



Lesson Series 52

Militarization and human rights in Bangladesh

Summary

This lesson discusses the state of emergency imposed in Bangladesh in January 2007 and its affect on the human rights of ordinary people.

Emergency and martial laws are increasingly common around Asia. Their brutality and repression become difficult to discuss both within the respective countries as well as internationally. By sharing the experience of Bangladesh, this lesson hopes to stimulate public debate regarding good governance and the protection of human rights.



Theme: Militarization and human rights in Bangladesh

The Issue

Emergency and martial laws are increasingly common around Asia. These laws grant inordinate power to governments, be they civilian or military, while curbing the civil liberties of ordinary citizens. The laws also tend to give the government supremacy over institutions such as the police and judiciary. In this way, there are no longer any checks on government power, which is used to keep the government in place and protect it from its opponents.

In such situations, the protection of human rights becomes nearly impossible. Rule of law, which is the greatest component in upholding basic rights, becomes a tool to be manipulated by the government and/or military. The institutional and legal provisions for the realization of human rights no longer have any meaning.

The Lessons

Lesson 1: Bangladesh's state of emergency and related legislation

Lesson 2: Abuse of power and threats to human rights

Cover photograph of army on the streets in Bangladesh. Source: AHRC, 2007.

Lesson 1

This lesson gives an overview of Bangladesh's (mis)use of repressive legislation under the state of emergency and how this affects basic human rights.

A. State of emergency, January 2007

On 11 January 2007, Bangladesh's President Iazuddin Ahmed proclaimed a state of emergency, and on the following day a group of bureaucrats and retired military generals took power in Bangladesh. This situation continues at the time of writing. The alleged justification for this takeover was the violence and instability plaguing the country due to clashes between the previous ruling party and its opposition. From October 2006 to January 2007 there were numerous deaths due to the violence, while transportation and other strikes rendered the entire country immobile.

The present state of emergency bans all political association, as well as basic civil liberties. Moreover, the military is given the power of magistracy; military and other law enforcement officials now have the authority to make arrests without warrants. This has led to significant arbitrary arrests, detention, torture and ill treatment of ordinary citizens, from shopkeepers and agricultural workers, to human rights activists and professionals. Most persons are initially detained under the 1974 Special Powers Act, which allows police to propose to the district commissioner that any person shall be detained for a certain amount of time.

The courts are unable to receive writ petitions under the state of emergency provisions. However, the Appellate Division of the Supreme Court spent over a month to hear cases protesting such arbitrary detention, after a series of debates between the government and the defendants regarding judicial authority. By the time the courts declared the detentions illegal, most of the victims had been implicated in fabricated cases, thereby keeping them in detention. Furthermore, the local magistrates responsible for their detention or release are under government influence. The government in turn, is under military influence.

In actual fact, there is a parallel military administration in the country, without whose green signal the civilian administration does nothing. Controversial institutions such as the Elections Commission and the Anti Corruption Commission have already been reformed, with key posts given to persons with military backgrounds. This has led to around 30 former ministers from both political parties being held for corruption charges—unthinkable under previous administrations. Even Tarique Rehman, son of former prime minister Khaleda Zia, has been in detention for corruption since 7 March 2007. A number of laws—in the guise of ordinances—have been imposed, restricting normal activity and movement. While these laws are purportedly being used to detain

politicians and other influential figures, all of whom have until now enjoyed blanket immunity for their illegal activities, the same laws are denying justice to innocent victims who are arbitrarily detained and tortured. Meanwhile, newspapers and electronic media have been warned not to publish any material deemed 'anti-nationalist'. Many media personnel have also been detained for illegal activities. In this way, the increasing repression and violence of the military is not widely spoken of.

Constitutional provisions

According to article 141A of the Constitution of Bangladesh, when "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" the president may proclaim a state of emergency. Such a state "shall cease to operate at the expiration of one hundred and twenty days, unless before the expiration of that period it had been approved by a resolution of Parliament". Bangladesh's state of emergency should therefore have ended in April. Moreover, the constitution further holds that a general election should be held 90 days after parliament is dissolved; this too has not occurred in the country.

