



# SHRINKING DEMOCRATIC SPACE AND FREEDOM OF EXPRESSION IN BANGLADESH

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Shrinking Democratic Space and Freedom of Expression in Bangladesh

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# **SHRINKING OF DEMOCRATIC SPACE AND FREEDOM OF EXPRESSION IN BANGLADESH**

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## INTRODUCTION

The people of Bangladesh have fought for democracy throughout their journey to independence, and have been struggling with it since. The people strived for a democracy which would uphold three ideals: equality; human dignity; and social justice.<sup>1</sup> The interim Government during the War of Independence publicly declared that those three ideals, as described in the Proclamation of Independence, would be upheld.

Civic space is as one of the key indicators of the democratic standard of a State. The more citizens are able to enjoy their freedoms of expression, assembly and association, media freedom, and right to take part in the conduct of public affairs, the more functional the democracy of that particular territory is. If citizens are eligible to enjoy civic space fearlessly and without obstruction, it leads to the development of a healthy society.

As an independent human rights organisation, FORUM-ASIA monitors and responds to human rights violations in countries across Asia.<sup>2</sup> Bangladesh has been a priority country of FORUM-ASIA for the last four years. Three country-specific fact-finding missions have been undertaken to monitor the country's human rights situation. Bangladesh's civic space, democratic institutions and practices, and scope for remedies from its judicial, administrative and legislative institutions demonstrate an alarming decline since 2008.

Decades of political violence is a direct result of political polarisation and family-centred political parties. Fragile colonial criminal justice institutions have become dysfunctional as a result of the extremely polarised political culture. Politicisation and the use of law-enforcement agencies, security forces, intelligence units, bureaucracy, and the judiciary against human rights defenders and dissenting voices, have left political institutions and the social fabric of Bangladesh dysfunctional.

Under the current Government, the number of extrajudicial executions has increased exponentially, with reportedly 283 people having been killed extra-judicially in the period

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<sup>1</sup> Ayesha Khanam, "Nothing of secularism, democracy and dignity of people yet", New Age, December 16, 2015, last accessed on November 24, 2018: <http://archive.newagebd.net/184934/nothing-of-secularism-democracy-and-dignity-of-people-as-yet/>

<sup>2</sup> FORUM-ASIA has member organisations in 21 countries across Asia, for more information visit: [https://www.forum-asia.org/?page\\_id=4001](https://www.forum-asia.org/?page_id=4001)

from 15 May to 30 November 2018 alone.<sup>3</sup> The unprecedented increase in enforced disappearances of opposition activists and dissidents, a horrendous practice under the Bangladesh Krishak Sramik Awami League (BaKSAL) regime from February to August 1975, have had a chilling effect on society.

Media freedom is systematically and extensively curtailed. Draconian bills and arbitrary use of agencies of the State stifle independent voices off and online. Independent human rights activism is faced with digital and physical surveillance, smear campaigns, fabricated cases, and arbitrary detention. Space for exercising peaceful democratic rights is curbed through physical violence and trumped up criminal charges. Elections have turned to tragicomic drama. The judiciary has been transformed into an arm of the executive branch instead of an independent pillar of the State.

All these human rights violations are being committed despite Bangladesh being a state party to key international human rights conventions, and it repeatedly voluntarily pledging to uphold human rights in the United Nations Human Rights Council. Its catastrophic human rights record is hidden under the 'generosity' of hosting Rohingya refugees who have survived genocide in Myanmar.

This report focuses exclusively on the human rights situation in Bangladesh. It is the culmination of years of advocacy on Bangladesh through member organisations, reports and reflections in regional and international platforms, and country visits conducted in the recent past by FORUM-ASIA. The report "Shrinking Democratic Space and Freedom of Expression in Bangladesh" examines: the current country's democratic and civic space; the status of freedom of expression, assembly and association; patterns of gross human rights violations; and the electoral process and its credibility.

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<sup>3</sup> Odhikar, Human Rights Monitoring Report on Bangladesh, November 2018, page 19, [http://odhikar.org/wp-content/uploads/2018/12/human-rights-monitoring-report-November-2018\\_Eng.pdf](http://odhikar.org/wp-content/uploads/2018/12/human-rights-monitoring-report-November-2018_Eng.pdf), last accessed at 16:35 on 14 December 2018.

## SHRINKING OF DEMOCRATIC AND CIVIC SPACE

'Equality, human dignity, and social justice in a democracy' were the promises the provisional Government of Bangladesh pledged to the people on 10 April 1971. These promises were not reflected in the Constitution of Bangladesh, when it was adopted in 1972. Neither was the call from political parties to form a national Government to draft the Constitution to affirm the spirit of unity of the new born nation-state. The Second Amendment to the Constitution of Bangladesh was enacted less than a year after the adoption of the Constitution itself. It included provisions for curbing fundamental rights and imposing a state of emergency.<sup>4</sup>

The democratisation process in Bangladesh suffered a major blow at a very early stage at the hands of the reputed democratic politician, Sheik Mujibur Rahman.<sup>5</sup> The Fourth Amendment brought fundamental changes to the Constitution of Bangladesh. A one-party system was introduced, repealing the multi-party system; a presidential system of Government was put in place of instead of a parliamentary system; the powers of the *Jatiya Sangsad* [National Parliament] were severely curtailed; the Judiciary lost much of its independence; and the Supreme Court was deprived of its jurisdiction over the protection and enforcement of fundamental rights.<sup>6</sup> This Amendment was preceded by the adoption of the Special Powers Act – 1974 to curb dissents in a systemic arbitrary fashion.<sup>7</sup> The political leadership unilaterally banned all political parties except the ruling party following the adoption of the Fourth Amendment.<sup>8</sup>

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<sup>4</sup> BANGLAPEDIA – National Encyclopaedia of Bangladesh, Constitutional Amendments, paragraphs 3, last accessed at 12:40 on 28 November 2018:

[http://en.banglapedia.org/index.php?title=Constitutional\\_Amendments](http://en.banglapedia.org/index.php?title=Constitutional_Amendments)

<sup>5</sup> *The New York Times*, "Sheik Mujib gets total authority over Bangladesh", 26 January 1975, last accessed at 12:18 on 28 November 2018, <https://www.nytimes.com/1975/01/26/archives/sheik-mujib-gets-total-authority-over-bangladesh-a-strong.html>.

<sup>6</sup> BANGLAPEDIA, paragraph 5: The Fourth Amendment: i) extended the term of the first Jatiya Sangsad (National Parliament); ii) made special provisions relating to the office of the president and its incumbent. Last accessed at 12:48 on 28 November 2018.

<sup>7</sup> The Special Powers Act – 1974, Laws of Bangladesh:

[http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=462](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=462), last accessed at 13:01 on 28 November 2018.

<sup>8</sup> Article 117A of Bangladesh Constitution in Fourth Amendment Act of 1975 conferred President Sheikh Mujibur Rahman to form one party named, Bangladesh Krishak Sramik Awami League (BAKSAL) banning all other political parties. According to Article 117A, President could—

“direct that there shall be only one political-party in the state. Once the President made an order for one party under Article 117A—

i) all political parties of the state would stand dissolved and the president would take all necessary steps for the formation of the National Party.

ii) the President by an order would determine all matters relating to the nomenclature, programme, membership organisation, description, finance and function of the National Party.

iii) once the National Party was formed each member of the parliament would have to join the party within a time fixed by the President ; otherwise he would cease to be a member of parliament and his seat would become vacant.

This repudiation of democratic norms at the early stages of the democratisation process in favour of a one-party authoritarian system resulted in massive curtailment of press freedom. A presidential decree banned all national and local newspapers except for four – two vernacular and two English national dailies – which were under the government ownership<sup>9</sup>. The two national dailies – the *Dainik Ittefaq* and the *Bangladesh Observer* – became state property overnight without any money being paid to the original owners. Such arbitrary actions not only made hundreds of journalists jobless, but had an irreparable impact on press freedom, freedoms of expression and opinion, and democratisation in Bangladesh.

Gross human rights violations, such as enforced disappearances, extra-judicial killings, torture, and arbitrary detention became the way of governance in the name of national security in post-independent Bangladesh. A newly created paramilitary force – the *Jatiya Rakkhi Bahini*<sup>10</sup> (National Security Force) – and the Bangladesh Police were responsible for human rights violations in the country.<sup>11</sup> Based on article 3 of the *Jatiya Rakkhi Bahini (Amendment) Act*, members of the paramilitary force were granted immunity from prosecution and other legal proceeding.<sup>12</sup>

Draconian laws of the British colonial era and those that were promulgated under the Pakistani regime were further tightened with new amendments and decrees after independence.

The following section provides an overview of laws that have been used to curtail freedoms and rights in Bangladesh.

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iv) none would be qualified for election as president or as a member of parliament if such was not nominated as candidate, by the National Party.

v) a person in the service of the Republic” shall be qualified to be a member of the National Party.”

<sup>9</sup> Lawrence Zring, *Bangladesh: From Mujib to Ershad: An Interpretive Study*, 1993, Oxford University Press. On 16 June 1975, Bangladesh Government banned the publication of all newspapers except four dailies: *Dainik Ittefaq*, *Dainik Bangla*, *Bangladesh Observer* and *Bangladesh Times*.

<sup>10</sup> The Government of Bangladesh created an 'elite' paramilitary force named 'Jatiya Rakkhi Bahini' by a presidential order titled 'Jatiya Rakkhi Bahini Order, 1972 (P.O. No. 21 of 1972)'. It is known to be a force parallel to the Bangladesh Army for serving the orders and instructions from the office of the President of Bangladesh for the maintenance of 'national security'. The *Jatiya Rakkhi Bahini* is reputed for committing enforced disappearances, extrajudicial killings, and various forms of gross human rights abuses from 1972 to 1975 until the Government merged it into the Bangladesh Army by adopting the *Jatiya Rakkhi Bahini (Absorption in the Army) Ordinance of 1975*. Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=505](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=505), last accessed at 12:13 on 7 December 2018.

<sup>11</sup> Lawrence Zring, *Bangladesh: From Mujib to Ershad: An Interpretive Study*, 1993, Oxford University Press.

<sup>12</sup> Human Rights Watch, *Ignoring Executions and Impunity: Impunity for Bangladesh's Security Forces*, <https://www.hrw.org/report/2009/05/18/ignoring-executions-and-torture/impunity-bangladeshs-security-forces>, last accessed at 10:20 on 10 December 2018.



**Bangladesh's Constitution**, as adopted on 16 December 1972, guaranteed fundamental rights for the people. It enshrined the rights to life, liberty, and security of person, as well as the freedoms of thought and conscience, assembly and association, speech and expression, and the freedom of religion. These guarantees were repealed in 1973.

The **Second Amendment to the Constitution** was adopted on 22 September 1973 to limit the protection from arrest and detention. The Amendment inserted **Part IXA** to the Constitution. It empowered the President, under 141A, to proclaim a State of Emergency if he is 'satisfied that a grave emergency exists in which the security or economic life of Bangladesh, or any part thereof, is threatened by war or external aggression or internal disturbance.'<sup>13</sup> Article 141C empowered the President to 'suspend the right to move the courts for the enforcement of any of the fundamental rights guaranteed in the Constitution.'<sup>14</sup> The Amendment ensured a certain amount of accountability through the requirement that the Prime Minister must countersign any Proclamation of Emergency and any order to suspend the enforcement of fundamental rights; and that no such declaration shall remain valid beyond 120 days, unless ratified by Parliament. However, given the reality of majority parliamentary politics, the ruling party has effectively unrestrained constitutional power to impose wide-ranging restrictions on fundamental rights and freedoms in the name of internal or national security.<sup>15</sup>

The impact of the removal of safeguards against arrests and detentions, by the amendment to Article 33, were immense. The obligation of State authorities to protect the right of any person in custody as soon as may be of the grounds for arrest, to consult and be defended by a lawyer of one's choice, and be produced before a Magistrate within 24 hours of arrest or detention is, in fact, denied to enemy aliens and those in preventive detention. This specific change of constitutional provision empowered law-enforcement agencies to refuse to disclose the grounds of arrest and detention of a person using the excuse of 'public interest', which has been the way of law-enforcement since. The Second Amendment to the Constitution was subsequently fortified with a raft of other legal instruments.

