
HUMAN RIGHTS REPORT 2008

ODHIKAR REPORT ON BANGLADESH



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HOUSE NO. 35 (3RD FLOOR), ROAD NO. 117, GULSHAN, DHAKA-1212, BANGLADESH
Tel: 880-2-9888587, Fax: 880-2-9886208,
E-mail: odhikar@citech-bd.com, odhikar.bd@gmail.com
Website: www.odhikar.org

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In this report Odhikar, a human rights organization of Bangladesh, covers the year 2008. It highlights critical areas that require immediate and urgent national, regional and international actions. Odhikar is committed to uphold human rights by promoting civil, political, economic, social, cultural and collective values of human rights including the implementation of obligations of the government prescribed by the national constitution as well as by international instruments including the International Covenant on Civil and Political Rights, the International Covenant on Socio, Economic and Cultural Rights, the Convention on Torture and CEDAW.

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I. Introduction

1. The Human Rights Report 2008 is one of the reports that Odhikar brings out at the beginning of a new year, consolidating and compiling its various reports published over the preceding year. Odhikar focuses on host of rights guaranteed under international human rights instruments and those protected by the Constitution of Bangladesh. It monitors violations of the right to life, liberty, and freedom from torture, freedom of expression, the rights of women, workers rights, and rights of religious and other minorities. It also follows legislative and institutional developments relevant to the enjoyment of universally guaranteed human rights.
2. As a human rights organization, Odhikar is involved in various activities such as investigation of incidents of human rights violations, urgent actions, and advocacy for human rights. It also publishes monthly human rights assessment reports using data obtained from a number of sources, including reports published in leading national dailies, reports obtained from its human rights defenders, and from victims or their families that approach Odhikar.
3. In 2008, in addition to a regular monthly report, Odhikar published special monthly report on the State of Emergency, published on the 12th day of each month to coincide with the nationwide imposition of the State of Emergency on 11 January 2007. This was a unique endeavour of Odhikar to record the impacts of the State of Emergency on the status of human rights. Each report highlighted Odhikar's concerns and made concrete suggestions based on international standards of human rights indicators.
4. This Annual Human Rights Report of 2008 reviews and analyzes key developments in the realm of human rights, as experienced by the people of Bangladesh. It will examine the role of the Caretaker Government, not only as an institution in itself, its legality but also parts played by the military and security forces in shaping policies and decisions with civil, political and human rights consequences.
5. It will also review institutional developments, such as those new institutions setup and changes made to existing ones, purportedly to further and secure individual and collective rights.
6. The report will also look at new legislations and amendments made to laws, enacted in the form of Presidential Ordinances. Under Article 93 (1) of the Constitution, the President is empowered to promulgate Ordinances when the Parliament has been dissolved or not in session. The report will list the major legislations proclaimed.
7. While reviewing the human rights situation in 2008, the report will also explore causes for the deplorable state of human rights and the culture of impunity and in this context, examine fault lines and democratic deficiencies in the Constitution and in particular, the imposition of the State of Emergency while a Caretaker regime is in place.
8. In this report, all assessments have been made based primarily on universally on recognized human rights standards and the Constitution of Bangladesh, where its provisions are consistent to universal human rights norms. The Constitution protects and guarantees some rights .It provides for the provision of enforcement of rights through elaborate judicial procedures.

II. Continued Concern: the State of Emergency

1. To assess the human rights situation in 2008, it's necessary to review conditions that existed in 2007. The major human rights concern was the State of Emergency imposed by the President on 11 January 2007 which continued in 2008. The Emergency was imposed under Article 141 A of the Constitution that empowers the President to proclaim Emergency if "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.”

2. The Proclamation of Emergency was quickly followed by the promulgation of an Emergency Powers Ordinance 2007 and then the Emergency Powers Rules. The Proclamation, Ordinance and Rules suspended numerous fundamental rights, contrary to international standards. It suspended, amongst others, fundamental rights of freedom of expression and assembly. Section 3 of the Emergency Powers Rules 2007 totally disallowed any kind of association, procession, demonstration etc, without the authorization of the authorities, and anyone found violating this prohibition, under Section 3 (4), was subject to two to five years of rigorous imprisonment.
3. It also prohibited the publication of any criticism of the government, in any form - be they news bulletins, talk shows, articles or cartoons. Moreover, access to justice, to remedy against any illegality in the government actions was blocked, contravening the basis of rule of law and internationally guaranteed rights. Section 5 (1) of the Emergency Rules, states that “No question should be raised before any Court regarding the orders passed on the basis of this Ordinance or by the authority of this Ordinance”.
4. This effectively disempowered citizens and gave law enforcement agencies power to take any action, including arbitrary arrests. It in fact effectively legalized arbitrary arrests and detention since the Court had no authority to verify the justification of arrests and detentions. This also set the backdrop for effectively authorizing torture since those arrested were almost always tortured in various forms during interrogation and detention. Moreover, the Emergency Powers Rules 2007 gave these powers to several organizations clustered under one title, “law and order maintaining force” under Section 2 (a). The forces included not only the Police, Armed Police Battalion, the Rapid Action Battalion, Ansar, Bangladesh Rifles, but also the Coast Guards and civil and military intelligence services. The members of these forces were authorized to arrest any person under a ‘catch all’ provision of Section 16(2) without any warrants.
5. The Emergency’s pervasive authority was reinforced by Section 20 of the Emergency Powers Rules, allowing the law enforcement forces to use force to execute orders, and under Section 21, it permitted the government to detain any person under Special Powers Act 1974. The government profusely used this combined power under the Emergency Rules 2007 and the Special Powers Act 1974 to detain an arrestee without giving any justification to the deprivation of liberty.

PRETEXT

6. The Emergency was imposed at a time when major political parties and alliances developed serious differences and were at logger-heads as to who would head the caretaker government, a system devised earlier to install a stopgap government to hold elections after the dissolution of parliament¹. In 2006, the tenure of the Bangladesh Nationalist Party (BNP) ended. Unprecedented political violence engulfed Bangladesh on 27th and 28th October 2006 resulting in a large number of casualties. The President, without fully exhausting the provisions laid down for the Caretaker Government, assumed himself in the position of the Chief Advisor and appointed a Caretaker Government. The procedures set in Article 58, in particular, Article 58C (5) requires the President to appoint a Chief Advisor, if no retired Chief Justice or Appellate Division Judge is available or willing to take the post, then the Chief Advisor

¹ Chapter II A, Article 58B (1) of the constitution of Bangladesh provides for the Non-Party Caretaker Government “during the period from the date on which the Chief Advisor of such government enters upon office after Parliament is dissolved or stands dissolved by reason of expiration of terms till the date on which a new Prime Minister enters upon his office after the constitution of Parliament.”

is appointed, "from among citizens of Bangladesh who are qualified to be appointed as Advisors".

7. Thus, instead of exhausting this mandatory provision of the Constitution, to look for a qualified person from amongst citizens of Bangladesh, the President appointed himself the Chief Advisor and set a new precedent. This assumption was unconstitutional.
8. The President therefore ascended to a unique position of absolute power, in effect to rule and legislate without any accountability whatsoever. As President during the Caretaker administration, he was in charge of all institutions of the military, head of the civil administration and in absence of Parliament, the only legislative authority. As such, all executive and legislative powers of the State were vested in one person, an unprecedented situation. This exposed a major weakness and gap of the Constitution.
9. Nevertheless, despite the nature of dictatorial power vested in one person, the President had no problem in getting 10 advisors, most of them from the civil society. However, within weeks, four of the advisors resigned accusing the President of bias and for creating conditions not conducive to hold a free and fair election. They were immediately replaced and date for 9th parliamentary Election was scheduled for 22 January 2007. The move of the President Dr. Iazuddin Ahmed, to become Chief Advisor in addition to President, resulted in controversy from many quarters. The Awami League complained about his partisan role, while human rights organizations expressed concerns about the absolute power vested by him.
10. The Awami League led alliance and others mounted massive campaigns and street protests that often ended in violence, leading to some 50 deaths, while the BNP was determined that the elections be held as scheduled. Concerns about the credibility of the elections were raised by various bodies, both national and international, as well as by other states. A major area of concern was that the voter list was perceived as being faulty and was being prepared by an Election Commission, that itself was considered controversial and had largely lost credibility.
11. On January 11 2007, at the behest of the Military, the President in a broadcast to the nation declared the State of Emergency and announced his resignation from the position of Chief Advisor. All other Advisors also resigned, except Advisor Justice Fazlul Haque who replaced him temporarily as the Chief Advisor. The next day, the President appointed a new Caretaker Government, the second in three months.
12. The Military played key role in imposing Emergency and installing a Caretaker Government with emergency powers². Curfew was imposed and the scheduled 22 January 2007 election postponed. The new Chief Advisor was Dr. Fakhruddin Ahmed, a former World Bank official.
13. The impact of Emergency was immediate. Televisions stopped political talk shows and reporting on political activities. Although there are provisions in the Constitution on the Emergency, The State of Emergency had not been declared in Bangladesh for a long time. For those who had experienced this before, the Emergency declared on 11 January 2007 brought out memories of worrying past experiences.

LEGALITY OF THE STATE OF EMERGENCY

14. There are serious questions about the compatibility of the Emergency Provisions of the Constitution and international standards. Under Article 141 B, after the issuance of Proclamation of Emergency, fundamental rights are suspended, particularly,

² International Crisis Group reports: 'on January 2007 Bangladesh's military installed a caretaker government (CTG), which used emergency powers to clamp down on violence in the run-up to bitterly contested elections'. Although the CTG headed by Fakhruddin Ahmed had a civilian facade, the ICG report admits, quoting from Economist, that it was a 'quiet coup'. (see Asia Report No 151 - 28 April 2008: Restoring Democracy in Bangladesh; also see 'The Coup That Dare Speak its Name', The Economist, 18 January 2007.

Articles 36, 37, 38, 39 and 40 dealing with freedom of movement, assembly, association, thought and conscience, and speech and freedom of profession or occupation respectively. Also, it can suspend the enforcement of any or all fundamental rights guaranteed by the Constitution in Part III. In other words, Emergency provisions could block resort to judiciary for securing rights protected under the Constitution.

15. Moreover, parameters to impose a State of Emergency by the President are quite broad, vague and subjective. Often it is a political question. As noted, when the President is satisfied that a "grave emergency exists" threatening "security and economic life of Bangladesh", he may proclaim Emergency. What constitutes 'grave emergency' is unclear.
16. The International Covenant on Civil and Political Rights, which Bangladesh has acceded and therefore obliged to follow as a part of its commitment to the international community, permits States Parties, in this case Bangladesh, to take measures "to the extent strictly required by the exigencies of the situation," derogating from rights under the Covenant at a time when "public emergency ..threatens the life of the nation." It declares that some rights can never be derogated such as right to life, right not to be tortured or inflicting of inhuman, degrading punishment.³
17. The remit of the emergency provisions are much wider in the Constitution of Bangladesh and does not limit its extent by exigencies of the situation. The emergency imposed last year and throughout 2008 indicated that it was not limited to the exigencies of the situation but rather used as a justification to rule. An exceptional measure for an exceptional situation was abused to govern. This was by far the longest period of Emergency experienced in Bangladesh, lasting from January 2007 to December 2008, when it was lifted following sustained national and international pressures.
18. The other problem has been the duration of the period of Emergency. The Constitution in Article 141 A (2) (c) states that emergency "shall cease to operate at the expiration of one hundred and twenty days.." but its proviso says that if the Parliament has been dissolved either before or after Proclamation of Emergency, "the Proclamation shall cease to operate at the expiration of thirty days from the date on which Parliament first meets after its re-constitution." This ambiguity of the Constitution was exploited by the Caretaker government in full in order to stay in power for two years!