The constitution also provides for the suspension of fundamental rights during a period of emergency rule. However, the High Court Division of the Supreme Court held that citizens' legal rights are not suspended during the emergency period and concluded that it would begin to hear individual habeas corpus cases from February 26 (For more details, see AHRC UA-067-2007).

Authoritarian governments, dictatorships and military regimes have become the norm around Asia. In September 2006, a few months before the state of emergency was imposed in Bangladesh, there was a military coup in Thailand. Without understanding the implications, there were some who claimed that the coup was in fact a good thing [see AHRC AS-229-2006 for further discussion]. No good can result from individuals in power ignoring the law and constitution that ultimately gives them their power. On the contrary, there is no longer any basis for rule of law, democracy and human rights protection. History is witness that any rule not legally legitimate brings only repression and abuse. If all power is corrupt, absolute power is that much more corrupt. By attempting to rule with absolute power, military and other dictatorships bypass all legal checks and balances, which were established to prevent the misuse of power and to protect the rights of citizens.

B. Legislation

It is important that legislation be progressive and adhere to international standards of human rights. The drafting and passing of legislation is therefore an important process, to be done by competent and intelligent bodies. In democratic societies, this process is usually undertaken by the national parliament or legislative body, with input from civil society as well as political parties. Public participation and rigorous debate work to prevent

harmful legislation from being enacted.

With the recent increase in draconian laws around the region, human rights are being systemically denied however. The following are a few such laws in place in Bangladesh.

Emergency Powers Ordinance 2007 (unofficial translation)

Section 5

(1) Any order relating to any authority delegated by dint of, or under, this Ordinance shall not be challenged before any court.

(2) Under certain circumstances if any authority, by dint of, or under this Ordinance, passes any order, or any order is considered as signed under this Ordinance, then the courts shall deem that order passed or signed under the Evidence Act 1872 (Act no. X of 1872).

Section 6

(1) Any action done or order passed under, or authorized by this Ordinance on good faith by any person designated by this Ordinance shall not be prosecuted or charged under any civil or criminal procedures, or any kind of litigation shall not be registered.

(2) Unless any evident provision under this Ordinance, no civil or criminal case, or any other legal proceedings shall be lodged against the government for any harm occurred as a result of any action, or any order done on good faith under the authority of this Ordinance.

Emergency Powers Rules 2007

Section 2 defines the " Law and Order Maintaining Forces" to include the Bangladesh police department, the Armed Police Battalion, Rapid Action Battalion, Ansar (village defence) force, Battalion Ansar, Bangladesh Rifles (border security force), Coast Guard force, National Security Intelligence, members of the Defence Intelligence Agency and the Armed forces. This is a significant number of personnel given extraordinary powers of arrest and detention without warrant; section 16 gives the ' Law and Order Maintaining Forces' the power to arrest any person on suspicion without warrant, while section 20 explicitly states that all personnel can " take any step including the use of force" to carry out any orders under these Rules. Section 21 provides for the detention

of these persons under the Special Powers Act of 1974. Moreover, according to section 10 all offences under the Emergency Rules are non-bailable. This provision is emphasized by section 19d, which states that regardless of sections 497 and 498 of the Code of Criminal Procedure, if any inquiry, criminal investigation or trial is in progress under sections 14 and 15 of the Emergency Rules, the accused persons shall not be entitled to appeal for bail before any court or tribunal.

In other words, disregarding basic human rights and principles of fair trial, state security forces can arbitrarily arrest and detain individuals without warrant or evidence; in fact, they can 'produce' evidence through the use of force. Such circumstances are conducive to widespread human rights abuse and corruption. Many human rights defenders are also being targeted by security forces and implicated in false cases.