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<sup>13</sup> The Constitution of Bangladesh, Laws of Bangladesh, Part IXA, Emergency Provisions, Article 141A: [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=367&sections\\_id=24703](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=367&sections_id=24703), last accessed at 13:30 on 02 December 2018.

<sup>14</sup> Ibid, Article 141C, [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=367&sections\\_id=24705](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=367&sections_id=24705), last accessed at 13:36 on 02 December 2018.

<sup>15</sup> Adilur Rahman Khan, National Security Laws in Bangladesh, *The Daily Star*, 30 January 1999, <https://www.thedailystar.net/news/national-security-laws-in-bangladesh>, last accessed at 13:43 on 02 December 2018.

**The Special Powers Act**, adopted in 1974, was one of the first tools to come into force immediately after the Second Amendment to the Constitution. The Government of Bangladesh, while adopting the law, declared that the Special Powers Act is an 'Act to provide for special measures for the prevention of certain prejudicial activities, for a more speedy trial and effective punishment of certain grave offences and for matters connected therewith.'<sup>16</sup>

The law defined prejudicial act as any act which is intended or to be likely to:

- i) Prejudice the sovereignty or defence of Bangladesh;
- ii) Prejudice the maintenance of friendly relations with Bangladesh;
- iii) Prejudice the security of Bangladesh or to endanger public safety or the maintenance of public order;
- iv) Create or incite feelings of enmity or hatred between different communities, classes or sections of people;
- v) Interfere with or encourage or incite interference with the administration of law or the maintenance of law and order;
- vi) Prejudice the maintenance of supplies and services essential to the community;
- vii) Cause fear or alarm to the public or to any section of the public;
- viii) Prejudice the economic or financial interests of the state.'

The broad definition of prejudicial act empowered the executive branch, including the civil bureaucracy, law-enforcement agencies, and intelligence units to use its extensive powers to repress without any functional system of accountability. In contrast, the judiciary occasionally – mostly under the military dictatorship in the 1980s and 1990s – granted remedies to victims, who were able to come before the High Court.

Numerous litigations challenging preventive detentions under the Special Powers Act exposed state authorities failed to: i) inform victims about the grounds for their arrest and detention; ii) establish the ground of detention within the statutory period of 15 days; and iii) produce the detainee before the Advisory Board within a certain time.<sup>17</sup> Legal challenges against 'preventive detention' under the Special Powers Act exposed that there is often no

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<sup>16</sup> The Special Powers Act of 1974, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=462](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=462), last accessed at 16:15 on 2 December 2018.

<sup>17</sup> Adilur Rahman Khan, National Security Laws in Bangladesh, *The Daily Star*, 30 January 1999, <https://www.thedailystar.net/news/national-security-laws-in-bangladesh>, last accessed at 13:43 on 02 December 2018.

alignment between the order and grounds of detention. Since its adoption, successive Governments have consistently used the law to violate human rights.

**The Fourth Amendment to the Constitution** was adopted on 25 January 1975 by the First Parliament of Bangladesh. The adoption of this constitutional amendment reportedly took only less than 15 minutes in the Jatiya Sangsad.<sup>18</sup> It drastically violated the basic structure of the Constitution by changing the parliamentary form of democracy to a presidential system. The Fourth Amendment curtailed the independence of the Judiciary,<sup>19</sup> while the Supreme Court was deprived of its jurisdiction over the protection and enforcement of fundamental rights. It established a one-party rule by removing a multi-party political system; the powers of the Parliament were significantly reduced, and the President became the supreme authority over all institutions of the State.

**The Special Security (SSF) Force Ordinance of 1986** was promulgated by military dictator Lieutenant General Hussain Muhammad Ershad for his personal security after he seized power by removing the elected President.<sup>20</sup> Initially, it was called the Presidential Security Force Ordinance of 1986, but the name was changed in the 1990s after the downfall of Ershad in a people's uprising in December 1990. The SSF Ordinance established a Security Force comprised of discipline forces to provide physical security to the President, Prime Minister and very important persons of Bangladesh. The Director General of the SSF, who enjoys status and privileges equivalent to the Chief of Army Staff of the Bangladesh Army, works under the command of the Prime Minister of Bangladesh.<sup>21</sup>

Section 8 states that 'An officer of the Force may arrest without warrant any person when there is reason to believe that the presence or movement of such person at or near the place where the President or the Prime Minister or a very important person is living or staying or

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<sup>18</sup> *Jatiya Sangsad* is the National Parliament of Bangladesh which consists of 300 geographical constituencies and requires two thirds majority Members' voice voting for adopting or rejecting a constitutional amendment. For further details, see: Lawrence Ziring, *Bangladesh: From Mujib to Ershad: An Interpretive Study*, 1993, Oxford University Press.

<sup>19</sup> Constitutional Amendment, BANGLAPEDIA, paragraph 5, [http://en.banglapedia.org/index.php?title=Constitutional\\_Amendments](http://en.banglapedia.org/index.php?title=Constitutional_Amendments), last accessed at 19:16 on 4 December 2018.

<sup>20</sup> Hussain Muhammad Ershad was the Chief of Army Staff, with the rank of lieutenant general, under President Abdus Sattar whom Ershad removed on 24 March 1982 by imposing Martial Law and making himself the Chief Martial Law Administrator. Ershad was ousted in a people's uprising on 6 December 1990.

<sup>21</sup> Section 5 of The Special Security Force Ordinance of 1986, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=698&sections\\_id=19577](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=698&sections_id=19577), last accessed at 00:10 on 4 December 2018.

through which he is passing or about to pass is prejudicial to the physical security of the President or the Prime Minister or such very important person, and if such person forcibly resists the endeavour to arrest him, or attempts to evade arrest, such officer may use all means necessary to effect the arrest, and may, if necessary and after giving such warning as may be appropriate in the circumstances of the case, fire upon him or otherwise so use force against him as to cause death.<sup>22</sup>

The SSF members also have the power to collect and communicate intelligence and seek assistance from other law-enforcement agencies, defence forces, and intelligence agencies. Actions of the SSF members cannot be challenged in any court, as blanket impunity is guaranteed under Section 11 of the Ordinance, which bars prosecution of any officer of the Force in respect of anything done or purported to have been done in exercise of the powers conferred by any provision of this Ordinance, except with the previous sanction in writing of the Government.<sup>23</sup> Successive Governments have used the law as a tool of repression.

After the removal of military dictator Ershad, parliamentary democracy was reintroduced on 6 August 1991 through the adoption by Parliament of the Twelfth Amendment to the Constitution, more freedom was granted to the media and socio-cultural activities spread across the country.<sup>24</sup>

### **Amendments to Criminal Laws**

The Government led by Justice Shahabuddin Ahmed, who became Acting President<sup>25</sup> of Bangladesh after the end of military dictatorship, amended a few draconian laws in 1991. The Government omitted **Sections: 2 (d); 2 (g)<sup>26</sup>; 16; 17; and, 18;** of the **Special Powers Act of**

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<sup>22</sup> Section 8 of the Special Security Force Ordinance of 1986, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=698&sections\\_id=19580](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=698&sections_id=19580), last accessed at 00:32 on 4 December 2018.

<sup>23</sup> Section 11 of the Special Security Force Ordinance of 1986, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=698&sections\\_id=19584](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=698&sections_id=19584), last accessed 00:37 on 4 December 2018.

<sup>24</sup> The Twelfth Amendment to the Constitution of Bangladesh – adopted by the 5<sup>th</sup> Parliament of Bangladesh – was nearly the opposite of the Fourth Amendment, which the 1<sup>st</sup> Parliament adopted.

<sup>25</sup> Shahabuddin Ahmed was the Chief Justice of Bangladesh from 15 January 1990. He assumed to the Office of President on 6 December 1990 as the Vice President and conducted the 5<sup>th</sup> Parliamentary. He returned to the position of Chief Justice from the post of Acting President on 9 October 1991 by the Eleventh Amendment to the Constitution on 6 August 1991. After retirement from the Judiciary in February 1995 the Parliament elected Shahabuddin Ahmed as the President of Bangladesh in July 1996. From 9 October 1996 to 14 November 2001 he served as the 15<sup>th</sup> President of Bangladesh.

<sup>26</sup> Section 2, Special Powers Act of 1974, [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=462&sections\\_id=11065](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=462&sections_id=11065), last accessed at 10:11 on 6 December 2018.

1974<sup>27</sup> that were criticised for being tools to muzzle press freedom. Soon after repealing those provisions of the SPA, the Government inserted a new draconian provision, **Section 505A to the Penal Code of 1860**.<sup>28</sup> Freedom of expression and press freedom came under threat of arbitrary scrutiny to prevent content that may be 'prejudicial to the interests of the security of Bangladesh or public order or to the maintenance of friendly relations of Bangladesh with foreign states or to the maintenance of supplies and services essential to the community.

The Section 505A of the Penal Code was coupled with the introduction of Section 99A to the **Code of Criminal Procedure of 1898**.<sup>29</sup> Section 99A widened the scope of defamation, and enabled the Executive Branch of the State to ban and seize all kinds of publications, and detain citizens.

Bangladesh's institutions – bureaucracy, law-enforcement and intelligence agencies, and the Judiciary - had been under control of the executive branch of Government during the various military dictatorships lacked, professionalism and competence. Institutionally, they lacked independence and confidence in 'discharging official duties' without repressive legislations while the democratisation process had just begun in Bangladesh in 1991. The political leadership of the ruling party,<sup>30</sup> comprised of a mixed group of professionals, including businessmen, retired military officers, and civil servants. Lawyers in the Fifth Parliament, did not have convincing experiences and commitments to uphold and nourish democracy. The opposition leader threatened the ruling party 'to teach democracy the hard way' on the very first day Parliament started its session. These conditions triggered the ruling party to adopt a spate of draconian laws. Ironically, those, who were critical of the Special Powers Act of 1974 for its draconian characteristics and abusive application to curtail the people's democratic rights, had inserted similar provisions in other colonial era criminal laws.

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<sup>27</sup> The Special Powers Act of 1974, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/pdf\\_part.php?id=462](http://bdlaws.minlaw.gov.bd/pdf_part.php?id=462), last accessed at 10:14 on 6 December 2018.

<sup>28</sup> Section 505A was inserted to the Penal Code of 1860 in 1991, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=11&sections\\_id=3567](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11&sections_id=3567), last accessed at 10:25 on 6 December 2018.

<sup>29</sup> Section 99A, The Code of Criminal Procedure of 1898, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=75&sections\\_id=14875](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75&sections_id=14875), last accessed at 10:43 on 6 December 2018.

