the international market. Such a body would also prove effective in dispelling baseless rumours and contain agitation that might flare up due to outside instigation, as is often alleged by the factory management and owners. Furthermore, labour unions, as has been proven in the industrialised countries, contribute towards healthy industrial relations necessary for sustainable growth of the garment industry as a whole in this age of globalisation and hard competition.

Rights of association and electing workers' representatives for collective bargain is not only a question of human rights but an essential component of production floor management.

7. Eviction of slum:

Demolition of living and livelihood spaces of the urban population continues.

The administration once again on June 1 demolished hundreds of shanties and a number of shops at the Hatirjheel-Begunbari area. Scores of people were rendered homeless; a large number lost their source of income as their outlets, most of which are small engineering workshops, were pulled to the ground. Though what the Rajuk did was very much within the purview of law, as these establishments were built illegally but one giant structure named the BGMEA Bhaban, built equally without authorization, was spared, at least for the time being.

While the Rajuk personnel went on with their demolition drive on the rest of the not so privileged and posh structures, reportedly, they did not bother issuing an eviction notice to the inhabitants nor did the authorities offer a rehabilitation scheme to the uprooted. Such apathy is, though shocking, hardly surprising, as the government did not bother complying with the High Court directive that no slum dwellers would be evicted without taking steps for rehabilitation. This drive symbolises the mentality and standing of the policymakers and reflects the very attitude of the administration towards the disempowered. For democracy to be established respect towards the lives and livelihood of the mass population is a

prerequisite which those in power tend to overlook. In the meantime, disparity widens and discontent increases.

Eviction of slums and denial to offer spaces to earn livelihood by self-employed urban population is a violation of human rights. This will contribute further to political instability and deteriorate the law and order situation in the cities.

8. Extra judicial killings:

Extrajudicial killings continued throughout the 17 months of Emergency.

Between 12 January 2007 and 11 June 2008, 225 people have reportedly been killed extra judicially by Bangladeshi law enforcement agencies.

Reported Extra Judicial Killings

12 January 2007 11 June 2008

| Law Enforcement Agency | No. of Persons Reported Killed |
|---------------------------------|--------------------------------|
| Rapid Action Battalion | 112 |
| Police | 79 |
| RAB and Police Joint Operation | 7 |
| Joint Forces | 7 |
| Army | 7 |
| Navy | 3 |
| Jail Police | 1 |
| Coast Guard | 3 |
| Forest Guard | 1 |
| Bangladesh Rifles (BDR) | 3 |
| Department of Narcotics Control | 2 |
| Total | 225 |

Circumstances of the Deaths

12 January 2007 - 11 June 2008

| Circumstance Reported | Number of Deaths |
|--|------------------|
| “Crossfire”/encounter/g unfight/shootout | 166 |
| Tortured to death | 35 |
| Shot dead in circumstances other than “crossfire”/encounter/g unfight/shootout | 13 |
| Other circumstances | 11 |
| Total | 225 |

Conclusions

Even after 17 months of rule, the government has failed to instil confidence in the people about its promise to return the country to democracy through a credible and participatory general election. Right to vote is an essential component of human rights and democracy is the only

environment of dialogue and interaction between democratic people, vital for non-violent solution of economic, social, political and cultural contradictions and antagonisms. Immediate election without external interference and installation of an elected government is the only solution before Bangladesh slips into a political abyss.

Odhikar calls upon the government to resolutely focus on the election process and return the country to normalcy, so that a condition is created for an enabling environment to gain confidence. Manipulation of state organs and institutions for preconceived outcomes has seriously undermined peoples' confidence in the regime and Bangladesh is already hanging on a very risky margin. Further doubts about the intention of the regime can flare up serious political instability that may go beyond the control of such extra-constitutional government.

Recommendations

1. Courts must be allowed to regain peoples' confidence by functioning independently with regards human rights as enshrined in international covenants.
2. Repressive tactics against the dissenting political forces must be stopped immediately. Mass arrests must stop immediately and political leaders and activists released. The government must secure and guarantee individual rights of those arrested.
3. Freedom of expression and conscience must be defended and protected for all. Silencing the dissenting voice is the condition a state creates to create violence by destroying and displacing the possibility of dialogue and creative engagement.
4. The approved Anti-terrorism Ordinance must be repealed and the government must immediately consult with a wider section of the people to resolve issues considered problematic. The Government should immediately make public the draft version of the Anti-Terrorism Ordinance for public scrutiny and comments.
5. It is urgent that the Appellate Division of the Supreme review its own judgement in order to sustain the High Court's inherent and constitutional powers to hear bail petition even in the cases under the emergency powers rules.
6. Right to association and collective bargaining should be respected at all circumstances and rights of workers are to be preserved.
7. Slum evictions must end. Rules need to be established by which urban population could have access to urban spaces, state owned or common, to earn their legitimate livelihood.

8. Extrajudicial killings, torture and indiscriminate arrests should cease to continue. Hold independent judicial inquiries into extrajudicial killings and prosecute all those suspected of involvement.

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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.
4. Odhikar is consistent in its human rights reporting and is committed to remain so.