While enormous power is given to security forces, basic rights of citizens are suspended. Section 3 of the Emergency Rules bans all rallies, processions and meetings, while section 5 places strict restrictions on news, photos, statements, opinions and comments, editorials, talk shows and other discussion forums. The suspension of their rights to freedom of expression, association and their right to seek remedies mean that victims suffer in silence. They are unable to voice their grievances through ordinary channels of communication. They cannot seek relief from the courts or other agencies. With the ban on all political activity, as well as the fact that many political leaders and party members are detained in prisons and facing trials for corruption, there is no one to speak out against the military backed government. The few individuals left are too scared to do anything but praise the government.

Even prior to the state of emergency in Bangladesh, the country had numerous repressive pieces of legislation. Section 54 of the Code of Criminal Procedure 1898 permits arrest on a 'reasonable suspicion' of a crime, and was the most commonly used provision by the police to arrest individuals and pry information out of them.

Under section 132 of the Code of Criminal Procedure, no criminal complaint can be lodged against any official without prior sanction from the government. This means that complainants must first lodge a case with a magistrate, argue the case and have it investigated simply in order to get it opened. Furthermore, an accused person who is found to have been acting "in good faith" or on orders from a superior shall never be charged and his actions shall never be considered a crime. These provisions appear to have been incorporated into Bengal's criminal procedure by the British colonial regime to protect its personnel at all costs from being pursued into a court by a "native" whom they had wronged. It is also an article that seems to have much more in keeping with antiquated French administrative regulations than with the common law tradition.

Section 54 of the Code of Criminal Procedure 1898

Any police officer may, without an order from a Magistrate and without a warrant, arrest-

First, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;

Secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

Thirdly, any person who has been proclaimed as an offender either under this Code or by order of the [Government];

Fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property [and] who may reasonably be suspected of having committed an offence with reference to such thing;

Fifthly, any person who obstructs a police officer while in the execution of his duty, or has escaped, or attempts to escape, from lawful custody;

Sixthly, any person reasonably suspected of being a deserter from [the armed forces of];

Seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh;

Eighthly, any released convict committing a breach of any rule made under section 565, sub-section (3);

Ninthly, any person for whose arrest a requisition has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

Section 86 of the Dhaka Metropolitan Police Ordinance was also frequently used by police in Dhaka to make arrests without valid reason after dark wherever someone is found without any 'satisfactory explanation'. It carries a one year penalty, fine, or both.

Section 86 of the Dhaka Metropolitan Police Ordinance (unofficial translation)

If any person is found between dusk and dawn

- a) Equipped with dangerous machinery without any satisfactory explanation; or,
- b) Covering the face or disguised or masked without any satisfactory explanation; or,
- c) Present in the house of anybody else or in a building of anybody else or on board a boat or in any vehicle without any satisfactory explanation; or,
- d) Lying or moving in or on any street, any yard or any other place without any satisfactory explanation; or,
- e) Entering into any house along with weapons without any satisfactory explanation; then, that person shall be imprisoned up to a maximum of one year or shall be fined up to two thousand Taka, or both.

The Special Powers Act 1974 allows police to propose to the district commissioner—who is also the district magistrate—that any person shall be detained for a certain amount of time. This continues to be used in conjunction with the emergency regulations to arbitrarily detain individuals.

Moreover, section 46 of the Constitution empowers the government to extend immunity from prosecution to any state officer on any grounds:

Notwithstanding anything in the foregoing provisions of this part, Parliament may by the law make provision for indemnifying any person in the service of the Republic or any other person in respect of any act done by him in connection with the national liberation struggle or the maintenance or restoration or order in any area in Bangladesh or validate any sentence passed, punishment inflicted, forfeiture ordered, or other act done in any such area), to make the above-mentioned law.

Although this provision was originally intended with reference to the 1971 war for independence from Pakistan, it is now used to protect police and joint operations units from prosecution for human rights abuses.

Notably, the Joint Drive Indemnity Ordinance 2003 removed from the hands of victims and their families the right to take legal action against soldiers, police and other security forces responsible for the gross abuses that occurred from 16 October 2002 to 9 January 2003 under Operation Clean Heart.