<sup>30</sup> Mrs. Khaleda Zia – widow of assassinated President Zia ur Rahman, who was a freedom-fighter and chief of Bangladesh Army, led the Bangladesh Nationalist Party (BNP) to assume to the office as Prime Minister after winning the 5<sup>th</sup> parliamentary elections in 1991. Khaleda Zia led the transformation of the presidential form of governance to a parliamentary democracy by adopting the Twelfth Amendment to the Constitution having various professionals in the Parliament to represent her party as legislators.

## Colonial laws abused to stifle dissent

Systematic abuse of criminal laws is deeply entrenched in Bangladesh's law-enforcement system. The police are infamous for the abusive application of the **Code of Criminal Procedure of 1898** for which ordinary victims do not have any prompt affordable remedy from the judicial or administrative institutions. For example:

i) **Section 54**<sup>31</sup> of the **Code of Criminal Procedure of 1898** empowers the police to detain citizens without any warrant on 'suspicion'.

ii) **Section 167**<sup>32</sup> of Code empowers Judicial Magistrates to order the detention of a person for 15 days in whichever custody they deem fit. The police systematically uses this particular provision for detaining suspects and opposition political activists under 'police remand' allegedly in collaboration with the Magistrates, along with breaching other laws and jurisprudence. The misapplication of Section 167 allows law enforcement agencies to commit custodial torture and extrajudicial executions and extort bribes.

iii) **Section 127**<sup>33</sup> of the Code empowers Executive Magistrates<sup>34</sup> and Officers-in-Charge<sup>35</sup> (OC) of police stations to 'command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse'.

iv) **Section 144**<sup>36</sup> of the Code authorises a District Magistrate<sup>37</sup> or an Executive Magistrate to issue an order 'in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed,

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<sup>31</sup> Section 54 of the Code of Criminal Procedure of 1898, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=75&sections\\_id=14518](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75&sections_id=14518), last accessed at 14:46 on 6 December 2018.

<sup>32</sup> Section 167 of the Code of Criminal Procedure of 1898, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=75&sections\\_id=20861](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75&sections_id=20861), last accessed at 16:44 on 6 December 2018. Section 167 is widely used for detaining suspects or opposition political activists in police remand for torture and extortions despite the Supreme Court's directives prohibiting the police abuse in the BLAST vs. Bangladesh, Dhaka Law Report 55.

<sup>33</sup> Section 127 of the Code of Criminal Procedure of 1898, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=75&sections\\_id=20746](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75&sections_id=20746), last accessed 17:37 on 6 December 2018.

<sup>34</sup> Executive Magistrates are administrative officers of the Executive Branch of the State. They enjoy ex-officio power of acting as 'Magistrates' in compliance with the British colonial practices. Section 10 of the Code of Criminal Procedure is changed in 2009 to empower the Executive Magistrates to perform magisterial duties, [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=75&sections\\_id=14300](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75&sections_id=14300), last accessed at 16:57 on 6 December 2018.

<sup>35</sup> Officer-in-Charge (OC) at a police station is an officer of the rank of Inspector, who are recruited as non-cadre officers of Bangladesh Police, often accused of having affiliation with the ruling party of the day.

<sup>36</sup> Section 144 of the Code of Criminal Procedure of 1898, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=75&sections\\_id=20789](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75&sections_id=20789), last accessed at 18:19 on 6 December 2018.

<sup>37</sup> District Magistrates are administrative officers of the Executive Branch of the State in Bangladesh according to Section 10 of the Code of Criminal Procedure of 1898.

ex parte'. Successive Governments have arbitrarily used Sections 127 and 144 to curb the freedom of assembly in Bangladesh.

v) **Section 132**<sup>38</sup> of the Code prohibits prosecution of Executive Magistrates, police officers, soldiers or any person using 'civil force' or 'military force' to 'disperse unlawful assemblies in good faith' under Sections 128, 130, and 131 of the Code without 'sanction of the Government'. The officers and soldiers of the Bangladesh Army are protected from prosecution.

vi) **Section 197**<sup>39</sup> of the Code protects Judge, Magistrate, or any public servant from prosecution without 'the previous sanction of the Government'.

vii) **Section 494**<sup>40</sup> of the Code empowers Public Prosecutors to withdraw from the prosecution of any person before the judgement is pronounced 'with the consent of the Court'. The full text of the provision reads:

'Any Public Prosecutor may, with the consent of the Court, before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal,- (a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences; (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences.'

**Section 494** of the Code of Criminal Procedure is one of the most frequently used legal provision to guarantee impunity for the defendants affiliated with the ruling party. Bangladesh's ruling parties:

- i) use the police to register fabricated cases against any person who becomes a target of the regime;
- ii) guarantee impunity to police officers or public servants of all departments for the actions of driving away the targets of the Government of the day;

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<sup>38</sup> Section 132 of the Code of Criminal Procedure of 1898, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=75&sections\\_id=20751](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75&sections_id=20751), last accessed 18:24 on 6 December 2018.

<sup>39</sup> Section 197 of the Code of Criminal Procedure of 1898, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=75&sections\\_id=21025](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75&sections_id=21025), last accessed at 18:56 on 6 December 2018.

<sup>40</sup> Section 494 of the Code of Criminal Procedure of 1898, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=75&sections\\_id=21986](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75&sections_id=21986), last accessed at 19:33 on 6 December 2018.

iii) appoint: a) lawyers of lesser merits and skills as public prosecutors: b) appoint judicial officers as Magistrates, promote them to lucrative positions with powers, and place them to important jurisdictions; for the purpose of i) protecting the people affiliated with ruling parties from being convicted in criminal cases; ii) use the same professionals and criminal justice institutions – specially the police, crime investigation, prosecution and the Office of the Attorney General, and the Judiciary of all tiers - with utmost strength of the state's power to prosecute their political opposition and other dissidents so that the latter's political career, financial and social life are brought to the brink.<sup>41</sup>

The **Contempt of Court Act of 1926** is a law that is being used against dissidents of the Government since 2010. The Government, on 22 February 2013, promulgated a new contempt law to conduct trial offences as 'contempt of court', and repealed<sup>42</sup> the British colonial law. A litigant challenged the new law before a High Court Bench. On 26 September 2013, the High Court declared the newly promulgated law 'illegal' and 'unconstitutional' for reducing the authority of the Judiciary and extensively empowering the governmental officials. The litigant's lawyer claims that since the High Court declared the new law illegal and unconstitutional the colonial law should be returned to be in effect<sup>43</sup>. The lawyer's claim contradicts the Government's claim<sup>44</sup> creating confusion among the people. Yet the critics of the Government continue facing contempt charges for questioning the judiciary's consistent failure to uphold the principle of a fair trial.

The application of contempt of court charges in Bangladesh is often selective or arbitrary. There are three categories of offenders, according to the way the Court and the Government treat persons allegedly held in contempt of court:

i) Critics of the Government have orders against them executed immediately.

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<sup>41</sup> Joint Submission to the Universal Periodic Review (UPR) 2<sup>nd</sup> Cycle by Asian Legal Resource Centre and Odhikar, 2013, paragraph 8, [https://lib.ohchr.org/HRBodies/UPR/Documents/Session16/BD/JS6\\_UPR\\_BGD\\_S16\\_2013\\_JointSubmission6\\_E.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/Session16/BD/JS6_UPR_BGD_S16_2013_JointSubmission6_E.pdf), last accessed at 11:41 on 17 December 2018.

<sup>42</sup> Section 20 of the "Adalat Obomanona Ain" of 1926, promulgated in vernacular language, repealed the Contempt of Court Act of 1926, Laws of Bangladesh [http://bdlaws.minlaw.gov.bd/bangla\\_all\\_sections.php?id=1108](http://bdlaws.minlaw.gov.bd/bangla_all_sections.php?id=1108), last accessed at 21:42 on 6 December 2018.

<sup>43</sup> BDNews24DotCom, HC rules contempt of court law illegal, 26 September 2013, <https://bdnews24.com/bangladesh/2013/09/26/hc-rules-contempt-of-court-law-illegal>, last accessed at 21:48 on 6 December 2018.

<sup>44</sup> The Government of Bangladesh in the official website of the Laws of Bangladesh claims that the Contempt of Court of Act of 1926 is repealed by the new law promulgated in 2013, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=140](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=140), last accessed at 21:00 on 6 December 2018.



The Daily Amardesh published a story titled 'Chamber bench means stay order in favour of the government' on 21 April 2010. Following a contempt of court petition filed by two lawyers of the Supreme Court, the Appellate Division of the Supreme Court of Bangladesh issued a 'contempt of court' rule against the vernacular daily's acting editor Mahmudur Rahman<sup>45</sup>, journalist Oliullah Noman, Deputy Editor Syed Abdal Ahmed, and News Editor Mujtahid Faruqui, and Publisher Hashmat Ali.<sup>46</sup> Mahmudur, without representation of a lawyer, defended the report published in the newspaper he edited. He claimed that the report's content was substantiated with references to cases where the litigants got expected remedies from the High Court Benches, however, the Chamber Judge's Bench stayed the High Court's orders in all the cases that politically benefited the Government. He further argued that the Judiciary should rather consider the factual details provided in the report and correct itself to objectively uphold 'justice'. He also requested the Court to refrain from abusing its authority through the unjust 'contempt of court' charge against him and his colleagues. One of the six judges of the Appellate Division, presided by the then Chief Justice Mohammad Fazlul Karim, responded to Mahmudur by saying that '(...) Truth is no defence (...)'.<sup>47</sup> Five out of the six Supreme Court judges decided to convict Mahmudur and handed him a sentence of six months imprisonment and a penalty of BDT 100,000, or another one month's imprisonment in failure of paying the penalty. His colleague, journalist Oliullah Noman, who apologised, was given one month imprisonment with a fine of BDT 10,000, or an additional seven days' jail term; publisher Hashmat Ali was fined BDT 10,000/- in the contempt charge. Hashmat paid the fine, while Mahmudur and Oliullah were jailed to serve seven months and 37 days' imprisonment respectively for refusing to pay the fines.

ii) Powerful elites are rarely held accountable for contempt of court

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<sup>45</sup> Mahmudur Rahman is reputed as a critique of the incumbent Government's policies. He became the acting editor of the Daily Amardesh. His newspaper published corruption scams involving Prime Minister Sheikh Hasina's son Sajeeb Ahmed Wazed, her Adviser for Information Technology Affairs, and her Mineral Resources Affairs Adviser Tawfiq-e-Elahi Chowdhury. Amardesh newspaper reproduced conversation between the presiding judge of the War Crimes Tribunal and a Belgium based Bangladeshi legal scholar. The audio conversation, in which the judge asked the expat scholar to 'write judgement' for the Tribunal to convict the defendants of the Jama'at-E-Islami party, was originally published by The Economist, "Trying war crimes in Bangladesh: The trial of the birth of a nation", <https://www.economist.com/news/briefing/21568349-week-chairman-bangladeshs-international-crimes-tribunal-resigned-we-explain>, last accessed at 23:18 on 8 December 2018. The Government, in retaliation, filed a cyber crime case against Mahmudur and his colleagues.

<sup>46</sup> The Daily Star, 20 August 2010, SC slams on contempt, <https://www.thedailystar.net/news-detail-151450>, last accessed at 22:49 on 8 December 2018.

<sup>47</sup> Author's interview with Mahmudur Rahman and Oliullah Noman over telephone.