JUDICIARY AND EMERGENCY

19. The highest judiciary of the country came under scrutiny during the period of Emergency and many felt that the Supreme Court, in particular, the Appellate Division, abdicated its responsibility to defend and protect the Constitution.
20. An appeal came up before the Appellate Division against an earlier decision of the High Court Division that granted bail to a person, who sought bail, following his arrest under the Emergency Powers Rules 2007. Lawyers for the petitioner raised important questions on the Emergency Rules exclusion of the court's authority to grant bail, once detained under these Rules. The right of provisional release pending legal process has been an integral part of the Court's authority to protect fundamental rights.
21. Considering the significant question on the authority of the court, and on interpretation of laws and the Constitution, the Judges of the High Court Division invited half a dozen leading lawyers to act as the Court's amicus curiae to give their opinion on whether prohibition to grant bails by the "court" or "tribunal" mentioned

³ Article 4, International Covenant on Civil and Political Rights.

in the Emergency Rules applied to the High Court Division of the Supreme Court of Bangladesh.

22. All six senior lawyers gave their views that as the High Court Division is part of Supreme Court of Bangladesh, and the highest court of the land and highest authority to defend and protect fundamental rights and the Constitution, the prohibition could not apply to the High Court. Moreover, lawyers argued that even the Parliament has no authority to deny the Supreme Court to review important questions on fundamental rights. The High Court then decided that it has the right to entertain applications of bail from those arrested under the Emergency Rules, 2007.
23. In April 2008, the full bench of the Appellate Division of the Supreme Court went against the decision of the High Court and declared that it had no jurisdiction to entertain or decide on arrests, detention and other matters made or done under the Emergency Powers Rules 2007.
24. It was a surprising decision and a sad example of the highest court denying itself jurisdiction in matters of fundamental rights guaranteed by the Constitution and an example of abdication of responsibilities by no less than the highest court of the land.
25. This decision of the Supreme Court caused an uproar amongst lawyers and others because of its potential impact on protecting basic human rights. Odhikar believes that this decision of the Supreme Court should be reviewed and the authority of the Supreme Court should be restored in full.
26. The Supreme Court, in yet another case in May 2007, overturned an High Court Order declaring illegal the decision to bring a case under the Emergency Power Rules 2007 for offences committed before the imposition of the State of Emergency. Based on principles of legality and on non-retrospective principles, the High Court decided that offences committed prior to the imposition of Emergency could not be brought under the newly proclaimed Emergency Rules 2007.
27. Such regressive rulings by the highest court grants freedom to the government, military and others to use Emergency provisions to arrest and detain without regard to fundamental human rights, or constitutional provisions. It also raised doubts about the independence of the highest judiciary.
28. At the fag end of the year, in the first week of December 2008, the High Court declared illegal and void four provisions of the Emergency Powers Ordinance 2007. It nullified Section 5 of the Emergency Powers Ordinance and Rules 11(3), 19 (Gha) and 19 (Uma) of the Emergency Powers Rules 2007.
29. Section 5 stipulates that no Order issued under the Emergency Ordinance or Rules could be challenged in any court. Rule 11 (3) barred any appellate court from staying any sentence given in any corruption case, and from granting bail to those accused under Emergency Rules. Rule 19 (Gha) prohibited the accused under Emergency Rules from seeking bail in any court during the inquiry, investigation and trial of the case. Rule 19(Uma) stipulated that no appeal can be filed with any appellate court against any Order of any court or tribunal and any action taken by the authorities concerned during the inquiry and investigation of any case under the Rules.
30. The court observed that Article 141B of the Constitution empowers the government to make any law and take any executive action transgressing Article 36, 37, 38, 39, 40 and 42 of the Constitution, but no other fundamental rights guaranteed by the Constitution. It said, the Supreme Court has the power to examine the laws and actions made or taken transgressing the six articles, to look into whether they have been made or taken in accordance with constitutional provisions, and the court can also declare any such law or action illegal after judicial scrutiny.
31. The High Court declared that none in the State can go beyond the Constitution and even the President cannot violate any constitutional provision even during war. The Constitution, the court observed is the solemn expression of the will of the people of the State at that it separated the three organs - Executive, Judiciary and Legislative. That cannot be changed.

32. The government, however, immediately appealed to the Appellate Division of the Supreme Court of Bangladesh.

LEGITIMIZING EMERGENCY

33. Under Article 141 A of the Constitution, the Proclamation of Emergency has to be "laid before Parliament" for its approval. Moreover, Article 141 C mandates that "Every Order made under this Article shall, as soon as may be, be laid before Parliament." In addition to the Proclamation of Emergency, the Order and Rules, the Caretaker Government profusely legislated through Presidential Ordinances. As many as 114 different Ordinances were issued⁴, brand new laws as well as amendments, and under Chapter III, Article 93, all Ordinances "shall be laid before Parliament at its first meeting following the promulgation of the Ordinance" or else, it will "cease to have effect at the expiration of thirty days after it is so laid."
34. In other words, the next Parliament, not only has to ratify the Emergency but at the same time, approve all Ordinances in its very first meeting. This simply is not possible in parliamentary practice. The risk is that there could be blanket indemnity through ratification or by amending the Constitution. Odhikar has steadfastly opposed any blanket ratification. Odhikar demands that the next Parliament should approve only those Ordinances absolutely necessary for the running of the country and not the en mass indemnifying of actions taken under Emergency by the 'Caretaker' Government. It should also examine the authority of the Caretaker Government to legislate.
35. The next Parliament should not only be attentive to the constitutional continuity aspect, but also the principles of democracy. It should not legitimize military regimes with a civilian façade and set a bad example so that any one with guns in hand can overthrow a constitutional government and gain legitimacy by subsequent Parliament in the name of 'constitutional continuity'. This is an issue that does not necessarily belong to the newly elected government, but a democratic concern that must be resolved by the people. The Parliament has granted such legitimacy before, essentially weakening the foundations of democracy.

III. The Caretaker Government

1. After the imposition a State of Emergency, the second Caretaker government was installed at the behest of the military, which was the key force behind the changeover. There are reports that some foreign missions were also involved in the process. Bangladesh entered into un-chartered territory, constitutionally speaking, with the emergence of a second Caretaker government. This has never happened before as such earlier Caretaker governments successfully held parliamentary elections within 90 days of taking over power. Also, none of them had ever declared a State of Emergency.
2. The new caretaker government started with a big bang. Odhikar recorded the human rights performance of the government and found that from 12 January to 10 February 2007, during its first 30 days, the government arrested 52,027 persons and 29 people were killed by different law enforcement agencies⁵. During its first month, one person a day was killed extra judicially. Indiscriminate arrests and detentions, torture, fear of Emergency Rules and suppression of fundamental rights brought street confrontations under control, though there were a number of violent conflicts.

⁴ The complete list of Ordinances issued during the Caretaker Government is annexed with the report. The first Caretaker Government also issued Ordinances.

⁵ Odhikar press release, 12 February 2007.

THE MILITARY AND THE CARETAKER GOVERNMENT

3. Under the military-backed regime there were visible signs of militarization. Either in-service or retired military personnel's were brought in to the Caretaker government and eventually to every other sector. There were retired Major Generals and a retired police chief in the government as Advisors, and a retired Brigadier General as Special Assistant to the Chief Advisor.
4. In addition to the cabinet, the re-constructed Election Commission got a retired Brigadier General, a retired Lt. Gen. headed the corruption busting organization the Anti Corruption Commission a serving Lt. Gen. was appointed to head the newly established National Coordination Committee to deal with so-called serious crimes. The telecom regulatory was full of retired and serving military officers as well as the Department of Shipping, Ports and even the state owned Steel and Engineering Corporation. Sports, was another sector where the military's presence are felt as the head of the sports council, Olympic association, hockey, swimming, basketball, shooting federations etc were ex-Army. The government even inducted a retired major general in the Truth and Accountability Commission. Military officers were sent to State owned gas corporation, the WASA and other organizations, ostensibly to weed out corruption.
5. The Military's influence in the second caretaker government was all pervasive, that increasingly led the government to be characterized variously as a military backed, military led or military controlled caretaker government. The military spanned over all 64 districts and other smaller administrative units of the country.
6. They were given free reign and enjoyed real power. There was no authority in the country to question this, including the judiciary, who gave way to the Emergency Rules. All law enforcement agencies were empowered to arrest without any warrant or court order, and once accused; the person had no option to seek bail.
7. It is widely believed that the security forces and the Caretaker government were also engaged in making and un-making political parties, used the campaign against corruption as a tool against senior political leaders, intended to re-design politics of Bangladesh and even tried unsuccessfully to exclude the heads of the two political alliances, Khaleda Zia and Sheikh Hasina. Even though it largely failed in realizing its objectives, the military has, nonetheless, established itself as a potent force to reckon with.

CONSTITUTIONALITY OF THE CARETAKER SYSTEM

8. A number of glaring questions came up due to the extended period of the Caretaker regime, about the mechanism itself and the constitutionality of the caretaker system. Odhikar finds that, there are flaws in the system as devised in the Constitution. It has also affected the functioning of judiciary, an organ vital for securing rule of law and good governance.
9. The caretaker system, inserted in the Constitution through the Constitution (Thirteenth Amendment) Act, 1996, was regarded as a panacea against the distrust generated between political parties with regard to the issue of credible general elections under a political government. A unique system, no where to be found in the world, entails handing over of power, after completion of the parliament's tenure or in the event of its dissolution, to an administration composed of unelected persons.
10. This provision was introduced by the 6th National Assembly. The Bill was placed before the Parliament on 26 March 1996 and passed without discussion, where 286 voted in favour and none against. The Assembly was dissolved on 30 March 1996. This was the only outcome of the shortest Parliament in the history of Bangladesh.

11. Chapter II A of the Constitution prescribes certain types of individuals who can run the country and the government unelected for a given period. The idea is to bring in non-partisan persons to take over and hold elections as political parties developed deep mutual distrust regarding the arrangement of parliamentary elections. The party that ran the country for five years could not even be trusted with the ballots.
12. Bringing in unelected persons to office to run the government goes against the principles set out Article 11 of the Constitution that declares that the "Republic shall be a democracy in which fundamental rights and freedoms and respect for dignity and worth of the human person shall be guaranteed, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured."
13. Thus the Constitution mandates effective participation by the people, whereas Article 58(B) (3) allows the Chief Advisor to exercise all executive powers of the Republic, a person not in any way elected but selected by the President. There is no participation of the people in the process of either induction of Chief Advisor or running of the government by a Caretaker government.