The law legalizing the Rapid Action Battalion (RAB) is also problematic. The Armed Police Battalions (Amendment) Act 2003, which has its origins in the Armed Police Battalions Ordinance 1979, gives the RAB wide responsibilities, including “intelligence in respect of crime and criminal activities” and “investigation of any offence on the direction of the Government”. Section 6B (1) further states that “The Government may, at any time, direct the Rapid Action Battalion to investigate any offence”.

The Rapid Action Battalion, which was inaugurated on 26 March 2004 and began its operations on June 21 of the same year, is depicted by the government of Bangladesh as an elite joint-operations crime-fighting force. In fact, RAB personnel operate as hired guns for whichever political party happens to have its hands on the reins of power. Through systemic violence and trademark “crossfire” killings, their great success has been the spreading of more panic and lawlessness throughout Bangladesh: the very things needed to justify the RAB’s continued existence.

The government of Bangladesh told the UN Special Rapporteur on extrajudicial executions that under the 2003 act the RAB is “guided strictly by the Code of Criminal Procedure” (E/CN.4/2004/7/Add.1, para. 26). In reality, nothing could be further from the truth:

According to section 103 of the code, police who search a certain premises must first obtain two or more “respectable inhabitants” of the locality to witness the search and countersign any record of seized items. When RAB personnel take persons in their custody to search and retrieve weapons or other illegal objects from premises at 3am they completely ignore this obligation. It is under these circumstances that RAB personnel conveniently get into “crossfire” and the person in their custody dies. Perhaps the RAB members are not complying with the code out of concern for the safety of the respectable inhabitants. Anyhow, so far as Bangladesh is concerned the reference to the Code of Criminal Procedure is spurious for the reason that the code works primarily to block the possibility of any complaint against state officers [Nick Cheesman, ‘Fighting lawlessness with lawlessness (or) the rise & rise of the Rapid Action Battalion’, article 2, vol. 5, no. 4, (August 2006), p.32].

Moreover, the mingling of both personnel and law in the RAB has intentionally caused confusion. The majority of RAB personnel are soldiers.

Out of the nine of its 12 regional battalion commanders listed on its website at time of writing, eight are army lieutenant colonels. Only one is a police officer. Informed observers in Bangladesh tell that the overwhelming majority of the RAB command is from the military. In this, RAB is a replica of the joint-force used for the 86-Day Tragedy. However, RAB is part

of the Bangladesh Police and technically under command of the police chief. Police personnel are obligated to follow the Police Regulation of Bengal and Police Act 1861. Yet the 2003 amended act makes no mention about whose guidelines it is meant to follow, and at the same time gives authority for the making of orders to the Ministry of Home Affairs rather than the chief of police. The multiplicity of persons apparently or actually in charge of the RAB, and duplication of command hierarchies, frees the RAB from any particular responsibility to anyone. Whereas the control of behaviour in law enforcement depends upon a sequence of functioning posts and departments, when these are jumbled up, maintenance of internal order is lost. All that is left is a RAB on the loose [Cheesman, 'Fighting lawlessness with lawlessness (or) the rise & rise of the Rapid Action Battalion', pp.32-3].

The systemic use of military personnel for policing has been the cause of repeated tragedies throughout Asia. The people of Bangladesh need only look to Nepal, Sri Lanka, Burma and Indonesia, among others, to obtain their lessons. Sri Lankan police were once relatively well-disciplined and law-abiding. Then they were told to hunt down insurgents and terrorists. The lessons learnt have carried on until today in horrendous forms of torture and killing for the most trivial reasons. In Burma, an army general is police commander. His men understand their duties only in terms of "security of the state". In Indonesia the police force under the Suharto regime was a part of the military structure itself. Now the country faces the monumental task of teasing the two apart. And Nepal is just starting to come to terms with what was done by joint operation forces under the royal dictatorship there in recent years. None of these are desirable models to be followed by Bangladesh.