Bangladesh's Minister for Liberation War Affairs, A. K. M. Mozammel Huq, and Minister for Food, Md. Quamrul Islam, who have both been Members of Parliament since 5 January 2014, criticised Chief Justice Surendra Kumar Sinha<sup>48</sup> about his handling of cases under the War Crimes Tribunal<sup>49</sup> on 5 March 2016. The Supreme Court heard a contempt of court proceeding, and fined the two Ministers BDT 50,000/- each, and in case of failure seven days in jail. After the verdict, an eminent jurist, Shahdeen Malik, told the media that the two Ministers had lost their moral rights to hold office, as the highest court has convicted them. However, neither one of them stepped down.

iii) 'Ruling party-friendly' people who once in a while scare the regime, face contempt or other criminal cases, but can avoid detention or imprisonment.

The Prothom Alo<sup>50</sup>, a national vernacular daily published an opinion piece titled 'Selection of the Chief Justice', on 15 December 2014, written by the newspapers joint editor Mizanur Rahman Khan. The article argued that the '12th amendment to the Constitution bars accepting the prime minister's recommendations, however, the provision was being ignored.' A lawyer brought the article to the notice of the Appellate Division of the Supreme Court seeking a contempt of court rule to be issued. The Court responded immediately, and summoned the author and the editor of the daily to appear before the Court. The editor Matiur Rahman and Mizanur Rahman Khan extended their unconditional apology. Furthermore, two Judges of the High Court found another article written by Mizanur to be grossly contemptuous for the judiciary. The Supreme Court accepted the unconditional apology, exonerated Matiur Rahman and ordered Mizanur Rahman Khan to pay a fine of BDT 5,000/-.<sup>51</sup>

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<sup>48</sup> Surendra Kumar Sinha was the first ever non-Muslim Chief Justice in Bangladesh's history. He, as a presiding judge along with his fellow Supreme Court judges, passed a verdict, in September 2017, declaring the Sixteenth Amendment to Bangladesh Constitution 'illegal' and 'unconstitutional'. The Amendment empowered the Parliament to impeach Supreme Court judges. In his memoir, he alleges that he was forced to resign. See Al Jazeera, 28 September 2018, 'Bangladesh: Ex-chief justice alleges he was 'forced' to resign', <https://www.aljazeera.com/news/2018/09/bangladesh-chief-justice-alleges-forced-resign-180927103453932.html>, last accessed at 17:20 on 16 December 2018.

<sup>49</sup> The Daily Star, 28 March 2016, Two ministers fined for contempt, <https://www.thedailystar.net/backpage/2-ministers-fined-contempt-1200730>, last accessed at 23:38 on 8 December 2018.

<sup>50</sup> The Prothom Alo is one of the highest circulated national vernacular daily of Bangladesh having print and online editions. Matiur Rahman, a pro-left political activist turned to be a journalist, is the Editor and Publisher of the newspaper.

<sup>51</sup> BDNews24DotCom, Prothom Alo editor joint editor apologise to court over published article, <https://bdnews24.com/bangladesh/2015/01/05/prothom-alo-editor-joint-editor-apologise-to-court-over-published-article>, last accessed at 01:05 on 9 December 2018.

**The Armed Police Battalions (Amendment) Act of 2003** was promulgated to create the Rapid Action Battalion (RAB) by amending the original legislation – the Armed Police Battalions Ordinance of 1979. The law inserted Sections 6A, 6B, 6C, and 6D and several other provisions for the purpose creating the RAB, which came into operation on 26 March 2004. The RAB was created for the purpose of gathering ‘intelligence in respect of crime and criminal activities’ and ‘investigat[ing] any offence on the direction of the Government.’<sup>52</sup> The RAB is authorised to operate arbitrarily without specified legal guidelines to carry out its duties. The RAB has earned the reputation of acting as judge, jury and executioner’ and ‘death squad of the State.’<sup>53</sup> Successive Governments have provided blanket impunity, and rewards,<sup>54</sup> to RAB personnel since the establishment of this self-claimed elite force.<sup>55</sup>

**Anti-Terrorism (Amendment) Act of 2013** was originally adopted on 24 February 2009 by Parliament. The same Government, which adopted the law, amended it twice in 2012 and in 2013. The Anti-Terrorism Act (ATA) defines movable and immovable properties located at home and abroad, suspicious transactions as terrorist act if any assumption is formed that the ‘suspicious transactions’ are generated from a crime under this Act.<sup>56</sup> The ATA prescribes death penalty or life imprisonment for committing murder, grievous hurt, kidnap, or attempt to kidnap.<sup>57</sup> The definition of a ‘crime’ under the ATA is extremely broad and vague in comparison with the globally accepted customary definition of ‘terrorism,’<sup>58</sup> which does not cover ‘property crimes’. The Government allegedly uses the ATA selectively against the opposition activists for peaceful protests and political rallies.

**Money Laundering Prevention (Amendment) Act of 2015**<sup>59</sup> was originally adopted on 20 February 2012, and was amended in 2015. There are similarities between the provisions of

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<sup>52</sup> Section 6 (aa) and (bb) of The Armed Police Battalions Ordinance of 1979 as amended in 2003, [http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=593](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=593), last accessed at 20:05 on 4 December 2018.

<sup>53</sup> Human Rights Watch, Bangladesh: Judge, Jury, and Executioner, December 2006, <https://www.hrw.org/sites/default/files/reports/bangladesh1206webwcover.pdf>, last accessed at 19:28 on 5 December 2018.

<sup>54</sup> The official website of Rapid Action Battalion shows a long list of officers received awards in 2017: <http://www.rab.gov.bd/english/awards/>, last accessed at 19:30 on 5 December 2018.

<sup>55</sup> Rapid Action Battalion claims itself an ‘elite force’ in its official website: <http://www.rab.gov.bd/english/about-us/>, last accessed at 19:33 on 5 December 2018.

<sup>56</sup> Section 2 (14) of Sontrash Birodhi Ain – Anti-Terrorism (Amendment) Act of 2013, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/bangla\\_all\\_sections.php?id=1009](http://bdlaws.minlaw.gov.bd/bangla_all_sections.php?id=1009), last accessed at 12:13 on 8 December 2018.

<sup>57</sup> Section 6, *Ibid.*

<sup>58</sup> United Nations Office on Drugs and Crime (UNODC), Doha Declaration, <https://www.unodc.org/e4j/en/terrorism/module-4/key-issues/defining-terrorism.html>, last accessed at 13:04 on 8 December 2018.

<sup>59</sup> Money Laundering Prevention (Amendment) Act of 2015, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/bangla\\_pdf\\_part.php?act\\_name=&vol=%E0%A7%AA%E0%A7%A8&id=1088](http://bdlaws.minlaw.gov.bd/bangla_pdf_part.php?act_name=&vol=%E0%A7%AA%E0%A7%A8&id=1088), last accessed at 13:00 on 9 December 2018.

the Anti-Terrorism Act, and the money laundering law. Both laws have a very broad definitions of the crimes they cover, which gives the authorities the power to abuse it arbitrarily, particularly against the dissidents.

Bangladesh's **Anti-Corruption Commission (ACC)** secretly initiated a money laundering case against independent human rights organisation, Odhikar and its secretary Adilur Rahman Khan, a prominent human rights advocate of Bangladesh, who maintains that he had no knowledge about the matter. In the middle of the investigation, the ACC summoned Adilur to appear before the ACC officers at its headquarters in Dhaka.<sup>60</sup> This is how Odhikar became aware of the ongoing secret investigation of money laundering. Amidst continued harassment, Odhikar was able to prove its innocence,<sup>61</sup> and be transparent about the projects the organisation had implemented for human rights. The ACC, according to the **Anti-Corruption Commission (Amendment) Act of 2013**, is barred from filing any complaint with the prosecution against the public servants without 'prior sanction' from the Government,<sup>62</sup> as per **Section 197** of the **Code of Criminal Procedure of 1898**, which has drawn criticism from the civil society.<sup>63</sup> The records prosecutions initiated by the ACC expose that it is biased against opposition leaders<sup>64</sup> and dissidents, while protecting the Prime Minister<sup>65</sup>, and pro-ruling party, high profile politicians.

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<sup>60</sup> A letter dated 18 May 2016 signed by Anti-Corruption Commission Deputy Director Jalal Uddin Ahammad summoned Odhikar Secretary Adilur Rahman Khan to appear at the ACC office on 25 May 2016. The ACC also asked Adilur to provide all necessary documents regarding the alleged money laundering.

<sup>61</sup> A letter dated 16 June 2016 signed by ACC Deputy Director Golam Shahriar Chowdhury confirmed that the 'allegation of money laundering was not proven in the investigation and thus recorded as disposed'.

<sup>62</sup> Sections 32 and 32 Ka of Durniti Domon Commission (Songshodhon) Ain of 2013 – Anti Corruption Commission (Amendment) Act of 2013, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/bangla\\_all\\_sections.php?id=914](http://bdlaws.minlaw.gov.bd/bangla_all_sections.php?id=914), last accessed at 15:57 on 8 December 2018.

<sup>63</sup> Iftekharuzzaman, Transparency International Bangladesh Chapter, Anti-Corruption Commission Amendment Bill Unconstitutional, Discriminatory and Self-defeating, <https://www.ti-bangladesh.org/beta3/index.php/en/report-s/3883-anti-corruption-commission-amendment-bill-unconstitutional-discriminatory-self-defeating>, last accessed at 16:10 on 8 December 2018.

<sup>64</sup> Prothom Alo, 30 January 2018, Khaleda collected money illegally for Charitable Trust: ACC, <https://en.prothomalo.com/bangladesh/news/170335/Khaleda-collected-money-illegally-for-Charitable>, accessed at 16:24 on 8 December 2018.

<sup>65</sup> The Daily Star, 6 May 2009, 11 Hasina cases on course to be dropped, <https://www.thedailystar.net/news-detail-87000>, last accessed at 20:00 on 8 December 2018.

## FREEDOM OF EXPRESSION

Bangladesh, since its independence in 1971, has never been safe and unrestricted space for freedom of expression, peaceful assembly and association, nor for press freedom. Newspapers have faced censorships of various degrees under successive Governments, with occasional opportunities to enjoy media freedom on thematic issues. Governments have used the intelligence agencies and non-state actors to intimidate and threaten the personal life and liberty of independent journalists and writers. Tools like deprivation of advertisements and cancellation of the registration of newspapers have been frequently used against them for criticising influential people in power. Governments have banned books, and national or international newspapers and periodicals at its own convenience. Under the military dictatorship in the 1980s, the country experienced unprecedented levels of repression, including arbitrary detention of renowned poets and journalists, and bans on newspapers and various publications.

Freedom of expression was expanded briefly after parliamentary democracy was reintroduced in 1991. However, people's confidence in the Government started to diminish after the introduction of draconian provisions<sup>66</sup> in the criminal laws and promulgation of new repressive laws.

After the proclamation of a state of emergency on 11 January 2007, widespread and serious allegations of violation of human rights at the hands of the armed forces followed. The curbing of the freedom of expression through militarised tactics was normalised. A summary of a classified telegram message from the Chargé d' Affaires of the Embassy of the United States<sup>67</sup> sent to her colleagues in November 2007, reads:

'Bangladeshi media are under pressure. The Caretaker Government and especially the military apply pressure -- usually discreetly but sometimes not -- to limit coverage that is critical or provokes opposition to their policies. In recent months, authorities have shut down all-news channel that aggressively covered anti-government protests, and have placed restrictions on

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<sup>66</sup> The Government led by Khaleda Zia inserted Section 505A to the Penal Code of 1860 and Section 99A to the Code of Criminal Procedure of 1898 to stifle freedom of expression.