PROBLEMS AND EFFECTS OF A CARETAKER GOVERNMENT

14. There are deep flaws in the Caretaker System as adopted in the Constitution. The idea originally was criticized by intellectuals and social activists committed to democratizing the Bangladesh Constitution. It is essentially an undemocratic institution as it lacks democratic essence. It also has several deep flaws affecting all other organs of the State. It is premised on "democracy for a day", to ensure a credible parliamentary election is held but is positively unhelpful in the development of democratic institutions.
15. The President, during the Caretaker government, acts alone as Article 58 (E) states that "Notwithstanding anything contained in articles 48(3), 141 (1) and 141 C (1) of the Constitution, during the period a Non-Party Caretaker Government is functioning, provisions in the Constitution requiring the President to act on the advice of the Prime Minister or upon his prior counter-signature shall be ineffective." This turns the President into an unaccountable entity, something that was glaringly visible over the last two years.
16. Add to this the power, exercised this time round by the President, himself assuming "the functions of the Chief Advisor of the Non Party Caretaker Government" under Article 58 (C) (5) and then under Article 161, of being the Supreme Commander of the Defence Services in Bangladesh, during the Caretaker period. In other words when a person is in a situation where he holds two offices, the Presidency and Chief Advisor, he is bound to turn into virtually a despot with absolute powers.
17. This is why parties are so keen about this otherwise ceremonial position of the President and like to ensure that the most 'obedient' and 'loyal' person gets the job. The Caretaker system has thus been politicized and has made controversial the high office of the President, which otherwise should be a symbol of national unity and reverence. Presidents are no longer perceived as neutral, rather viewed as highly partisan persons. Experiences since the dissolution of the last Parliament in October 2006 have demonstrated how much the Caretaker system has damaged the institution of the President in Bangladesh.
18. The other casualty of the Caretaker system has been the Judiciary. Article 58 (C) of the Constitution sequences the head of the Caretaker government, the Chief Advisor as follows: a) The Chief Advisor shall be the last retired Chief Justice; b) In case of unavailability or unwillingness of the last retired Chief Justice, the Chief Justice who retired before the last Chief Justice; c) In case of his unavailability or unwillingness, the last retired Judge of the Appellate Division; d) In case of unavailability and unwillingness of such a Judge, the Judge of the Appellate Division before the last

- retired Judge; e) If no such Judges are available or not ready to accept, the President is to appoint one qualified citizen in consultation with political parties; f) If all else fails, the President himself would assume this responsibility.
19. Such overwhelming emphasis and preference for retired Chief Justices and Judges of the Supreme Court affected the apex judiciary. The assumption was that such persons would be neutral and non partisan after serving on the bench. Since the position of Chief Advisor is crucial in holding elections, governments in power responsible to promote and appoint Judges of the Supreme Court, factored this in while making such promotions and appointments of Judges. It is widely believed that even the Constitution was amended to increase the retiring age of the Judges of the Court by the BNP government to enable a Judge of their choice to retire at a time to synchronizing with the ending of the BNP government's tenure in order for him to become the Chief Advisor. This was why the opposing political parties could not agree on the said Judge becoming Chief Advisor, resulting in serious crisis.
 20. The provision also contradicts basic principles of democratic governance, the separation of powers between the Executive, judiciary and Legislature. The Caretaker system has dragged the Judges and the judiciary into the political arena, to run the government and administration. The judiciary has thus itself become controversial because of this system.
 21. The other effect on the Judiciary, an institution that should never have any role in administration, was the opportunity for the Judges to become Chief Advisor. It is evident from the ways sitting judges Jockey for position through repeated appointments of Judges, superseding the senior Judge.
 22. The other major worry reflected in the last Caretaker government is contradictions in Article 58 (B) (12) that provides that "The Non-Party Caretaker Government shall dissolve on the date on which the Prime Minister enters upon his office after the constitution of the new Parliament." This provision not only provides open-ended tenure of the Caretaker government with no fixed period set, but also contradicts another key provision of the Constitution. Article 123 (3) obliges that "A general election of members of Parliament shall be held within ninety days after Parliament is dissolved, whether by reason of the expiration of its term or otherwise than by reason of such expiration." This ambiguity as to the exact tenure of the Caretaker government enabled the Caretaker government to extend its tenure to two years in office.
 23. The system has other confusions. Article 58 (D) clause 1 says that "The Non Party Caretaker Government shall discharge its functions as an interim government and shall carry on the routine functions of such government with the aid and assistance of persons in the services of the Republic; and, except in the case of necessity for the discharge of such functions it shall not make any policy decision".
 24. This provision leaves doors wide open for differing interpretations, conclusion and controversies as to what constitute "routine" activities and "policy". This dogged the last Caretaker Government throughout its period.
 25. Odhikar considers the Caretaker government as an undemocratic system that has already caused immense damage to the State, its institutions and developments thereof. It considers that there is no place for an unelected regime in any democratic governance, even for the shortest period of time.

DEADLY MIXTURE-CARETAKER SYSTEM AND EMERGENCY

26. When the President imposed the State of Emergency and installed a Caretaker Government, gradually the cracks and fault lines of the Constitution of Bangladesh appeared one by one. There was no known thought given before, especially when introducing the Caretaker system that it would be a deadly combination when mixed with a State of Emergency, which happened in January 2007.

27. Two questions agitated many minds from very beginning, the date for the general election and how long would the Caretaker government be in power. Another question that arose was, whether the Emergency offered the Caretaker government any legal or constitutional validity. The answers were not found in the Constitution. As discussed above, when the Parliament is absent, either because of dissolution or expiry of its term, the State of Emergency has no end date. It could be an open-ended matter even though in a public interest case filed by a news paper editor, a human rights activist and a teacher (referred above), the High Court Division said that the State of Emergency cannot continue for indefinite period.
28. The Caretaker government also has no end date. Putting these two together- an unelected government, with both legislative and executive powers, and the suppression of fundamental rights through Emergency-they can run Bangladesh as long as they chose. The two year period of the last Caretaker government was not decided by the Constitution or by the people of Bangladesh, but by the Caretaker government itself and there were no "legal" way to remove such a government.
29. Odhikar believes the Constitution has to be re-visited in order to eliminate these possibilities that have caused enormous damage to developing democratic institutions in the country.

CARETAKER GOVERNMENT AND POLITICS

30. The last Caretaker government, with no one to be accountable to, backed by the military, made number of pronouncements. It declared that it has been mandated by popular support it received from the people and used that as justification to reform institutions and practices that precipitated the situation to impose Emergency and the government's taking over of power.
31. It then set its own agenda that included holding parliamentary elections - but not within the 90 days dictated by the Constitution, but after completing a fresh voter list. The government announced the preparation of a new voter list to remove the controversy around whether elections would be rigged. In addition, the regime announced that free and fair elections would not be possible until rampant corruption in Bangladesh was tackled. The principal targets in the new drive against corruption were politicians, party activists suspected of illegal activities and their businessmen cohorts.
32. The government, along with the military, then targeted rescuing democracy from a viciously confrontational two-party politics; a drive against corruption and punishing those guilty of corruption; effective role in counter terrorism; reform of the state institutions and reform of the political parties. However, since holding elections had to remain the primary purpose of a Caretaker Government, the regime had to argue this would not be possible until corruption and mismanagement in public life ceased.
33. However, it soon became transparent that what the government meant about addressing confrontational politics was what was commonly described as a "minus two formula" - eliminating from politics the countries' two leading civilian politicians, Khaleda Zia and Sheikh Hasina. It also appeared that the government was using the crackdown on those guilty of corruption as nothing more than a tool to reform the political parties to its liking. This is evident from the various pro-government and pro-party leader fractions that major political parties were breaking into and the reported incidents of infighting within them.
34. By individualizing otherwise complicated problems that Bangladesh faces, such as, solely blaming Hasina and Khaleda for the political, social and cultural failure of Bangladesh, the last Caretaker government failed to take into account a highly competitive and unequal world, the roles of so-called development partners, global lending agencies and other such factors. In the end, its activities turned into a suppression of political leaders and broadly, politics. Many believe, de-politicization

was the name of the game that unfortunately bounced back. The Caretaker government increasingly realized the impossibility of de-politicization of society and backtracked, and eventually, negotiated with the very same politicians that were targets for elimination.

IV. Institutional reforms and developments

1. As a part of the Caretaker government's mantra of reform, the state institutions targeted under Emergency that required reform were the Election Commission, the Anti-Corruption Commission, the Public Service Commission, the Judiciary, Bangladesh Telecommunication Regulatory Commission and other institutions. Interestingly the government also intervened to reform the political parties.
2. Such reforms are not only commendable since many of these institutions turned moribund, ineffective and inefficient. However, the approach of the military-backed government was problematic in that it viewed the military as the sole State institution that was free from the scourge of corruption. Therefore, in a practice so characteristic of a military dictatorship, serving and retired Army officers were appointed to high offices as Commissioners in the "reformed" institutions. Structural reforms of the institutions have rarely been undertaken except changes in personnel. As a result "reforms" have been nothing more than a face-changing exercise, raising fears of militarization of State Institutions.
3. The government has often approached institutional improvements by replacing the head of some organizations and branding that as 'reform'. At times, such as in the case of reforms in the Dhaka City Corporation, this has been imposed by sending in soldiers. Short of arresting local government Chairmen and Mayors suspected of corruption, the administration has not invested in improvements at the local democratic level. As changes have been enforced by the government without engaging people in debate, discussion or decision-making, it seemed likely that the reforms are fragile and perhaps not sustainable. The government also established other new institutions like the National Human Rights Commission and Truth and Accountability Commission.

THE ELECTION COMMISSION

4. The body that came under most attention was the Election Commission. The Election Commission is the constitutional body responsible for holding elections to the office of President, members of Parliament and other bodies. It has two other key roles, to delimit the constituencies and prepare electoral roles.⁶
5. After taking over power, the Caretaker government made public statements to hold free, fair and credible general elections. The existing Election Commissioners resigned one after another as by then they had become hugely controversial. The election scheduled on 22 January 2007 was suspended and a new batch of Commissioners was appointed to run the Election Commission. As referred earlier, as a part of Caretaker government's militarization process, one Commissioner, out of three, was appointed from pool of retired military officials.
6. The Commission started to prepare a new voter list since the old list was thoroughly discredited. This was indeed a massive task that was not achieved within the timeframe that the government had set for itself. The army was invited to run the voter registration which was digitalized with photos. It was generally accepted that without the new voter list, credible elections would be unlikely. At the end, it turned out to be a successful process that eliminated about 13 million ghost voters

⁶ See Article 118-126 of the Constitution of Bangladesh.