While some laws are bad, others are non-existent. For instance, although article 35(5) of the constitution prohibits torture and the country has ratified the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), there is as yet no law that prohibits and criminalizes the practice, as well as no means to lodge a complaint. The Bangladesh government said it will only apply article 14(1) of the UN convention—stipulating the right to redress, compensation and rehabilitation for victims—in accordance with existing laws. As there are no existing laws for redress, compensation and rehabilitation, it is not difficult for the government to say that it has fulfilled its obligation by doing nothing. This inaction also applies to Bangladesh's submission of periodic reports to the CAT Committee; its first report was due in 1999 and second in 2003, neither of which have been submitted.

The adoption and enforcement of the above laws clearly indicates that torture and extrajudicial killings are deliberate government policy in Bangladesh. This is the case even though Bangladesh is a member of the UN Human Rights Council, as well as party to key international human rights covenants such as the CAT. These international obligations are routinely ignored, while state and government officials take care to protect themselves under laws like the Joint Drive Indemnity Ordinance, or now, under the emergency regulations.

Questions For Discussion

1. What is the role of the military in your country? How does this affect the human rights of citizens?
2. Discuss any repressive legislation that you are aware of, and its effect on society.

Lesson 2

This lesson will look at military abuse and threats to human rights in Bangladesh; how the situation described in Lesson 1 affects the daily life of ordinary people.

Arbitrary arrest and detention

The Asian Human Rights Commission (AHRC) has documented numerous cases of arbitrary arrest and detention since the state of emergency was imposed in Bangladesh five months ago; this is only a fraction of the actual number of cases. These cases indicate that political groups are being targeted and that security forces are abusing their power to arrest individuals without warrants. In the most recent such case documented by the AHRC on 15 June 2007, seven university students were detained for attending a protest.

Seven members of the Bangladesh Students League (BSL)—the youth wing of the Bangladesh Awami League (BAL)—were arbitrarily arrested and detained by joint security forces on 7-9 May 2007. The students were accused of attending the procession of 2-3000 people defying the state of emergency at the airport when former prime minister and BAL president Sheikh Hasina returned to Bangladesh on May 7. The joint security forces told six students that they were arrested for involvement in the Dhanmondi Thana Case No. 15 of 2007 (dated 7 May 2007), while one student was arrested under Shahbag Thana GD No. 411 (dated 8 May 2007); both cases relate to the procession. However, in the first information reports (FIR) of both cases no specific names of suspects were mentioned; security officers can thus arrest anyone with the same charges under the said cases.

When brought to the court, all seven students were remanded in violation of the state of emergency according to section 54 of the Bangladesh Code of Criminal Procedure, which allows the police to arrest a person without an order from a magistrate and without a warrant. The arrested students are believed to be detained at the Dhaka Central Jail.

There have been reports that police and intelligence branches recently prepared a list of around 200 leaders and activists of the BSL, who violated the state of emergency and have criminal records. Shahbag police also reportedly confirmed that raids are ongoing to arrest the BSL activists mentioned in the list. This was in fact the third such raid at the Dhaka University premises. According to one law enforcement officer, the list of activists is 'getting longer'. [See AHRC UA-193-2007, 15 June 2007]

On June 5, the AHRC wrote of the arrest of two BAL leaders and former ministers under the Special Powers Act 1974; Mr Obaidul Quader—former minister for youth, sports and cultural affairs—was arrested on March 9 and Mr Abdul Jalil—former trade minister—on May 28. Both are currently under 'preventive detention' in accordance with section 3(1) of the Special Powers Act.