<sup>67</sup> Bangladesh Media Feeling Heat from Caretaker Government, United States Embassy's Secret Telegram, WikiLeaks, [https://wikileaks.org/plusd/cables/07DHAKA1843\\_a.html](https://wikileaks.org/plusd/cables/07DHAKA1843_a.html), last accessed at 10:16 on 7 December 2018.

lively television talk shows. Journalists report phone calls from military intelligence and other officials who suggest how to play the day's news, leading media outlets to practice self-censorship.'

Bangladesh's private television news channel, CSB News, had broadcasted the student protests against the armed forces under the state emergency in August 2007. The students of the University of Dhaka chased the military out of the campus for torturing students at the university. The CSB News channel defied the military authorities' warning to not show footage of the protests against the army. The military-controlled Government shut down the CSB News on 6 September 2007. The news channel, in a publicly released statement, claimed that four senior officials from the Bangladesh Telecommunication Regulatory Commission (BTRC) visited the station accompanied by security forces and shut down the TV station.<sup>68</sup>

The legacy of the military-controlled emergency regime of 2007 and 2008 was apparent through forced closure of print and electronic media, and the adoption of draconian laws.

The closures of the Daily Amardesh, a national vernacular daily, on 2 June 2010 and on 11 April 2013, had no legal merit at all. The Government used a former employee of the newspaper to file a fabricated fraud case against the acting editor of the daily, Mahmudur Rahman, as a basis for shutting down the paper.<sup>69</sup> On 10 June 2010, a High Court Bench declared the shutdown illegal, which allowed the newspaper to resume publication. However, on 11 April 2013, the Government shut down the newspaper again by executive decision and deployed law-enforcement agencies. Mahmudur Rahman was arrested again on 11 April 2013 and detained in prison<sup>70</sup> for 1,322 days till 23 November 2016. The newspaper still remains closed. Mahmudur is facing around 140 trumped up cases, including cyber crime, defamation, arson, bomb blast, and sedition. All these cases against Mahmudur Rahman were registered by members of the Bangladesh Awami League, the ruling party, and police officers. Among the 140 cases, 36 were registered for alleged defamation of British Labour Party Member of Parliament, Tulip Siddiq, Prime Minister Sheikh Hasina's niece. Mahmudur Rahman has been

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<sup>68</sup> BBC, 6 September 2007, Bangladesh news channel off air, [http://news.bbc.co.uk/2/hi/south\\_asia/6982409.stm](http://news.bbc.co.uk/2/hi/south_asia/6982409.stm), last accessed at 6:18 on 9 December 2018.

<sup>69</sup> Committee to Protect Journalist, 2 June 2010, In Bangladesh, newspaper shut down, editor arrested, <https://cpj.org/2010/06/in-bangladesh-newspaper-shut-down-editor-arrested.php>, last accessed at 6:41 on 9 December 2018.

<sup>70</sup> Asian Human Rights Commission, 24 November 2016, BANGLADESH: Mahmudur Rahman finally freed after more than three years in arbitrary detention, <http://www.humanrights.asia/news/press-releases/AHRC-PRL-029-2016/>, last accessed at 17:05 on 9 December 2018.

living in exile, since supports of the ruling party attacked<sup>71</sup> him in an attempted lynching at the Kushtia District Court premises on 22 July 2018.

The spree of trumped-up cases against the Daily Star Editor, Mahfuz Anam in 2016 is one of numerous examples of arbitrary use of the criminal justice mechanism beyond legality or rationality. On 3 February 2016, Mahfuz made an introspective remark<sup>72</sup> in a TV talk show about the lapse in his editorial judgement in publishing reports based on unverified information circulated by the Task Force for Interrogation (TFI)<sup>73</sup> during the military controlled emergency regime in 2007 – 2008. The Daily Star<sup>74</sup> published seven reports on alleged corruption involving Khaleda Zia and her two sons, and three similar reports involving Sheikh Hasina, without verifying the information provided by the TFI.

Two days later, Prime Minister Sheikh Hasina's son, Sajeeb Ahmed Wazed Joy published a Facebook post terming the Daily Star's report as 'unpatriotic and anti-Bangladesh activities'. Sajeeb accused Mahfuz of publishing those reports ' (...) in support of a military dictatorship in an attempt to remove [Sajeeb's] mother from politics.'<sup>75</sup> Sajeeb termed Mahfuz Anam edited newspaper reports treason committed by the editor of a major newspaper to run ' (...) a false smear campaign to assist in a military coup.' As the Facebook post of Sajeeb went viral, the members of the ruling party, Bangladesh Awami League, started registering cases against Mahfuz Anam. A total of 83 cases were registered, including 67 criminal defamation and 16 sedition cases, in around two weeks' time.<sup>76</sup> Mahfuz challenged the legality of the filing so

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<sup>71</sup> FIDH, 24 July 2018, Bangladesh: Attack against Mr. Mahmudur Rahman, <https://www.fidh.org/en/region/asia/bangladesh/bangladesh-attack-against-mr-mahmudur-rahman>, last accessed at 17:57 on 9 December 2018.

<sup>72</sup> BDNews24DotCom, 4 February 2018, Daily Star Editor Mahfuz Anam admits to publishing DGFI-fed baseless stories, <https://bdnews24.com/media-en/2016/02/04/daily-star-editor-mahfuz-anam-admits-to-publishing-dgfi-fed-baseless-stories>, last accessed at 18:27 on 9 December 2018.

<sup>73</sup> Task Force for Interrogation (TFI) comprised of officers of armed forces and military intelligence agencies who use to interrogate high profile detainees among politicians and bureaucrats, torture them, and spread stories scandalising the detainees.

<sup>74</sup> The Daily Star, 23 February 2016, Human chains demand withdrawals cases against Star editor, <https://www.thedailystar.net/country/human-chains-demand-withdrawal-cases-against-star-editor-659563>, last accessed at 20:53 on 9 December 2018.

<sup>75</sup> BDNews24DotCom, 5 February 2018, Joy wants Daily Star editor detained, tried for false stories against Hasina, <https://bdnews24.com/politics/2016/02/05/joy-wants-daily-star-editor-detained-tried-for-treason-for-false-stories-against-hasina>, last accessed at 18:30 on 9 December 2018.

<sup>76</sup> The Guardian, 18 May 2017, Bangladeshi editor who faced 83 lawsuits says press freedom under threat, <https://www.theguardian.com/world/2017/may/18/it-all-depends-on-how-i-behave-press-freedom-under-threat-in-bangladesh>, last accessed at 18:30 on 9 December 2018.

many cases on the same ground, and a High Court Bench stayed 72 cases on 11 April 2016.<sup>77</sup> He did not have to face detention in any of the cases.

The **Information and Communication Technology (Amendment) Act of 2013** has been one of the main tools being consistently used against dissidents in Bangladesh. The Government of the Bangladesh Awami League amended the ICT Act of 2006 on 19 August 2013 in haste through an Ordinance. The amendment was approved at a time when prominent human rights advocate, Adilur Rahman Khan, secretary of Odhikar, had been in arbitrary detention for 62 days, since 10 August, in the first ever cyber-crime case filed in the history of Bangladesh.<sup>78</sup> The Government, in Section 57, increased the punishment from ten to 14 years imprisonment for offences covered by the amended Act. The provision reads:

‘(..) If any person deliberately publishes any material in electronic form that causes to deteriorate law and order, prejudice the image of the State or person or causes to hurt religious belief the offender will be punished for maximum 14 years and minimum 7 years imprisonment.’

The amended provision is similar to clauses of the Special Powers Act of 1974. It made the offence 'non-eligible for bail' unlike in the ICT Act of 2006, where it was 'non-cognisable' and the police did not have the power to arrest anyone 'without prior approval from an authority or court'. Thus, the ICT (Amendment) Act of 2013 made some of the offences 'cognisable'. The law-enforcement agencies were given enhanced power to arrest anyone accused of violating the law without a warrant..

Human rights groups criticised the amended provision as a tool that will take Bangladesh back 'towards the medieval age.'<sup>79</sup> The amendment resulted in the registration of numerous cases

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<sup>77</sup> Dhaka Tribune, 12 April 2018, High Court stays 72 cases against Mahfuz Anam, <https://www.dhakatribune.com/bangladesh/2016/04/12/high-court-stays-72-cases-mahfuz-anam/>, last accessed at 21:11 on 9 December 2018.

<sup>78</sup> The police registered a General Diary (GD) Entry several hours after the Detective Branch (DB) of Dhaka Metropolitan Police (DMP) hours after picking up Adilur Rahman Khan from the street in front of his house in late night on 10 August 2013. The GD was later transformed to a cyber crime case under the Information and Communication Technology (Amendment) Act of 2009 and Section 505A and 505C of the Penal Code. Adilur and his colleague A S M Nasiruddin Elan, Director of Odhikar, were detained in prison for 62 and 25 days respectively in the case. It is pending before the Cyber Crimes Tribunal of Dhaka as Case no. 1 before the Tribunal followed by a stay order passed by the Appellate Division of the Supreme Court of Bangladesh.

<sup>79</sup> Ain O Salish Kendra, ICT (Amendment) Act, 2013: Right to Information and Freedom of Expression under Threat, <https://goo.gl/Qn9cVE>, last accessed at 04:03 on 9 December 2018.



leading to arbitrary detention and imprisonments of critics of the Government.<sup>80</sup> Amidst criticism from human rights groups, in September 2018, the Government repealed Sections 54, 55, 56, 57, and 66 of the ICT (Amendment) Act of 2013 by adopting the Digital Security Act (DSA) of 2018.

The Government enacted the DSA<sup>81</sup> using the excuse of ensuring 'security of digital devices' and protecting people from 'digital crimes'. Sections 8, 28, 29 and 31 of the DSA can be used for alleged offences that seem to 'hurt religious values, create communal hatred or bad feelings; disrupt law and order; spread defaming information; and cause disturbance to economic activity, national security, defence and sovereignty' allowing the police to ask the Bangladesh Telecommunication Regulatory Commission (BTRC) to block or shut down the digital space or seize the devices used for such acts.

If a police officer 'believes' that anyone may commit or assist in committing or think of committing a crime under the DSA in the future, the police can arrest and detain the person(s), raid any place or seize any device or material without any warrant, according to Section 42 and 43 of the DSA.

Section 32 of the DSA protects the **Official Secrets Act of 1923**,<sup>82</sup> a draconian colonial law that is being used to commit and hide corruption by the bureaucrats and ruling politicians and bars governmental transparency in Bangladesh. A journalist can be punished with a minimum of 14 years to maximum 25 years of imprisonment, or a fine of BDT 2.5 million, or both, for publishing information protected the Act.

The Editors' Council<sup>83</sup> expressed its concern by saying, '(.) A frightening aspect of the DSA is the enormous arbitrary power given to the police who may arrest a journalist just on suspicion of a so-called crime that he thinks may be committed in the future. The police

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<sup>80</sup> At least 32 people were arbitrarily detained under the ICT (Amendment) Act of 2013 from January to December in 2017, according to Odhakar's Annual Human Rights Report of 2017, page 42.

<sup>81</sup> Digital Security Act of 2018, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/bangla\\_all\\_sections.php?id=1261](http://bdlaws.minlaw.gov.bd/bangla_all_sections.php?id=1261), last accessed at 14:13 on 9 December 2018.

<sup>82</sup> The Official Secrets Act of 1923, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/pdf\\_part.php?act\\_name=&vol=VII&id=132](http://bdlaws.minlaw.gov.bd/pdf_part.php?act_name=&vol=VII&id=132), last accessed at 14:27 on 9 December 2018.