- from the former list. This was the first time that the list of over 80 million voters had photos as well as other personal details. This outcome was widely appreciated.
7. In addition to the preparation of a voter list, National Identity Cards were also prepared and given to each voter. Despite concerns of safety, data security and privacy, that Odhikar also shares, it too was a worthwhile endeavour. Now the challenge is protecting data from abusive use. The government has issued an Ordinance to establish the National Identity Registration Authority.
 8. In regard to voter rolls and national identity cards, Odhikar appreciates the inclusion of thitherto marginalized segments of the society, who had no stake and ownership, such as 'Hizras', and 'Biharis'. This process has acknowledged their human existence.
 9. As the clamour for early general election intensified, the Election Commission announced a roadmap to the election. It included, in addition to completing the voter list, registration of political parties and finalizing the electoral laws. Then the Commission decided to redraw constituencies, which was opposed by most political parties, but was finally given the go-ahead by the apex court.
 10. While the Commission was missing all sorts of self declared deadlines, it then announced the holding of polls to the local governments, including City Corporations and Upazila Parishads, before general elections. Such a position of the Commission created doubts about its credibility and neutrality as to how serious it was to go for general elections, which was its constitutionally mandated assignment. Finally good sense prevailed and eventually, the date of the 9th general election was announced on 29 December 2008. The local government election was moved to January 2009.
 11. The Representation of the People (Amendment) Ordinance, 2008 was issued, and detailed various provisions of laws relating to general elections and included many new and far reaching provisions. It required mandatory registration for political parties and guidelines for party registration, democratized nomination process of the political parties, severance of ties of political parties with student wings, requiring party constitutions to be consistent to the national Constitution, induction and nomination of women. It extended list of disqualifications for the parliamentary candidates including loan and bill defaulters. It also required revelations of personal information such as education, wealth, pending criminal accusations etc.
 12. These provisions had some impact as only those parties that got registration could participate in the election. Most parties had to amend their constitution to meet requirements of law. The Jamaat-e-Islam acknowledged supremacy of the Constitution, recognized the Liberation War of 1971, allowed non-Muslims membership and offered positions to women. However, in case of loan defaulters, non disclosure of personal information and in particular, those accused of serious crimes, the Commission compromised.
 13. Inclusion of the 'No-vote' was a quite significant aspect of the election law. This enabled voters to register their views when persons of their choice were not around and further enabled voters to exercise the political right to vote, which such voters could not do before, except by abstaining from the voting process.
 14. The Election Commission however still cannot be considered as an independent body as contemplated by the Constitution, as the Secretariat that manages the Commission is staffed by civil bureaucrats appointed by the government and as such, the government wields degrees of control over the Commission.

THE ANTI CORRUPTION COMMISSION

15. As a part of the Caretaker Government's reform agenda as well as its flagship project of combating corruption, the Government reconstituted the Anti Corruption Commission (ACC). Existing Commissioners resigned and the former Chief of Army was appointed as its Chairman. It brought other military officials too, to administer the organization. The Government also established an ad hoc entity titled "Committee to investigate serious crimes" run by the military. This Committee on its own decided which case to investigate and then sent it to the ACC to prosecute. The ACC is an investigation as well as a prosecuting authority.
16. The anti corruption campaign initially received substantial public support but it could not keep up as by then it had become apparent that investigation and prosecution decisions had other objectives, and that anti-corruption drives had political angles. Senior political leaders and others were picked up and imprisoned on not so serious accusations, where others with more notoriety remained untouched.
17. The government established special tribunals in the parliament complex and even established prisons that said volumes about those in power of their views on the Parliament and democracy. The ACC also failed to respect procedural aspects of anti corruption prosecutions and soon the High Court started to stay proceedings and even anti-corruption investigations. The special tribunals however gave long sentences to those who it found guilty.
18. As time progressed, the governments' zeal to prosecute alleged corrupt persons diminished and its selective approach to investigate and prosecute essentially failed. It also visibly backtracked from its anti-corruption campaign pledges as the election process gained steam. The government realized that any general election, to be credible, must be participated by the two major alliances led by BNP and Awami League and to allure them to participate, the government started to negotiate with the parties. The price was the reversal of anti corruption drives and a gradual release of those detained and even convicted.
19. However, it should be acknowledged that the anti corruption drive has exposed the nature, extent and depth of corruption in the country and the amount of money involved. Whether this has reduced corruption or not is debatable, but this certainly has sensitized the people about corruption. The government also reinforced the Commission through the Anti Corruption Commission (Amendment) Ordinance 2007.
20. Odhikar however has consistently demanded through its monthly reports that rule of law be respected in the campaign against corruption and that the drive must not be used for other purposes. It maintained that law should be applied equally, regardless to the position of the alleged offender.

PUBLIC SERVICE COMMISSION

21. The military-backed government reorganized the Public Service Commission after the resignation of the incumbent members. The Commission fell into disrepute because of politicization and inefficiency. Public service examination questions were repeatedly leaked. The new Commissioners introduced and strengthen procedures.
22. In a bold move, the government cancelled the last such examination results and ordered for re-selection. This has blocked the potential appointments of those who used dishonest means earlier to gain positions.

THE JUDICIARY

23. The separation of judiciary could be regarded as one of the major successes of the Caretaker government. Successive political governments dragged their feet to implement Supreme Court directions given in a case filed by Mr. Masdar Hossain, a lower court judge.⁷
24. The Caretaker government, immediately after assuming power, published a set of four Rules, prepared by the previous government and vetted by the Supreme Court that the previous government was reluctant to issue. These four rules were the Judicial Service Commission Rules 2002, Bangladesh Judicial Service Pay Commission Rules 2002, Bangladesh Judicial Service (Service Constitution, Composition, Recruitment Suspension, Dismissal and Removal) Rules 2002 and Bangladesh Judicial Service (Posting, Promotion, Leave, Control, Discipline and other Service Condition) Rules 2001. The Criminal Procedure Code was also amended to separate Judicial and Executive Magistrates. This separation caused some dissatisfaction within the Executive Magistracy.
25. However, just because there has been separation, one should not assume that the Judiciary has become independent. The government still exercises control over recruitment of judges, which is still done by the Public Service Commission through the Ministry of Law. Moreover, though the Supreme Court is supposed to manage the Judiciary, it has no independent Secretariat.
26. The question still remains open about how far the separation of judiciary would improve administration of the justice system. The way the justice system has been manipulated and politicized over the years and has largely failed to protect human rights, and because of remaining obstacles, it remains to be seen. Despite despondency, Odhikar hopes that Judges would use their new found freedom to enforce the rule of law and dispense justice.

THE SUPREME JUDICIAL COMMISSION

27. The government in March 2008 established the Supreme Judicial Commission through the Supreme Judicial Commission Ordinance 2008. The Commission was created to screen and recommend for appointments of Judges to the Supreme Court, both High Court and Appellate Division. The Commission is headed by the Chief Justice of Bangladesh, Minister of Law, three most senior Judges of the Appellate Division, two most senior Judges of the High Court Division, the Attorney General, President, Supreme Court Bar Association, while the Ministry of Law will provide all secretarial service of the Commission.
28. The Commission will screen suitable candidates for appointment by the President, as a Judge of the Supreme Court. They will consider educational qualification, competence, experience and other elements in drawing their recommendations. The Commission would submit two names against each vacant position for the President to appoint.
29. This is expected to minimize partisan appointment of Judges in the apex judiciary that not only became a huge political issue but in many ways tarnished the image of the judiciary. However, there are still concerns about the preponderance of executive members in the Commission and also about the lack of clarity of criteria for such screenings.

⁷ Secretary, Ministry of Finance vs. Md. Masdar Hossain. 20 (2002) BLD (AD). Bangladesh Law Digest. Vol. 20, 2002.

THE NATIONAL HUMAN RIGHTS COMMISSION

30. It is an irony that at the end, an unelected, extra-constitutional, military backed government promulgated the law establishing the National Human Rights Commission that human rights activists had long been demanding. It was established in September 2008 while it started its activities from 1 December 2008. The law was promulgated a year earlier in 2007, at a time when the State of Emergency denied people their fundamental rights. This dichotomy is perhaps only experienced in Bangladesh, where, on the one hand, the government, devoid of any democratic legitimacy, that ruthlessly imposes emergency and suppresses rights, promulgates and eventually establishes, a National Human Rights Commission.
31. The law provides for the establishment of an 'independent' body to safeguard the people's rights but leaves the power to select the Chairman and members of the Commission to a committee dominated by government officials. Apart from the Head of the Selection Committee, an Appellate Division judge, the five other members — the Attorney General, Comptroller and Auditor-General and the Chairman of the Public Service Commission's — are political appointees of the government, and the remaining two, viz. the Cabinet Secretary and Law Secretary, are bureaucrats.
32. Thus the Committee that ultimately selected the members and the Chairman of the Commission were mostly government officials, and not independent experts or even activists. Also the process of selection was not transparent.
33. The Commission is composed of a Chairman and two Commissioners. The Chairman is a retired Judge of the Supreme Court, while one Commissioner is a university teacher and a third one, the former head of an NGO that monitors election.
34. There are a number of key concerns about the efficacy of the Human Rights Commission. The Commission can, after investigation of incidents of violations of human rights, recommend to the government to file cases, if other efforts of mediation or arbitration fail.⁸ The Commission, under Section 14 can recruit a mediator to solve the problems between victims and perpetrators. It can also investigate allegations of human rights abuses, under Section 15, through issuing summons to the respondents. The law however is silent regarding what happens if such summons are ignored.
35. The Commission can make its recommendations to the appropriate authority, meaning the government, under Section 16 but such recommendations are not binding and government is not obliged to follow through. It can also approach the High Court Division to enforce rights under the Constitution's enforcement mechanism under Article 102. Section 16(4) permits the government to differ from or not implement the Commission's recommendation. In such case, the government has only to write back with reasons to the Commission of its inability to accept such recommendations. This provision has made the Commission a very weak institution indeed.
36. The Commission has no "right" to be consulted by the government while enacting legislations affecting human rights. Major concerns here are independence of the Commission and its effectiveness.
37. Odhikar has always advocated for the establishment of a Human Rights Commission, which is independent, both financially and functionally, from the control of the government. Most importantly, Odhikar believes, recommendations of the Commission should be binding upon the government or else, the government would disregard the Commission with ease.

⁸ Section 13. National Human Rights Commission Ordinance, 2007

TRUTH AND ACCOUNTABILITY COMMISSION

38. On 8 June 2008, the government promulgated the Voluntary Disclosure Ordinance 2008 that established a Truth and Accountability Commission. The government established this Commission because of uncontrolled and large-scale corruption that affected economic development as well as the business that retarded democracy and rule of law, which had to be eliminated to maintain economic and industrial development. It wanted to "remove corruption" by means other than a criminal trial and reduce the burden of trials upon the state. It was conceived as an alternative to regular legal process.
39. The government thus formed the Truth and Accountability Commission to let people voluntarily admit to their corruption, deposit ill-gotten wealth to the state exchequer, and get mercy. The idea of establishing such a Commission was first touted by this regime in response to the decrease in business following the declaration of Emergency in January 2007. Investments, both local and foreign, dwindled, partly due to Emergency that signalled to foreign investors that the country was going through an unstable political period. It intended to restore business confidence.
40. Although in some parts of the world, variations of a 'Truth Commission' have been set up, primarily to "reveal the truth", after massive crimes spanning for decades, where victims had no way of knowing about missing persons, how their relatives had disappeared or were killed; who gave the orders; how it was carried out, etc. In other words, the idea behind a 'Truth Commission' was to bring out untold facts hidden from victims and societies so that there could be some form of "closure". At the same time, perpetrators had the opportunity to show their remorse and repentance, and in most cases, victims were compensated.
41. The Truth Commission, however, is a very different creature. It protects perpetrators of economic crimes by undertaking this 'truth telling' process *in camera*, only before the 3 member Commission. The Commission would keep their identities guarded. In effect, victims of corruption and economic crimes would not know how a person used or abused his office or authorities, his means of accumulating money or even, who were accomplice in this crime. So the truth will be buried in the Truth Commission.
42. Moreover, there are serious questions about equal treatment under law, a constitutional right. It also violates rights under law to be tried by an independent and competent tribunal for crimes committed. A person before this Commission and a person before the ACC would be treated differently for the same crime of corruption. Also, by protecting the identity of the person before the Commission, it could not ensure accountability and justice. Since the process is not public, not transparent, it failed to meet the minimum standard of administration of justice.
43. It was not only equal rights, but also a principle of fair trial that was at stake here since there was no other place, other than a duly constituted court that could hold trial for a crime. It appears that the Commission is neither a court nor tribunal. The Commission has been kept beyond the supervisory jurisdiction of the Supreme Court. The Commission's political objective became clear as after confiscating money, the petitioner before the Commission would be barred from contesting in an election to a public office or companies.
44. Because of these and other reasons, a petition was filed before the High Court on August 26, 2008 to declare the Voluntary Disclosure Ordinance 2008, under which the Truth Commission was formed on July 30, illegal and void. The High Court agreed on 13 November, 2008 and declared the Truth and Accountability Ordinance 2008 and the functioning of the Truth and Accountability Commission unconstitutional and

illegal. However, on appeal by the government, the Appellate Division stayed the operation of High Court Order.