Again, neither persons were presented with warrants or any other documents validating their arrest. However, a general diary (GD) case against Mr Quader was filed at the Ramna police station, in which he was identified as a 'patron of criminals' with vague charges such as involvement in creating 'anarchy and sabotage'. Mr Quader was then produced before the Chief Metropolitan Magistrate's Court, Dhaka on the following day. The Court ordered a 30-day detention of Mr Quader at Dhaka Central Jail under the Special Powers Act without any review of the charges made by the police. Mr Quader later received a letter from the Home Ministry signed by a Deputy Secretary (Security Cell-3), containing reasons for his preventive detention. The reasons were vague and unsubstantiated: "influencing the slum people against law and order", "patronizing terrorist activities", "involving in destructive action". Additionally, he was charged with corruption for a BDT 12,000,000 (USD 177,500) toll collection. Mr Quader is now being detained at Kashimpur Central Jail-2.

After Mr Abdul Jalil's arrest on May 28, he was produced before the Dhaka Metropolitan Magistrate Court on June 3, where the police claimed he was involved in toll collection and conspiracy against the government. Upon the police's request, the Court ordered him to be remanded for one month under the Special Powers Act. Mr Jalil is currently receiving medical treatment at the Banglabandhu Sheikh Muzib Medical University Hospital in Dhaka.

It is reported that on the evening prior to his arrest, joint security forces searched Mr. Jalil's residence in Gulshan for two hours and took away four passports; his and his family members', as well as other documents relating to his property and bank transactions. [See AHRC UA-176-2007, 5 June 2007]

There is growing concern that the caretaker government's ongoing anti-corruption drive is turning to be against politicians of opposition parties. If there is sufficient evidence against these persons, they should be subjected to due legal proceedings under relevant domestic laws, rather than the current practice of (mis)using the Special Powers Act 1974. Not only does such misuse violate basic rights as well as international legal principles, it also weakens the domestic legal system.

Threats to human rights defenders

On 3 May 2007, journalist Mr Jahangir Alam Akash, working with the CSB News received threatening phone calls from a Major Rashidul Hassan Rashid, an official of the RAB-5, questioning him regarding his broadcast of an extrajudicial killing of an alleged criminal by a RAB team on May 2. The team shot the man in his house in front of his wife and young daughter. Major Rashid termed Mr Akash's broadcast as 'anti state activities' and warned him that if any person representing the CSB News or Mr Akash himself makes any further attempt to enter into the area of the RAB's activities, the RAB will take action against him and his colleagues. [See AHRC UA-149-2007, 5 May 2007]. Such behaviour has prevented the majority of Bangladesh's media from speaking out regarding human rights abuses committed by the state.

Similarly, at around 2pm on 26 April 2007, Mr ASM Nasiruddin Elan, acting director of ODHIKAR, a human rights organization based in Dhaka, received a phone call from Lieutenant Commander Mehedi of the Bangladesh Navy. Mehedi asked Mr Elan to meet Mr Zubayer, Captain of the Bangladesh Navy, at their Naval Headquarters in Banani, Dhaka. A subsequent phone call from the Naval Headquarters Intelligence section informed Mr Elan that Captain Zubayer wanted to discuss two incidents of custodial death that had been previously investigated by Mr Elan's fact-finding team. Another phone call was made on May 2, at which time Mr Elan requested Lt. Commander Mehedi to send an official letter regarding his request. Mehedi refused to send such a letter and repeatedly called Mr Elan throughout the day. At 4pm, Mr Elan was told that Captain Zubayer would meet him at 9am on May 3.

On the following day a plainclothed individual came to the ODHIKAR office and took Mr Elan to the Navy Headquarters on a scooter. After waiting for some time, Mr Elan was taken to see Captain Zubayer. Several other officers were present as well, some of whom Zubayer addressed as officers of the Directorate General of Forces Intelligence (DGFI). They all began to verbally abuse and threaten Mr Elan, and accused him and all ODHIKAR staff of being involved in seditious and anti state activities. He was further told that he would be arrested if he mentioned this meeting to anyone. These threats were clearly intended to discourage Mr Elan and his organization from continuing their human rights work. [See AHRC UA-147-2007, 4 May 2007].

Questions For Discussion

1. Are you aware of similar cases of human rights abuse in your country? What remedies can be sought in these situations?