<sup>83</sup> Editors' Council is a platform of national daily newspaper of Bangladesh. It took to the streets in protest of the adoption of the Digital Security Act of 2018. Dhaka Tribune, 28 September 2018, Why Editors' Council opposes the Digital Security Act, <https://www.dhakatribune.com/bangladesh/2018/09/28/why-sampadak-parishad-opposes-the-digital-security-act>, last accessed at 13:20 on 9 December 2018.

are allowed to make such arrests that have been made mostly non-bailable without any warrant. In practical terms, this will bring journalism under police control (..).'

The definitions of concepts such as 'tarnishing the State's image,' 'the spirit of liberation war,' or 'the 'father of the nation's image', in the DSA are vague and broad, leaving plenty of room for arbitrary application that can extensively violate the rights of citizens. Likewise, it has included 'defamation' as a crime with enhanced penalties superseding Section 499 of the Penal Code of 1860. Part Four of the DSA provides for the creation of a Digital Security Council headed by the Prime Minister,<sup>84</sup> and comprised of two Ministers, five senior Secretaries, the chiefs of Bangladesh Police and the Directorate General of Forces Intelligence,<sup>85</sup> and the Director General of the Digital Security Agency.

The Government's attempts to curb civic space is also reflected in the **Broadcast Bill of 2018**, approved in Cabinet on 15 October 2018. The Government claims that it wishes to 'bring discipline in broadcast media.' It made provision to jail individuals for airing any 'misleading and false' information regarding the 'Liberation War' in broadcast media. The punishment for committing a crime under the Bill is up to three years imprisonment, or a fine of BDT 50 million or both. Continuation of committing the 'crime' will make a broadcaster liable for a fine of BDT 100,000 per day. The Bill empowers the Government to establish a Broadcast Commission with unilateral authority to issue or revoke broadcasting licences.<sup>86</sup>

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<sup>84</sup> Records suggest that the governmental bodies that work under the incumbent Prime Minister, such as the NGO Affairs Bureau (NGOAB), is highly repressive in their actions.

<sup>85</sup> Directorate General of Forces Intelligence (DGFI) is part of the Armed Forces Division works under the Ministry of Defence and the Office of the Prime Minister.

<sup>86</sup> Dhaka Tribune, 15 October 2018, Draft law cleared with jail time for airing lies in talk shows, <https://www.dhakatribune.com/bangladesh/government-affairs/2018/10/15/cabinet-clears-draft-broadcast-law-2018>, last accessed at 19:38 on 9 December 2018.

## Freedom of Peaceful Assembly and Association

The Government of Bangladesh has also been consistently using multiple forces, including state and non-state actors, to restrict the freedom of peaceful assembly and association. After assuming office in January 2009, the Government used: i) law-enforcement agencies; and ii) goons of various wings of the ruling party. Law-enforcement agencies, including: the regular Police, the Detective Branch (DB) of Police, Special Branch (SB) of Police, Rapid Action Battalion (RAB), Directorate General of Forces Intelligence (DGFI), and National Security Intelligence (NSI), as well as non-state actors. Violent sections of the ruling party include: the members of the Bangladesh Awami League, its student wing – Bangladesh Chhatra League (BCL), youth wing – Awami Jubo League (AJL), workers wing – Jatiya Sramik League (JSL), and so on. The Government consistently used both state actors and non-state actors to deal with those who are not affiliated to the ruling party. Whenever the opposition tried to host peaceful protests and rallies against the Government or to communicate with their supporters through public meetings,<sup>87</sup> the Government systematically used the state and non-state actors<sup>88</sup> to drive away their targets.<sup>89</sup>

The police have been selective and discriminatory in granting permissions for peaceful assemblies in the country. The ruling party and its affiliates have been allowed to hold regular public gatherings and meetings with full cooperation from the security forces.

In contrast, opposition parties and independent groups face serious hurdles to host public meetings. The fate of opposition political meetings remains at the mercy of the police. On 24 September 2018, the Bangladesh Nationalist Party (BNP), the main opposition political party, sought permission from the Dhaka Metropolitan Police (DMP) to hold a public meeting at Sohrawardi Uddyan<sup>90</sup> or at Naya Paltan<sup>91</sup> on 27 September. The DMP officers rejected the application, saying that permission for a public meeting on a weekday cannot be given. The

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<sup>87</sup> BDNews24DotCom, BNP denied permission of Jan 5 rally at Paltan, 4 January 2018, <https://www.banglanews24.com/politics/article/66046/BNP-denied-permission-of-Jan-5-rally-at-Paltan>, last accessed at 14:27 on 17 December 2018.

<sup>88</sup> The Daily Star, 30 January 2018, BCL activists again attack protesting students, <https://www.thedailystar.net/city/bcl-ruling-party-men-attack-student-protest-road-safety-jigatola-dhanmondi-dhaka-1615828>, last accessed at 14:37 on 17 December 2018.

<sup>89</sup> The Daily Star, 5 August 2018, BCL in its element, <https://www.thedailystar.net/frontpage/bcl-activists-again-attack-protesting-students-1526980>, last accessed at 14:37 on 17 December 2018.

<sup>90</sup> Sohrawardi Uddyan is a formerly race course ground in Dhaka. The Pakistani military's surrender at this public place enhanced its historic importance since 16 December 1971. It is a preferred ground for hosting public meetings of political parties.

<sup>91</sup> The central office of the Bangladesh Nationalist Party is located at Naya Paltan in Dhaka.

top police officers reportedly suggested the BNP to move its meeting to 29 September, suggesting it a public holiday. Meanwhile, the ruling party, the Bangladesh Awami League, wished to host a public meeting on the same date in the city. The police kept the BNP waiting till 28 September and refused to give permission for the second time. However, the ruling party was allowed to host its meeting on the requested date and venue.

On 29 September, the BNP again sought permission to host a meeting this time on 30 September, which was granted 26 hours before the scheduled time of meeting based on 22 conditions.<sup>92</sup> Among the conditions, the police asked the BNP to: install high-resolution CCTV cameras inside and outside the venue; set up archways and use metal detectors at the entry points; scan meeting-bound vehicles with [the BNP's own] scanners; arrange fire extinguishers at the venue; not to hamper public safety; not to carry sticks; not to make speech hurting religious sentiments; not to hold procession on, and from, the way of the meeting venue; and finish the meeting by 5:00 PM.

The Government uses the police to arbitrarily arrest and detain opposition supporters before and after public meetings, despite peaceful participation. The ruling party members physically attack the members of the opposition as well. Such attacks do not lead to any legal remedy for the victims due to their allegiance with the opposition.

The Government's handling of the Quota Reforms Movement<sup>93</sup> points to a pattern of brute forces unleashed against peaceful assemblies and valid public demands. Students of several public and private universities and colleges demanded reforming the existing quota system in the top public jobs recruited under the Bangladesh Civil Service (BCS). Ordinary people supported the students' demands by extending support to the leaders and activists of the Quota Reforms Movement.

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<sup>92</sup> The author received a copy of the official permission given by the Dhaka Metropolitan Police to the Bangladesh Nationalist Party for hosting meeting in Dhaka. The Daily Star, on 30 September 2018, published report, BNP gets nod on 22 conditions, <https://www.thedailystar.net/politics/bnp-hold-rally-in-suhrawardy-udyan-dhaka-tomorrow-dmp-allow-1640305>, last accessed at 10:00 on 10 December 2018.

<sup>93</sup> Quota Reforms Movement seeks reforms of the recruitment in the Bangladesh Civil Service cadre service jobs. The Government reserved 56 percent quota in the cadre and non-cadre class one jobs under the Bangladesh Civil Service. Among the 56 percent: 30 percent jobs for grandchildren of 'freedom-fighters', 10 percent for women, 10 percent for district based population, 5 percent for ethnic minorities, and 1 percent reserved for the people with disabilities. The students of universities and colleges demanded for reducing the 'freedom fighter' quota and widening the public top jobs for aspirants having merits. The Government is accused of using the 'freedom-fighter' quota to recruit candidates having affiliation with the ruling party for political benefits.

On several occasions, the police used tear gas, baton charges, water cannons, and shotgun bullets against students, while they held peaceful protests in Dhaka and other jurisdictions of the country. The Detective Branch of Police allegedly abducted<sup>94</sup> three students from the Dhaka streets for leading the movement. At the time, onlookers live-streamed the abduction on Facebook Live, and online activists demanded their release using social networking platforms. A few hours later, the DB police releases the three abducted student leaders.

The Police handed over the matter to the ruling party's student wing, Bangladesh Chhatra League (BCL), who started violent attacks<sup>95</sup> against the supporters of the Quota Reforms Movement. The BCL supporters and police jointly unleashed violence against the students by sexually abusing girls,<sup>96</sup> and beating teachers and leftist political party leaders.<sup>97</sup> The attacks of the BCL<sup>98</sup> supporters were not limited to the capital city. Rather, ruling party members were violent across the country. At the Rajshahi University campus, BCL men also used violence. Photos and videos show that BCL men beating Md. Torikul Islam, a postgraduate student of the Rajshahi University, with a hammer, bamboo sticks, and other local weapons.<sup>99</sup> The police were present when BCL men broke the right leg and spine of Torikul.<sup>100</sup> The police detained over 20 leaders and activists of the Quota Reforms Movement,<sup>101</sup> while the BCL supporters enjoyed impunity.

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<sup>94</sup> The Daily Star, 16 April 2018, 'We were blindfolded, taken to DB office', <https://www.thedailystar.net/city/quota-system-reform-movement-leaders-picked-intimidated-cops-1563229>, last accessed at 13:48 on 10 December 2018.

<sup>95</sup> The Daily Star, 2 July 2018, Quota Reforms Movement: Cops leave spot before 'BCL men' arrive to attack at Shaheed Minar, <https://www.thedailystar.net/city/quota-reform-movement-police-leave-spot-before-bcl-men-arrive-shaheed-minar-dhaka-1598680>, last accessed at 13:50 on 10 December 2018.

<sup>96</sup> The Daily Star, 3 July 2018, BCL men even more aggressive, <https://www.thedailystar.net/frontpage/bcl-men-action-again-1599037>, last accessed at 14:00 on 10 December 2018.

<sup>97</sup> The Daily Star, 9 July 2018, Quota reform: Cops foil citizens' demo, assault DU teacher, <https://www.thedailystar.net/city/bangladesh-quota-reform-protest-in-government-jobs-police-foil-parents-demonstration-jatiya-press-club-dhaka-1599289>, last accessed at 14:00 on 10 December 2018.

<sup>98</sup> CIVICUS Monitor, Student Wing of Ruling Party Attacking Activists, Academics, and Journalists with Impunity, <https://monitor.civicus.org/newsfeed/2018/08/02/student-wing-ruling-party-attacking-activists-academics-and-journalists-impunity/>

<sup>99</sup> The Daily Star, 9 July 2018, Rajshahi police saw nothing, <https://www.thedailystar.net/frontpage/rajshahi-police-saw-nothing-1602220>

<sup>100</sup> The Independent, 8 July 2018, BCL 'hammer' attack Tariqul's spine damaged, leg broken, <http://www.theindependentbd.com/printversion/details/156916>, last accessed at 14:00 on 10 December 2018.

<sup>101</sup> RTV News, 20 August 2018, 20 Quota reformists including Rashed Khan get bail, <http://en.rtvonline.com/bangladesh/1736/20-quota-reformists-including-Rashed-Khan-get-bail>, last accessed at 15:05 on 10 December 2018.