45. As the year ended, the Commission wrapped up its operations.

NATIONAL IDENTITY REGISTRATION AUTHORITY

46. As referred to above, the government decided to register and issue identity cards to all citizens and undertake voter registration to create a voter list to get all voters registered. It was all done at the same time using the same data. On 15 May 2008 the Government promulgated the National Identity Registration Authority, 2008.
47. The authority was established to register and issue identity cards, to replace a lost or damaged card, record birth and deaths and preserve all data. In this regard, it has been authorized to issue a National Identification Number (NID). It could record biometrics features of the person, including finger prints, hand geometry, palm prints, iris and facial recognition and DNA signature and voice.
48. Odhikar is very concerned that the Ordinance provides precious little detail about how these personal data would be protected and preserved, and who would have access to these data. There are serious concerns of privacy rights if DNA and other samples are preserved. Odhikar insists that there should be more awareness about the true purport of this Ordinance and demands that the next parliament re-examines this Ordinance and amends it appropriately to guarantee right to privacy.

REFORMING OF POLITICAL PARTIES

49. The other major institution that the Caretaker government intended to reform was political parties. The idea was that political parties collectively let down the people and caused problems and therefore should be reformed.
50. In the name of reform, the government primarily tried to remove the heads of two political parties, BNP and Awami League, by forcibly sending them out of the country or isolating and marginalizing them by imprisonment following the filing of cases for alleged corruption. Indeed, the two leaders were thrown in prison for a very long period and produced before specially set up tribunals.
51. The government, to engineer changes in leaderships in two main political parties, also provoked and created differences within various tiers of leadership and suddenly, in both parties, a group of leaders emerged demanding changes in how parties are run etc. Such outside intervention generated suspicion and even dashed hopes of reforms undertaken spontaneously in these parties.
52. It also goaded some to set up new political parties and indeed a number of such parties were set up. These new parties received special treatment.
53. The government also allowed so called 'religious' parties virtual freedom to carry out political activities, organize public meetings and rallies. They launched a major drive against the National Women's Development Policy of 2008⁹. These political activities received no or little obstruction, whereas the mainstream political parties were barred from any political activity.
54. The Government's attempt to reform political parties ended up dividing parties, and many feared, that the government intended to use these divisions to manipulate and control parties for its own purposes. However, in the end, this policy backfired and the government had to reverse its course by forceful public opinion.

⁹ The National Women's Policy of 2008 was drafted by the Government in March 2008, but received stiff resistance from so-called 'Islamic' hardliners, at it suggested equal rights in property and inheritance, and other 'sensitive' issues. The Government has since been silent on the issue.

55. Odhikar believes that political parties not only need to have legal status, they have to operate within the law. Funding of political parties should be transparent so that parties cannot be controlled by those with money only, and above all, parties not only must have internal democracy but must also develop a culture of democracy so that democratic minded activists and leaders are produced by them.

V. Legislative Developments

During the year under review and indeed over the period of Caretaker government, as noted earlier, some 114 Ordinances were promulgated; some new and others amendments to existing legislations. Few of these had close implications for the enjoyment of human rights that Odhikar monitored closely. Obviously, the Emergency Ordinance and Rules of 2007 were of particular interest, as discussed above. Here, some such legislation will be analyzed.

ANTI-TERRORISM ORDINANCE, 2008

1. The government proclaimed one law with far reaching and serious consequences without any discussion or consultation whatsoever. The Anti Terrorism Ordinance 2008 issued on 11 June 2008 contained not only a new definition but gave list of terrorist acts. According to Section 6, acts or omissions constituting threats to unity, integrity, security or sovereignty of Bangladesh, creating panic among the people, or obstructing official activities would be regarded as 'terrorism'.
2. This definition is quite broad and vague, opening up possibilities of abuse. Odhikar immediately deplored its promulgation on such an important area by an unelected and unconstitutional government without even soliciting the views of the public. This unilateral decision shows dangers of having an unelected government in office. It was even difficult to obtain the text of the law for sometime.
3. The law provides a minimum sentence, three years rigorous imprisonment to life term as well as death sentence. Under Section 7, persons can be charged for extending financial or other support to terrorist activities, even on the basis of reasonable suspicion. Crimes under this Ordinance are non bailable. It authorizes police to detain a person on remand for ten days, which can be extended to five more days by the court. Section 28 authorizes the government to set up special Anti Terrorism Tribunals to try cases under this Ordinance. The Tribunal has to follow special procedures.
4. According to Section 41, the government may transfer, on "reasonable grounds," any case relating to crimes under this Ordinance, from any Sessions Court or tribunal to any Special Tribunal, or from any Special Tribunal to any Sessions Court, at any stage prior to the completion of depositions.
5. The Ordinance gives extensive powers to law enforcement agencies, over and above the wide power given by existing legislations to arrest without warrant, on mere suspicion, and powers of preventive detention. There is no authority in Bangladesh to scrutiny the powers of such agencies.
6. Odhikar believes that terrorism should not be addressed from law and order perspectives alone; it has to take into account the economic, social, political, cultural context. An anti-terrorist law that extricates citizens from their constitutional and human rights can not be acceptable. Moreover, criminal activities mentioned in the Ordinance could be addressed under the existing penal laws.
7. Odhikar apprehends that the Ordinance would be used to persecute political opposition, human rights defenders, trade unions and other activists in the name of ensuring security of the State. As the definition is so vague and broad, it can catch

- all, even legitimate protests exercising constitutional rights, could be perceived by the government as threats against State and as such terrorism.
8. The law provides the authority to ban any organization purportedly engaged in terrorism and prohibits and criminalizes statements in support of a banned organization without needing to show that the speech directly incited a criminal or terrorist act. This is a tool that government would use against its adversaries.
 9. Considering the grave consequences for human rights and that it was promulgated without any public consultation or participation whatsoever, Odhikar demands that the next Parliament should not only debate or discuss, in the house and in the committee, but must solicit public opinion, through public hearings and other means. Without broader public consultation, this law should not be approved, since there are strong opposing views, that laws already in place adequately address issues covered by the Anti Terrorism Ordinance 2008. All aspects must be duly considered before the adoption of this law. It has to provide adequate safeguards against its abuse.
 10. In addition, the government also introduced the Money Laundering Ordinance, 2008 in April.

THE RIGHT TO INFORMATION ORDINANCE

11. The Right to Information Ordinance 2008 was promulgated on 20 October 2008. It established an Information Commission with a Chief Information Commissioner at its helm. A Right to information legislation has long been demanded by many for transparent administration and good governance. It is also a right of the people who are sovereign. However, it was promulgated by such a regime that took away fundamental rights of the people, imposed Emergency and installed an unelected government.
12. Still, there were some degrees of public consultation before its promulgation and most thought was in favour of such a law. However, it was found that the mechanism put in place would not help in getting information. Some stakeholders described it as a black law. Journalist associations and others submitted their comments which were largely ignored.
13. Section 4 of the Ordinance recognizes right to information subject to this law and that it obliges to provide information sought. Section 8 deals with procedures to obtain information. The person seeking information has to provide his personal details, description of information sought and other information to clarify what is being sought. A pre-fixed amount has to be paid to get information. This provision has generated widespread discontent. Odhikar feels, by using this option, getting information would be costly and constitute a major obstacle to receive information. For journalists and others, who would need lots of information it would effectively be a prohibition from obtaining information because of costs.
14. The Ordinance provides that information would be denied on number of grounds. Under Section 7, information that could threaten security, integrity and sovereignty of Bangladesh it could be denied. Also if it affects relations with foreign countries or organizations it could be refused. It provides hosts of other circumstances when information can be denied. Some of these restrictions are logical but the way the Ordinance has been framed, broad remit of issues on the denial list including an imprecise definition of national security; Odhikar feels that these pretexts would be used to deny information. It is possible that much less information would be made available following the Ordinance.
15. The other concern is independence and autonomy of the Information Commission. Section 24 provides rights to appeal in information are not provided within stipulated time.

16. The important concern Odhikar has about this Ordinance is total exclusion of eight named security and intelligence agencies from purview of this law. A schedule lists these organizations, which are: 1) National Security Intelligence Agency (NSI), 2) Directorate of Forces Intelligence (DGFI), 3) Defence Intelligence Units, 4) Criminal Investigation Department of Bangladesh Police (CID), 5) Special Security Forces (SSF), 6) National Revenue Board's Intelligence Cell, 7) Special Branch of Bangladesh Police, 8) Rapid Action Battalion's (RAB) Intelligence Cells.
17. Most of these agencies are accused of involvement in violations of human rights and they often exceed their jurisdictions. Also there are questions about disciplines, financial propriety and their alleged involvements in political affairs, also evidenced during the Caretaker government, would certainly negate any benefit for having a law on right to information.

VI. Major Human Rights Concerns

1. There are a number of human rights violations for which that Odhikar expressed its concerns. Wherever thought appropriate, Odhikar conducted its own investigation, and in other cases, observed monitored and recorded violations. Reports on some such areas with deep concerns are mentioned below. As it would illustrate, violations were widespread, covering almost all internationally recognized human rights.

EXTRAJUDICIAL KILLINGS

2. Bangladesh has earned notoriety in carrying out extrajudicial killings. All human rights reports on Bangladesh, whether published by international organizations like Human Rights Watch, International Federation for Human Rights (FIDH) or government reports like the US State Department Annual Human Rights Report, or the European Parliament's resolution, all referred to and expressed concern regarding extrajudicial killings carried by different security agencies in Bangladesh.
3. Different terminologies have been used by the press and the law enforcement agencies to distract extrajudicial killings, such as, deaths during cross-fire, encounter etc. However, cross-fire is widely used when members of law enforcement agencies typically pick up a victim and then while recovering weapons with the arrestee, his hidden accomplices emerge open fire and in the process, the arrestee becomes the sole casualty.
4. Not surprisingly, the number of extrajudicial killings was fairly high during 2008. It should be pointed out here that extrajudicial killings were taking place even during political governments and it continued during Emergency too.
5. Extrajudicial killings are the worst examples of violations of right to life. Article 32 purportedly guarantees right to life that *"No person shall be deprived of life or personal liberty save in accordance with law."* The pervasive culture of crossfire has eroded efficacy of this provision. This guarantee sounds hollow to those innumerable victims and their families and mocks the Constitution.
6. It became more complicated when, during the emergency, all law enforcement agencies banded together to form what has been known as "Joint Forces". They were deployed all across the country, ostensibly, "in aid to civil administration", a loosely defined concept. However, in area of extrajudicial killings, the Rapid Action Battalion (RAB) took most life followed quickly by Police. What, however, worries Odhikar and others is the absolute impunity enjoined with extrajudicial killings. None of the killings are investigated or perpetrators made to account.
7. Since 1 January to 31 December 2008, a reported number of 149 people have allegedly been extra-judicially killed by law enforcement agencies.

BREAKDOWN OF EXTRAJUDICIAL KILLINGS BY AGENCY

8. Of the 149 people killed by law enforcement personnel, Rapid Action Battalion (RAB) killed 68 people, police killed 59 people, RAB and police acting together killed 15, the "Joint Forces" killed 1, Coast Guards killed 4 person and Bangladesh Rifles (BDR) killed 2 persons.

CIRCUMSTANCES OF THE DEATHS

9. Of the 149 people extra-judicially killed, it was reported that 136 people were killed in so-called "crossfire"/encounter/gunfight/shootout¹⁰, 12 people were tortured to death and 1 was shot dead in circumstances other than "crossfire"/encounter/gunfight /shootout.
10. It was reported that RAB killed 65 people in "crossfire"/encounter/gunfight/shootout while 3 persons were tortured to death.
11. 50 people were killed by police in "crossfire"/encounter/gunfights/shootout. They tortured 8 people to death. The police also shot dead 1 people in circumstances, other than "crossfire"/ encounter/ gunfights/ shootout.
12. RAB and the police acting together killed 15 people in "crossfire" /encounter /gunfight/shootout.
13. The Coast Guard killed 4 people in "crossfire" /encounter/gunfight/shootout.
14. Bangladesh Rifles (BDR) killed 1 people in "crossfire" /encounter/gunfight/shootout and 1 people was tortured to death.
15. The "Joint Forces" allegedly killed 1 person in "crossfire" "/encounter/ gunfight/shootout.

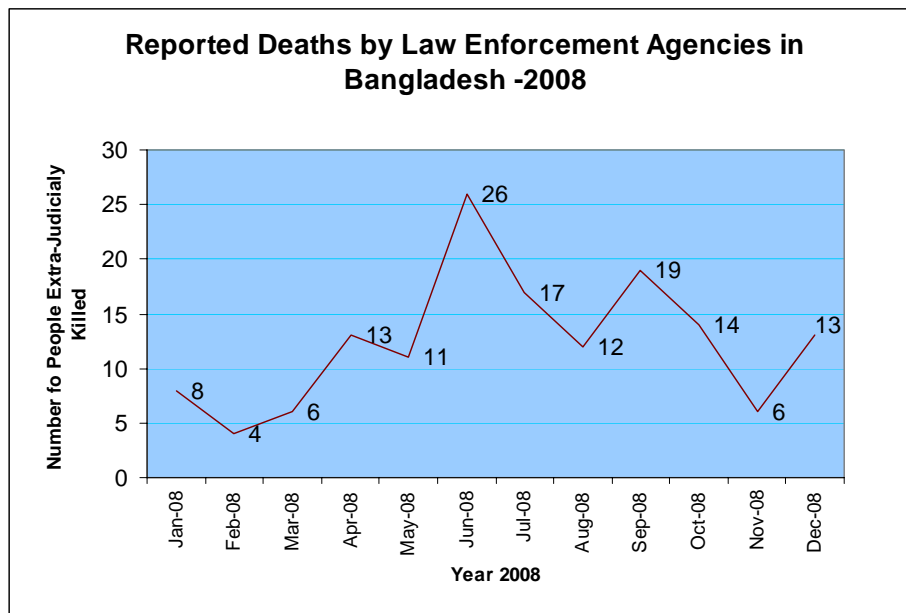
TABLE 1: EXTRAJUDICIAL KILLINGS BY LAW ENFORCING AGENCIES IN 2008

Month (s)	RAB	Police	Joint Force	RAB Police jointly	BDR	Coast Guard	Grand Total
January	3	1	0	1	1	2	8
February	0	4	0	0	0	0	4
March	4	2	0	0	0	0	6
April	8	5	0	0	0	0	13
May	6	4	0	0	1	0	11
June	13	6	0	7	0	0	26
July	8	9	0	0	0	0	17
August	3	6	0	1	0	2	12
September	6	12	1	0	0	0	19
October	6	6	0	2	0	0	14
November	4	2	0	0	0	0	6
December	7	2	0	4	0	0	13
Total	68	59	1	15	2	4	149

Source: Odhikar statistics

GRAPH 1: EXTRAJUDICIAL KILLINGS 2008

¹⁰Recently, reports in the press have increasingly used more than one of the terms "crossfire", "encounter", "gunfight" and "shootout" in one article to describe the same incident. It is, therefore, no longer possible for Odhikar to determine which of these descriptions best describes an incident of extra-judicial killing. Odhikar has, therefore, grouped these incidents together.



POLITICAL ALLEGIANCE OF THE VICTIMS

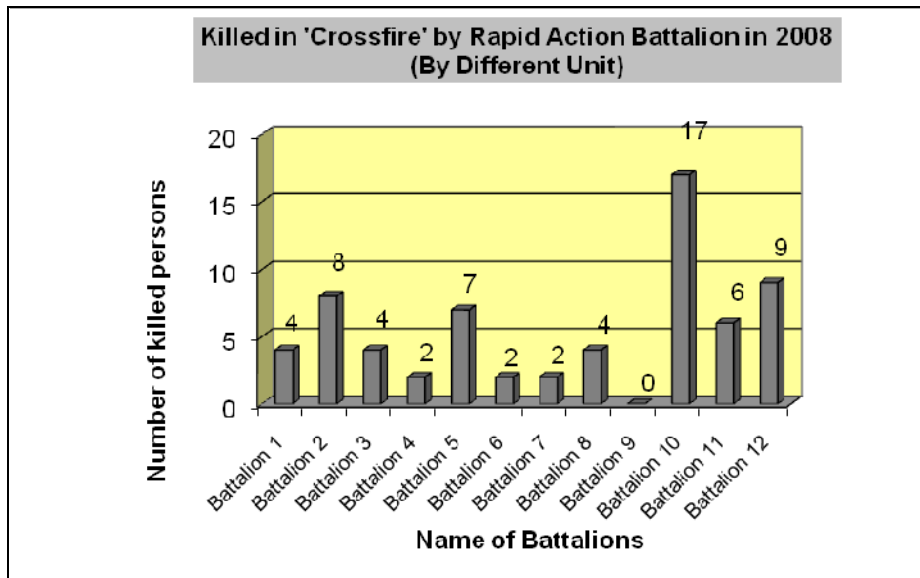
16. Those people extra-judicially killed, 1 person was reportedly a member of the Bangladesh Nationalist Party (BNP), one was a member of the Awami League, 21 were members of the Purbo Banglar Communist Party (Red Flag); 10 were members of the Purbo Banglar Communist Party (Jonojuddho); 7 were members of the Purbo Banglar Communist Party; 2 were from Biplobi Communist Party, 1 was from New Biplobi Communist Party; 3 were members of Gono Mukti Fouz; 1 member of Sromojibi Mukti Andolon; 3 were of the Shorbohara Party, 4 were members of Gonobahini; 1 was from Communist Juddho; 1 was from Maobadi Sangstha¹¹.

OTHER CHARACTERISTICS OF THE VICTIMS

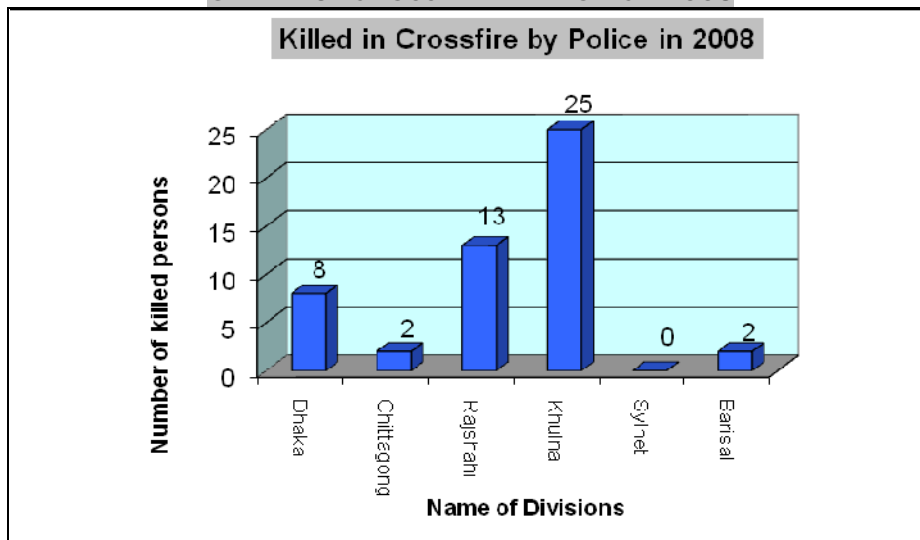
17. 1 person extra-judicially killed was farmer, 3 were businessmen, 1 was a worker of an automobile service center, 1 was a woman 4 were young men whose professional identities were unknown.
18. Of those 149 who were extra judicially killed, some were affiliated with alleged gangster/dacoit groups: Among them 3 people were from Gangchil Bahini, 1 from Taslim Bahini, 2 from Rozen Bahini, 1 from Amal Bahini another person was from the Emon group.
19. It was alleged that 3 people were smugglers, 3 were drug dealers, 1 was a mugger, 17 were robbers, 3 were pirates, 1 thief, 1 was an alleged extortionist and 46 people were alleged to be criminals but there was no information available to Odhikar about the nature of their alleged crimes.

GRAPH 2: CROSSFIRE BY RAB (BY UNIT) 2008

¹¹ Apart from the BNP and the Awami League, the other parties mentioned are radical left 'underground' organizations.



GRAPH 3: CROSSFIRE BY POLICE 2008



IMPUNITY

20. In Bangladesh, successive government has consistently failed to meet its obligations to investigate violations; to take appropriate measures in respect of perpetrators, particularly in the area of justice, by ensuring that those suspected of criminal responsibility are prosecuted, tried and duly punished; to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations. This has enabled the culture of impunity to take deep root.
21. Impunity entails the denial of rights to victims, justice and redress. It goes against the principles of rule of law by not bringing perpetrators of human rights violations to justice. Bangladesh provides both *de facto* and *de jure* immunity, by not bringing perpetrators to account, whether in criminal, civil, administrative or disciplinary proceedings.