The Government used similar violent tactics against the school children, who took to the streets for their Road Safety Movement to demand justice<sup>102</sup> after several students were crushed by buses in Dhaka on 29 July 2018. The school students peacefully took to the streets to discipline the traffic in Dhaka and elsewhere in Bangladesh. The juvenile boys and girls checked for validity of documents including the fitness certificates, route permits, driving licences during their protests. High profile ministers, bureaucrats, military and police officers were found using official or private vehicles without valid documents or violating traffic rules during the school children's protests.<sup>103</sup>

On the sixth and seventh days of the protest, the ruling party goons of the BCL captured the streets wearing helmets, carrying machetes, rods, and firearms<sup>104</sup>. Under police cordon, the ruling party goons attacked on the students causing severe injuries to numerous teenaged protesters. Journalists of local and international media faced attacks<sup>105</sup> by the ruling party goons<sup>106</sup> under police cordon. The Government used brute force by deploying its armed goons and police to chase away the teenagers<sup>107</sup> from the streets fearing people's uprising. The Government has guaranteed blanket impunity to the perpetrators of the attacks.

Bangladesh Government, as well as non-state actors, increasingly criminalise human rights activities, by branding civil society activists anti-state actor and foreign agents for extending moral support and exposing the truth. Arrest and detention of Shahidul Alam, a globally acclaimed photographer and writer, is one among many examples. Shahidul had used his Facebook to broadcast live videos to expose the violence unleashed by the BCL in

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<sup>102</sup> The Guardian, 3 August 2018, Teenagers bring parts of Bangladesh to halt with bus death protests, <https://www.theguardian.com/world/2018/aug/03/teenagers-bring-parts-of-bangladesh-to-a-halt-with-bus-death-protests>, last accessed at 15:12 on 10 December 2018.

<sup>103</sup> New Age, 2 August 2018, Agitating students take to streets in Dhaka again for safe roads, <http://www.newagebd.net/article/47401/agitating-students-take-to-streets-in-dhaka-again-for-safe-roads>, last accessed at 15:25 on 10 December 2018.

<sup>104</sup> Prothom Alo, 7 August 2018, How BCL attacks carried out, <https://en.prothomalo.com/bangladesh/news/181143/How-BCL-attacks-were-carried-out>, last accessed on 15:40 on 10 December 2018.

<sup>105</sup> The Daily Star, 6 August 2018, Journos attacked while on duty, <https://www.thedailystar.net/city/5-photojournalists-hurt-in-bcl-men-attack-science-lab-dhaka-student-protest-for-safe-roads-1616251>, last accessed at 15:30 on 10 December 2018.

<sup>106</sup> New Age, 6 August 2018, Journalists attacked while covering protests in Bangladesh, <http://www.newagebd.net/article/47707/journalists-attacked-while-covering-protests-in-bangladesh>, last accessed at 15:36 on 10 December 2018.

<sup>107</sup> CNN, 6 August 2018, Bangladesh protests: How students brought Dhaka to standstill, <https://edition.cnn.com/2018/08/06/asia/bangladesh-student-protests-intl/index.html>, last accessed at 13:40 on 10 December 2018.

collaboration with the Police on 5 August 2018. He gave a live interview to Al Jazeera<sup>108</sup> to explain the human rights situation including extrajudicial executions, enforced disappearances, and corruption. Hours after Shahidul's interview the Detective Branch abducted him from his apartment and later reported him to be arrested in a cyber crime case. He alleged that he was hurt to bleed in police custody. Following several rejections of Shahidul's bail petitions in the Metropolitan and Sessions Court of Dhaka, a High Court Bench granted him bail and he was released on 20 November after 108 days arbitrary detention.

Rights activists of Bangladesh have to face hate speech from the ruling political elites. After Shahidul Alam's arbitrary detention rights activists and academic scholars across the globe demanded his release. In response, the prime minister's son and her Adviser for Information and Communications Technology Affairs Sajeeb Ahmed Wazed Joy made a Facebook post<sup>109</sup> accusing Shahidul of spreading 'fear and panic' using 'fantastical and provocative lies during the students' road safety movement. Sajeeb continuously writes against the civil society actors and politicians. He made attacking posts against prominent jurist cum politician Dr. Kamal Hossain and journalist Mahfuz Anam.<sup>110</sup>

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<sup>108</sup> Al Jazeera, Bangladesh: Renowned photographer held after media comments, <https://www.aljazeera.com/news/2018/08/bangladesh-renowned-photographer-detained-media-comments-180806065359943.html>, last accessed at 14:16 on 10 December 2018.

<sup>109</sup> Sajeeb Ahmed Wazed Joy's Facebook post on Shahidul Alam on 10 August 2018, <https://www.facebook.com/sajeeb.a.wazed/posts/1318144508321969>, last accessed at 4:50 on 10 December 2018.

<sup>110</sup> The Daily Star, 16 October 2018, Joy wants arrest of Dr. Kamal, Star editor for 'treason', <https://www.thedailystar.net/frontpage/joy-wants-arrest-dr-kamal-star-editor-treason%E2%80%99-4183>, last accessed at 17:00 on 10 December 2018.

## OTHER HUMAN RIGHTS VIOLATIONS

Systematic abuses of human rights in the hands of the law enforcement agencies have made Bangladesh's rights situation a catastrophic one. Denying the right to liberty, through arbitrary arrest and detention, seems to be the way of law enforcement. In making arrests and detentions, the law-enforcement agencies including the Police, Rapid Action Battalion (RAB), Detective Branch (DB), and Counter-Terrorism and Transnational Crime Unit (CTTCU) of Bangladesh hardly follow the rule of law. The enforcement of the law is institutionally coercive in the country. The absence of accountability before the Executive or Judicial authorities, coupled with political nepotism and entrenched corruption allow law enforcement authorities to violate basic human rights with complete impunity.

Using the State's power to acquire undeserving and disproportionate wealth through corruption and theft of the people's assets appears to be a top priority, as per records, in Bangladesh. Such politics of greed relies on coercive law-enforcement system and incompetent criminal justice mechanism. In other words, subjugated rule of law institutions get patronage for political and individual gains, which establishes a reciprocal system for the ruling political and financial elites and bureaucrats.

Coercive and corrupted institutional system remains a root cause for numerous societal and political problems, weakening the rule of law. Gross violations of human rights are the ultimate consequence of incompetent institutions. Thus, the ordinary poor, opposition politicians of the day, independent civil rights and human rights activists become victims of state repression in Bangladesh. Under these circumstances, custodial torture and fabrication of evidence have become the norm for police and law enforcement authorities, while unchecked extrajudicial killings and enforced disappearances have been increasingly normalised.

A case of enforced disappearance was documented from the Chittagong Hill Tracts on 13 June 1996. The victim was identified as Kalpana Chakma, a female student activist. The Bangladesh Army was accused of disappearing her. Her whereabouts still remain unknown.<sup>111</sup>

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<sup>111</sup> The Daily Star, 12 June 2018, Kalpana Chakma vanished into thin air, <https://www.thedailystar.net/city/kalpana-chakma-vanished-thin-air-1589929>, last accessed at 16:00 on 15 December 2018.



After a decade's break enforced disappearance was recorded in December 2007 under the military-controlled emergency regime. A group of people wearing the uniform of Rapid Action Battalion (RAB) allegedly abducted Md. Shafik Ullah Monayem, a man politically affiliated to Awami Jubo League in Barisal city. At the time of abduction, the officers showed their identity cards as officers of the RAB as Monayem's friends challenged the abductors. Monayem's whereabouts remain unknown.<sup>112</sup>

Enforced disappearances increased significantly after Sheikh Hasina assumed to office as Prime Minister in January 2009. Three complaints of enforced disappearances were recorded in that year. In 2010, alleged number of enforced disappearances rose to 18. As of November 2018, the law-enforcement agencies of Bangladesh have allegedly disappeared 498 people since January 2009.<sup>113</sup> Among these cases 366 disappearances are committed after January 2014 – when Sheikh Hasina renewed her tenure through a farcical election. From January to November 2018, at least 83 people have been reportedly disappeared by the law-enforcement agencies. Majority of the victims are leaders and activists of the opposition political parties. Three victims are former parliamentarians while many are elected representatives of local governmental bodies.<sup>114</sup>

Two disappeared victims were picked in Dhaka by Bangladeshi agencies and reappeared in India. Sukho Ranjan Bali, a defence witness of a war crime case against a leader of Jama'at-e-Islami party, abducted by the police from the Supreme Court premises. Months later, Bali was found in a prison of Kolkata.<sup>115</sup> Salahuddin Ahmed, former State Minister of the BNP, claimed he was abducted from his flat in Dhaka in March 2015 by the RAB. Salahuddin allegedly disappeared for 62 days, and was found in a disorientated state near the border with India.<sup>116</sup>

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<sup>112</sup> Asian Human Rights Commission, 8 September 2008, BANGLADESH: Whereabouts of a man remain unrevealed after being arrested by the Rapid Action Battalion in Barisal, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-201-2008/>, last accessed at 16:00 on 15 December 2018.

<sup>113</sup> Data provided by Odhikar on the basis of publicly exposed cases of enforced disappearances involving the law-enforcement agencies of Bangladesh.

<sup>114</sup> Odhikar Human Rights Monitoring Report on Bangladesh, November 2018, page 4, [http://odhikar.org/wp-content/uploads/2018/12/human-rights-monitoring-report-November-2018\\_Eng.pdf](http://odhikar.org/wp-content/uploads/2018/12/human-rights-monitoring-report-November-2018_Eng.pdf), last accessed at 14:00 on 15 December 2018.

<sup>115</sup> Human Rights Watch, 16 January 2013, Bangladesh: Find Abducted Witness, <https://www.hrw.org/news/2013/01/16/bangladesh-find-abducted-witness>, last accessed at 20:30 on 14 December 2018.

<sup>116</sup> The Guardian, 13 May 2015, Missing Bangladesh opposition spokesman surfaces in India, <https://www.theguardian.com/world/2015/may/13/missing-bangladesh-opposition-spokesman-surfaces-in-india>, last accessed at 21:00 on 14 December 2015.

Incidents of enforced disappearances cannot be seen as simple statistics. These disappearances expose the ruthlessness and lawlessness of the State. Each of the cases of enforced disappearances has stories of inconsolable grief, shattered dreams, and struggles of socio-economic and emotional survival with no possibility of redress. The Judiciary has not passed a single order assertively against the State after hearing habeas corpus writs since 2009.<sup>117</sup> Due to the culture of impunity and collapsed justice system, victims live with deeper frustration, fear, and anger while facing intimidation from state agents.

Torture is institutionalised in the law-enforcement system of Bangladesh despite the fact that there is a law criminalising torture since 24 October 2013.<sup>118</sup> Constitutional prohibition<sup>119</sup> and jurisprudence<sup>120</sup> are totally disregarded while the law-enforcement and intelligence agencies systematically use torture as a tool. At least, 48 people have died in custody due to torture between January 2014 to November 2018 – a period after criminalisation of torture.<sup>121</sup>

Extrajudicial killings continue with impunity. The Torture and Custodial Death (Prohibition) Act of 2013 criminalises extrajudicial killings. Yet there is no public record of prosecuting a single perpetrator of the law-enforcement agencies, while almost hundreds of people are extrajudicially killed in Bangladesh.<sup>122</sup> According to the latest Odhikar Human Rights Report November 2018, from May 15 to 30 November, 283 persons were reported to have been killed extrajudicially during the ongoing ‘anti-drug drives’ across the country, with 34 persons reported to have been extra-judicially killed in November alone.<sup>123</sup>

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<sup>117</sup> Joint NGO Alternative Report to the UN Human Rights Committee on Bangladesh, 119<sup>th</sup> Session of the UN Human Rights Committee, Paragraph 20, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BGD/INT\\_CCPR\\_CSS\\_BGD\\_26483\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/BGD/INT_CCPR_CSS_BGD_26483_E.pdf), last accessed at 12:32 on 17 December 2018.