22. Impunity is seen every where, but no where more publicly than in the extrajudicial killings carried out by the law enforcement agencies. Not a single individual has ever been made to account.
23. The extent to which impunity has been engrained is even more evident when, on January 29 this year, the Home Advisor, M A Matin, reportedly flagged the issue of extrajudicial deaths in a meeting he chaired, instructing the highest officials within the police and the Rapid Action Battalion to ensure that 'such incidents do not take place further'. Those instructions seem to have fallen on deaf ears. In 2008, there have reportedly been 149 extrajudicial killings, defying an order by the highest executive authority in the Home Ministry.
24. Odhikar has investigated a number of incidents of so-called 'crossfire' and revealed that the victims were not killed in encounters, but that the killings were pre-planned and politically motivated.
25. It is true that extrajudicial killings have existed for years, but such summary executions must stop. Extrajudicial killings and custodial deaths are a national shame that should no longer be tolerated.

PRISON AND PRISONERS RIGHTS

26. Another form of violation of right to life is deaths in custody. This trend has continued regardless of types of government in power. In 2008 it was reported that a total of 66 people died in jail custody.

TABLE 2: DEATH IN JAIL 2008

Month (s)	Jail Custody
January	6
February	13
March	8
April	6
May	6
June	2
July	7
August	1
September	6
October	2
November	2
December	7
Total	66

Source: Odhikar statistics

27. Among those who died in custody, one was detained Ward Commissioner and BNP leader Abdul Quayyum Khan. His family members claimed that he died due to lack of treatment. Quayyum fainted in a toilet at the Dhaka Central Jail on the morning of February 8, 2008 and was taken to the Dhaka Medical College Hospital where he was declared dead soon after his admission. According to eyewitness accounts, he was taken to the hospital handcuffed. Family members as well as senior members of the BNP have reportedly claimed that Quayyum had been suffering from a heart disease and that his death resulted from a lack of treatment in jail.
28. Prison has been a perpetually neglected area that never received the attention it deserves. There are too many prisoners and very little space to accommodate them. Courts routinely send people to jail without taking into account whether the prisoner's rights would be respected or not. Under the Jail Code, a prisoner has the

- right to get a defined space in prison, while in reality; they do not even have standing space. Overcrowding of the prison population results in many violations. While the official holding capacity of prisons in Bangladesh is about 27,368 prisoners, the current figure stands at 75,480¹².
29. Overcrowding has impacts on sleeping space, bath and toilet facilities, health care and treatment. There are also concerns about management of prisons and the inside regime. Privileges are often abused where money and political influence play important roles. There are consistent reports on the use of jail hospitals to house healthy prisoners for a 'fee', where conditions are relatively better.
 30. During Emergency, when a number of VIPs were taken into custody, prisons witnessed discriminatory treatment. Such prisoners received exceptionally favourable treatment, particularly receiving outside medical attention. They were frequently brought to government and even private clinics.
 31. However, in the case of other prisoners, such facilities are not often extended, and certainly not with the ease VIP prisoners have availed.
 32. Advocate Sigma Huda, a lawyer and a human rights activist who was appointed as the UN Special Rapporteur for Trafficking in Persons, especially Women and Children, in 2004, was accused by the Anti Corruption Commission with abetting her husband in five extortion cases as well as a sixth case where the couple was accused of illegally acquiring wealth disproportionate to their income. Subsequent to the conviction, Sigma Huda's lawyers filed an Appeal to the High Court, whereby they also submitted a bail petition for her. Finally on 13th December 2007, after postponing the bail hearing many times, a High Court division bench granted Ms. Huda bail. Subsequently, the Supreme Court under the then Chief Justice, stayed the bail order by the High Court even though the offence she was convicted of was a bail able offence, and on 7th March 2008, rejected Sigma Huda's bail in a landmark judgment, stating that appellants convicted in graft cases under the Emergency Power Rules would not be granted bail pending appeal with the High Court unless the appellant is above 60 years of age, critically ill as certified by a duly constituted medical board, and is a woman, thereby leaving provision for Ms. Huda's lawyers to seek review. It may be noted here that Ms. Huda met all three criteria. On 3rd June 2008, Sigma Huda was finally granted three months' bail by the High Court Division of the Supreme Court but the Government subsequently appealed to the Supreme Court for cancellation of her bail.
 33. Finally, Sigma Huda received bail and a Stay Order from the High Court Division of the Supreme Court and left prison to be admitted into a private hospital.

TORTURE AND ILL TREATMENT

34. Torture has become so endemic that once a person is arrested the assumption is that he will be tortured. Its so because of the impunity accompanying torture. It is used as a tool by the agency members to extract a 'confession' etc and considered as routine work.
35. There are no accurate estimates how many persons fall victim to torture or the extent of this practice. It is also difficult to guess as torture is used for different purposes, as a part of questioning a suspect, getting confessions, extracting money, making false statements, oppressing the poor and often to repress opposition against the Government party.
36. It is also inflicted to humiliate the person and as an exercise to show power and authority. It is often used at the time of arrest. Torture is also applied as an efficient and less costly alternative to elaborate investigation. The premise is, once tortured;

¹² <http://www.prison.gov.bd/index5.php?category=15> (as of 31 December 2008)

- the person will open up and tell the truth. Law enforcement agencies believe, security, law and order cannot be maintained without torture.
37. Thus torture is carried out when suspects are picked up by law enforcement agencies, and taken to their custody. When the suspects are taken into remand for further questioning, torture is routine.
 38. Despite its widespread prevalence, curiously, torture is not a crime in Bangladesh, as it has not yet been criminalized. Bangladesh is a party to the Convention Against Torture (CAT) but has yet legislated its obligations and put in place laws and procedures to address torture. However, since torture has been prohibited by international instruments and is regarded as an international crime, it should be considered a crime in Bangladesh. Odhikar demands that torture is made a specific crime, perpetrators punished and victims given reparations.
 39. Culture of impunity protects the perpetrators and since most of the investigations are carried out by the same agencies, it is almost impossible to get redress for torture victims. There is no independent authority to complain against the law enforcement authorities. Odhikar as such demands the formation of an Independent Investigation Department to take complaints against the members of law enforcement agencies, including the security agencies, equipped with their own investigators. Torture has to be rejected and disowned by the authorities, who have to make it clear that acts of torture would not be tolerated and the perpetrator would also not be protected in any way.
 40. The Judiciary's attempt to reign in torture has failed as the government has not yet amended Section 167 of the Code of Criminal Procedure following the High Court's Order. The High Court Division of the Supreme Court of Bangladesh, on April 17, 2003 ordered the government to amend the law relating to interrogation of people remanded in custody. The Court also directed the authorities to make glass-partitioned rooms in jails for interrogation of the arrestees. Until such rooms are made, the arrestees will be interrogated at the jail gate, in the presence of their relatives and lawyers. No such glass-room has yet been constructed and no relatives or lawyers of any arrestee are allowed to be present during interrogation. There are only a few recent incidents of interrogating detainees at jail gates- when the Court ordered the investigation officers of those cases to do so.
 41. As such, torture remains and continue to be a source of major concern and a glaring example of human rights violation in Bangladesh. The government has many promises, including those pledges made during election to the UN Human Rights Council in 2006 but, has not followed through these promises.
 42. Torture took a more menacing turn during the State of Emergency and the following are some of the case studies of torture from Odhikar's records. In 2008, Odhikar's record reveals that 44 persons have been tortured. However, Odhikar contemplates that the total number of torture victims are more higher than this figure as in most of the cases the victims remain silent due to fear of further torture.

TABLE 3: TORTURE BY LAW ENFORCING AGENCIES IN 2008

Month (s)	RAB	Army	Police	Jail Police	Total
January	0	0	2	0	2
February	1	0	1	0	2
March	0	0	0	0	0
April	1	0	3	12	16
May	0	0	3	0	3
June	1	0	3	0	4
July	0	0	2	0	2
August	0	0	8	0	8
September	0	0	2	0	2
October	0	0	3	0	3
November	1	0	0	1	2
December	0	0	0	0	0
Total	4	0	27	13	44

Source: Odhikar statistics

ARBITRARY ARRESTS & DETENTIONS

43. Arbitrary arrests and detentions took a new turn during the period of Emergency and in the year under review in the form of “mass-arrests”, when hundreds of people were arrested within a short span of time. In 2008, at midnight of 28 May to 30 June, mass arrests were conducted by the Joint Forces. During this one month of arrests the total number of arrests was 50,215. Many of the arrested people were affiliated with political parties.
44. Almost always, such arrests are made without meeting the basic requirements. The arrestee is not told about the reasons of his arrest, not produced on time before the Magistrate (within twenty-four hours), a constitutional requirement, and has no immediate access to a lawyer.
45. Moreover, the Emergency Powers Rules 2007, Section 16 (2) gives the law and order forces unfettered authority to arrest without warrant. Before Emergency, arrests could still be made without warrant, often under Section 54 of the Cr.P.C. but the Emergency provision was more vicious as it denied the court’s authority to grant bails. During Emergency, lots of arrests were made using Section 16 (2) of Emergency Power Rules 2007.
46. The Government explained mass arrests on law and order grounds, as drives against miscreants, criminals, fugitives and those otherwise wanted by the law but most such arrestees were found to be principally grassroots level political activists. Joint Forces also conducted numerous drives thus swelling the prison population. There were days, when over 2000 persons were arrested, most innocent and un-involved. The police then had a field day, according to various reports, by simply releasing these arrestees after striking deals with them.

Large numbers of arbitrary arrests or mass arrests also clog the judicial and prison systems. There are also reports of illegal and prolong detentions in military camp.

INTIMIDATION ON HUMAN RIGHTS DEFENDERS

47. A women human rights defender of Odhikar, was interrogated by plain clothes officers while she went to the Dhaka District Court in order to monitor a case. There she was held for a while, verbally abused and intimidated. The incident left her so traumatized that she resigned from Odhikar soon after, which is why her name has not been mentioned here.

48. Odhikar receives intimidating phone calls by various intelligence agencies. In most cases they asked about Odhikar's work and inquired about its officials.