<sup>118</sup> Torture and Custodial Death (Prohibition) Act of 2013 was adopted in the Parliament due to local and international campaign propelled by the victims and human rights defenders and supported the development partners.

<sup>119</sup> Article 35 (5) of Bangladesh Constitution prohibits Torture.

<sup>120</sup> BLAST vs. Bangladesh, Dhaka Law Report 55.

<sup>121</sup> Data provided by Odhikar based on publicly exposed cases of custodial torture in Bangladesh.

<sup>122</sup> Asian Legal Resource Centre Written Submission to the 37<sup>th</sup> Session of the UN Human Rights Council, BANGLADESH: Law on torture is useless in a broken justice mechanism, <http://alrc.asia/bangladesh-law-on-torture-is-useless-in-a-broken-justice-mechanism/> last accessed at 23:20, 17 December 2018.

<sup>123</sup> Odhikar Human Rights Monitoring Report on Bangladesh, November 2018, page 19, [http://odhikar.org/wp-content/uploads/2018/12/human-rights-monitoring-report-November-2018\\_Eng.pdf](http://odhikar.org/wp-content/uploads/2018/12/human-rights-monitoring-report-November-2018_Eng.pdf), last accessed at 15:20, 14 December 2018.

## ELECTIONS

The 11<sup>th</sup> National Parliament election scheduled on 30 December 2018 is a crucial moment for the people of Bangladesh, who expect the election to be participatory, free and fair. As the previous election in 2014 was boycotted by the major opposition party, BNP, and pre and post-election violence threw the country into turmoil<sup>124</sup>, the upcoming election should be seen as a crucial moment for the stability of the country and its democratic institutions.

To ensure free and fair elections, a key democratic institution such as the Election Commission (EC) should be seen as credible and impartial. However, during its missions to Bangladesh FORUM-ASIA recorded how a wide range of civil society organisations and media do not consider the Election Commission able to carry out its mandate in an independent manner. In particular, there are serious concerns on its ability to address critical issues, such as due process for the registration of candidates and voting.

According to Odhikar, on 20 November during a meeting with election observing organisations, EC Secretary Helaluddin Ahmed announced that observers will not be able to take pictures of the polling stations; cannot film the electoral environment of the polling centre and will not be allowed to give interviews to the media. Observers will not even be able to use cell phones.<sup>125</sup> Previously, on 6 November 2018, the EC arbitrarily cancelled the registration of Odhikar as election observer without notice. On 12 December 2018, Odhikar got rule and stay from the High Court Division, which technically allows the human rights group to monitor the elections.

Article 118 of the Constitution allows the President to appoint the Chief of the Election Commissioner (CEC) and election commissioners, and to determine their number. Article 118 states, “the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf, be made by the President.” However, 47 years since independence and 46 years since the constitution was

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<sup>124</sup> FORUM-ASIA, 9 January 2014, Bangladesh: Crackdown on opposition leaders and violence must end for the facilitation of an inclusive political process, <https://www.forum-asia.org/?p=16565>, last accessed at 15:20 on 14 December 2018.

<sup>125</sup> Odhikar Report November 2018, page 12

promulgated, yet the state powers have failed to devise any law regarding appointment of the election commissioners.

Article 118 should be seen together with Article 48<sup>126</sup> (3), which states: “In the exercise of all his functions, save only that of appointing the Prime Minister pursuant to clause (3) of article 56 and the Chief Justice pursuant to clause (1) of article 95, the President shall act in accordance with the advice of the Prime Minister”.

This constitutional provision appears problematic, as the President is not authorised to exercise 'discretion' in appointing any official of the EC. In another word, the Prime Minister can control the process of appointing the EC top officials, including the CEC and the Election Commissioners.

Shushashoner Jonno Nagorik (SHUJAN), a leading civil rights organisation, led by Dr Badiul Alam Majumder, coined the term 'Khulna Model Election' to explain how elections take place in Bangladesh: “ 'Khulna Model Election' means, removing the main opponents from the field using the law-enforcement agencies; obstructing the polling agents of the opposition party candidates; using muscle power by the ruling party men during the polls; and inaction by the EC.<sup>127</sup>”, said Dr Badiul in a press conference. Independent national newspaper Prothom Alo, reported how the May 2018 corporation election in the city of Khulna was characterised by “forced eviction of opposition BNP candidates' polling agents from the centres, forceful balloting, vote rigging including voting by a child, and compelling voters to vote in front of the ruling party candidates' agents”.<sup>128</sup>

In the lead up to the elections, what is seems to be absent is a 'level playing field' for all. Only in the first two weeks of September 2018, BNP claimed that 3,500 people were arrested, while 300,000 BNP leaders and activists were implicated in 3,000 cases labelled by BNP as “false and

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<sup>126</sup> Article 48 of Constitution of Bangladesh, Laws of Bangladesh, [http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=367&sections\\_id=24597](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=367&sections_id=24597), last accessed at 10: 40 on 10 December 2018.

<sup>127</sup> New Age, 6 July 2018, Sujan fears 'Khulna-model' election likely in 3 cities, <http://www.newagebd.net/article/45305/sujan-fears-khulna-model-election-likely-in-3-cities>, last accessed at 15:30 on 14 December 2018.

<sup>128</sup> Prothom Alo, 18 May 2018, Khulna city sees new model of 'manipulated poll', <https://en.prothomalo.com/bangladesh/news/175780/Khulna-city-sees-new-model-of-manipulated-polls>, last accessed at 11:00 on 10 December 2018.

fabricated".<sup>129</sup> Odhikar reported how among the accused persons, some are deceased, bedridden due to serious illness, already jailed or living abroad.<sup>130</sup>

Violations of freedoms of expression and assembly have also been documented throughout the month of November, as Police barred meetings and rallies organised by opposition parties as well as non-political organisations and student groups.<sup>131</sup>

While opposition candidates and supporters continue to be targeted, unrests and episodes of violence increased in December. On 11 and 12, clashes broke out in at least seven cities, injuring nearly 100 people. Two Jubo League and Awami League leaders were killed, while BNP supporters and candidates, including the Secretary General Mirza Fakhrul Islam Alamgir, were allegedly attacked by ruling party supporters in several districts.<sup>132</sup>

The undermining of independent institutions such as Election Commission, combined with the crackdown on dissent and political opponents, indicates the lack of a conducive environment for free and fair elections in the country.

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<sup>129</sup> Dhaka Tribune, 15 September 2018, BNP fears coercion, alleges police crackdown ahead of national polls, <https://www.dhakatribune.com/bangladesh/politics/2018/09/15/bnp-fears-coercion-alleges-police-crackdown-ahead-of-national-polls>, last accessed at 16:00 on 14 December 2018.

<sup>130</sup> Odhikar, Human Rights Monitoring Report on Bangladesh, October 2018, page 8, [http://odhikar.org/wp-content/uploads/2018/11/human-rights-monitoring-report-October-2018\\_Eng.pdf](http://odhikar.org/wp-content/uploads/2018/11/human-rights-monitoring-report-October-2018_Eng.pdf), last accessed at 16:30 on 14 December 2018.

<sup>131</sup> Odhikar, Human Rights Monitoring Report on Bangladesh, November 2018, page 13, [http://odhikar.org/wp-content/uploads/2018/12/human-rights-monitoring-report-November-2018\\_Eng.pdf](http://odhikar.org/wp-content/uploads/2018/12/human-rights-monitoring-report-November-2018_Eng.pdf), last accessed at 16:35 on 14 December 2018.

<sup>132</sup> On this issue see Hindustan Time, 11 December 2018, Nearly 100 injured in Bangladesh poll campaign violence, <https://www.hindustantimes.com/world-news/nearly-100-injured-in-bangladesh-poll-campaign-violence/story-PfE0MgFQnoHhiBro87ox4L.html>, last accessed at 16:30 on 14 December 2018; and The Daily Star, 12 December 2018, Spectre of violence returns, <https://www.thedailystar.net/bangladesh-national-election-2018/news/fakhrul-motorcade-attacked-claim-bnp-1672153>, last accessed at 15:45 on 14 December 2018.

## RECOMMENDATIONS

FORUM-ASIA calls upon the Government of Bangladesh to:

- Repeal the draconian provisions of the Digital Security Act of 2018 revising the law in compliance with the international human rights laws and standards;
- Release all protesters and opposition leaders who have been arbitrarily detained for exercising their human rights and drop all trumped up charges against them;
- Carry out prompt, impartial, independent and efficient investigations into all complaints and reports of excessive use of force by the police as well as state-sponsored vigilantes against protesters and journalists;
- End the climate of impunity and promptly investigate all cases of extrajudicial killings and enforced disappearances, establish an independent committee to investigate these violations, and cease the deadly anti-narcotics campaign;
- Stop the repression against any form of peaceful dissent and opposition;
- Implement recommendations from the third cycle of its Universal Periodic Review, particularly those on the protection of freedoms of expression, assembly, and association, as well as on human rights defenders; fully accept remaining recommendations on enforced disappearances and extrajudicial killings; and develop a concrete and time-bound plan in consultation with civil society and other stakeholders to implement UPR recommendations.

The Election Commission to:

- Ensure its impartiality, restore people's faith in the electoral process by closely monitoring the campaign and election period, and ensure that the upcoming elections are free and fair;

The National Human Rights Commission to:

- Recommend to the Government of Bangladesh to respect, protect and promote fundamental freedoms, including the right to freedom of peaceful assembly, association and expression;

The International Community to:

- Closely monitor the human rights situation in Bangladesh, particularly in relation to freedoms of expression, assembly, and association, in the context of the upcoming elections, and draw attention to these issues at the 40th regular session of the UN Human Rights;
- Regularly highlight and address human rights concerns through UN human rights mechanisms, including the Human Rights Council, Special Procedures, and Treaty

Bodies, and follow up with the government of Bangladesh in implementing recommendations from its Universal Periodic Review;

- Support civil society's calls for a conducive environment for free and fair elections, and its efforts in publicly raising awareness about human rights violations in the country, including crackdown on peaceful protests, extrajudicial killings and enforced disappearances; and respond to any allegations of threats or reprisals against human rights defenders;
- Use their strategic influence within the region to support the promotion and protection of human rights and democracy in Bangladesh.

## About FORUM-ASIA

The Asian Forum for Human Rights and Development (FORUM-ASIA) is the largest membership based human rights and development organisation in Asia with a network of 67 members in 21 countries across the region. FORUM-ASIA works to promote and protect all human rights for all, including the right to development, through collaboration and cooperation among human rights organisations and defenders in Asia and beyond. FORUM-ASIA seeks to strengthen international solidarity in partnership with organisations and networks in the global South.

FORUM-ASIA was founded in 1991, and established its Secretariat in Bangkok in 1992.

Since then, other offices have been opened in Geneva, Jakarta, and Kathmandu.

FORUM-ASIA has consultative status with the UN Economic and Social Council (ECOSOC Status) and a consultative relationship with the ASEAN Intergovernmental Commission on Human Rights (AICHR).

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