BORDER VIOLENCE

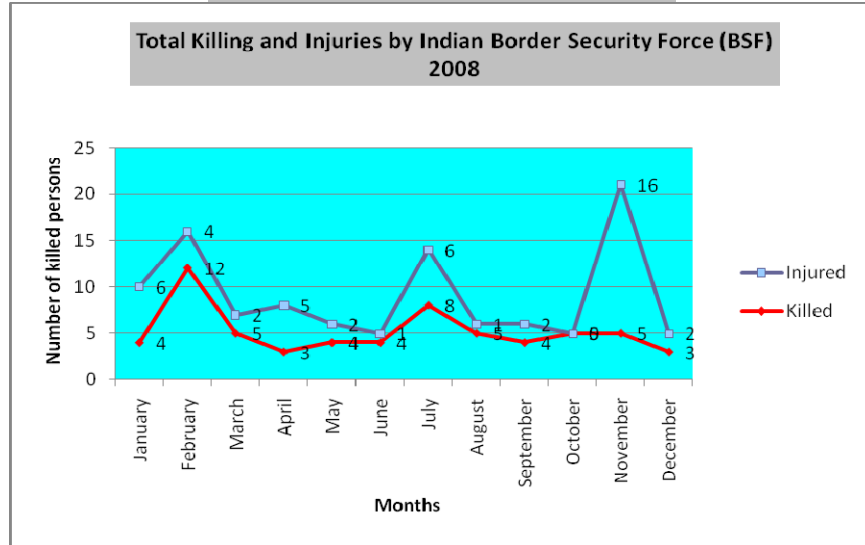
49. 62 Bangladeshi nationals were reportedly killed by the Indian Border Security Force (BSF) from 1 January to 31 December 2008. During this time, 47 Bangladeshis were reported injured, 81 were abducted by BSF and 3 incidents of looting by BSF allegedly took place. It is also reported that a total of 20 Bangla speaking people were pushed into Bangladesh territory.
50. India has persistently violated border practices and international norms and follows a shoot-to-kill policy.
51. In this regard, Odhikar recalls a statement made by the Indian High Commissioner Pinak R Chakravarty on May 16, 2008 justifying such extrajudicial killings. The High Commissioner reportedly said that people who die in border shootings are mostly "smugglers". He referred to those killed by the Indian Boarder Security Forces (BSF) in the border areas. Odhikar condemned his statement and demanded its retraction. Odhikar believes that extra-judicial killings can never be justified and the High Commissioner's attempts to do so are a slap on the face of the fundamentals of rule of law.
52. Odhikar had also expressed its grave concern that three Indian ships reportedly intruded seven miles into the Bangladesh sea boundary on 25 December 2008 and despite protests by the Bangladesh authority, remained there. It is reported that among those three ships, two were Indian Navy vessels while one was a survey ship. According to reports, Indian ships were positioned on or near block 14, well within the Bangladesh maritime zone. This intrusion constituted a breach of the Bangladesh maritime boundary and an unfriendly act, contrary to the international obligations of India.
53. Odhikar urges the Government of Bangladesh to seriously and effectively engage with the Government of India, to clearly demarcate sea borders, based on principles of the UN Charter, international law, bilateral agreements.

TABLE 4: BORDER KILLINGS 2008

Name of the month	Killed	Injured	Abducted	Looting/snatching	Push in	Total
January	4	6	2	0	0	12
February	12	4	3	0	0	19
March	5	2	3	0	0	10
April	3	5	0	0	0	8
May	4	2	4	0	0	10
June	4	1	8	0	0	13
July	8	6	27	3	1	45
August	5	1	4	0	0	10
September	4	2	2	0	5	13
October	5	0	11	0	0	16
November	5	16	10	0	0	31
December	3	2	7	0	14	26
Total	62	47	81	3	20	213

Source: Odhikar statistics

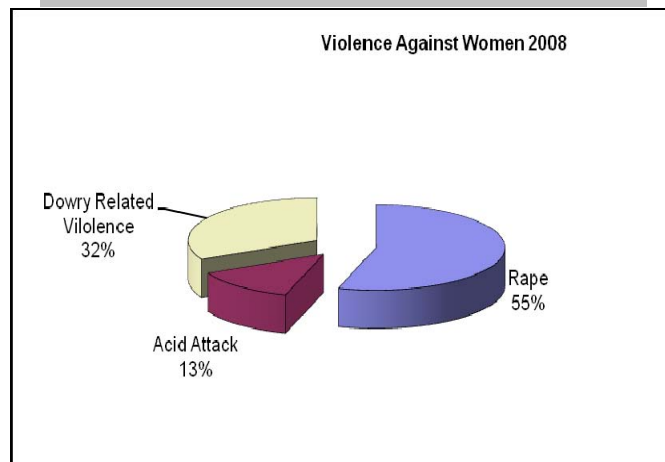
GRAPH 4: BORDER KILLINGS 2008



VIOLENCE AGAINST WOMEN

54. Violence against women is widespread in Bangladesh and in most of the cases the victims are underprivileged, poor women. Despite specialized criminal laws for protecting women - the Suppression of Violence against Women and Children Act, the Dowry Prohibition Act, the Child Marriage Restraint Act, the Acid Crime Control Act, to name a few - instances of violence against women- especially dowry, domestic violence and rape - have not decreased in any significant manner. The major reasons why women do not get justice are: barriers to accessing the justice system, police corruption, mismanagement of vital evidence, and ignorance of the law and a lack of proper medical reports. However, due to social 'values' and stigma many women do not disclose the violence. The number of women who experience violence - including rape, dowry related violence, beatings, torture and murder - is high in impoverished sections of society and particularly among women who live in rural areas of Bangladesh, both in domestic situations and outside the home.

GRAPH 5: VIOLENCE AGAINST WOMEN 2008



RAPE

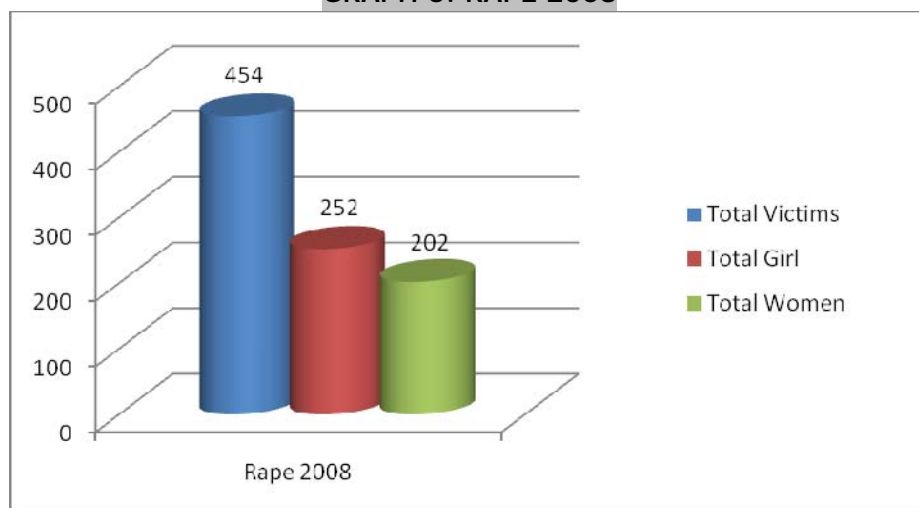
55. Between 01 January and 31 December 2008 a total of 454 women and girls were reported as victims of rape. Among them 202 were women and 252 girls¹³. Of them, 68 women and 30 girls were killed after being raped and one woman committed suicide. Among those raped 110 women and 70 girls were the victims of gang rape.

TABLE 5: RAPE 2008

Month (s)	Total number of victims	Total number of women	Total number of children	Gang Rape		Killed after being raped		Committed suicide after being raped	
				Wome n	Childre n	Wom en	Childre n	Wome n	Children
January	22	10	12	7	1	4	1	0	1
February	29	13	16	7	4	6	2	1	0
March	56	25	31	14	10	6	6	0	1
April	60	30	30	20	10	10	4	1	0
May	57	22	35	9	9	3	3	1	0
June	59	19	40	8	13	8	5	0	0
July	33	16	17	8	4	6	3	0	0
August	44	16	28	9	9	4	2	1	2
September	29	14	15	7	3	5	0	0	0
October	32	15	17	8	4	6	3	0	0
November	15	9	6	6	1	5	0	0	0
December	18	13	5	7	2	5	1	1	0
Total	454	202	252	110	70	68	30	5	4

Source : Odhikar- Rape

GRAPH 6: RAPE 2008



¹³ The term 'girls' means females up to the age of 16 years in accordance with the Children Act 1974.

RAPE BY LAW ENFORCEMENT AGENCIES

In 2008, 5 women/ girls were raped by law enforcement agencies. Among them 4 were raped by police and 1 by RAB.

In July, a girl (14) was raped by a RAB-11 member Abdul Gafur at Sonargaon of Narayanganj. She was raped near a bus stand by him. Later local people and police captured him.

In July, another girl (16) was raped by a Sub-Inspector Rezaul Karim, GRP Police Station at Kamalapur of Dhaka. The girl was collecting waste papers in the Railway station area. When she went to the GRP toilet to relieve her, Rezaul raped her.

In August, a woman came to the Savar police station for General diary. Then SI Abu Bakar Siddiqui took her with microbus to arrest the criminal. On the way she was raped inside the microbus.

In September, a girl (6) was raped by Jail Police Samsul Haq Hawlader at Sariatpur. She was raped when she was working in the kitchen of Jail Police.

In October, a woman was raped by Sub Inspector (SI) Abdul Hamid at Rajshahi. She was raped at her home.

ACID VIOLENCE

56. Acid violence is the term used for the violence perpetrated when a person throws acid to another person's body. A total of 133 people; 73 women, 34 men and 26 children, were reported as victims of acid attacks in 2008.

57. Acid is frequently sold ignoring the law (the Acid Control Act 2002) as the monitoring is poor. According to the Acid Control Act, 2002, whoever produces, imports, transports, stores, sells and uses acid without licence could be sentenced to three to 10 years' rigorous imprisonment with fine. People who possess equipment used for producing acid without having the licence to do so could be sentenced to three to 15 years' rigorous imprisonment with fine.

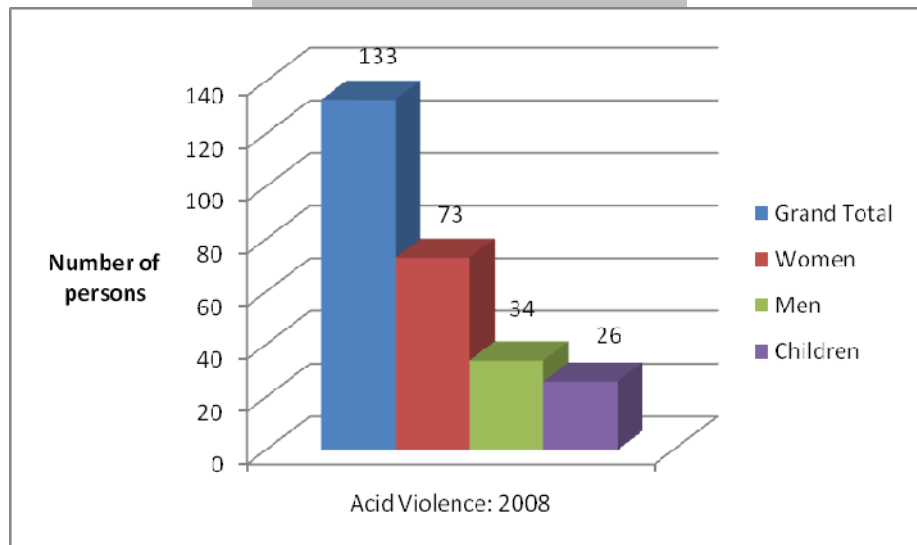
58. Acid is sold freely at the city's Tantibazar, only a quarter of a kilometre away from the Deputy Commissioner's (DC) office which is responsible for controlling production, transport, storage, usage and sale of acid. Taking advantage of the authorities' inactivity, the acid market is running rampant increasing incidents of acid crimes in the country.

TABLE 6: ACID VIOLENCE 2008

Month (s)	Women	Men	Children		Grand Total
			Girl	Boy	
January	6	1	1	2	10
February	5	2	2	1	10
March	9	1	1	0	11
April	3	1	0	0	4
May	9	6	1	1	17
June	5	6	1	1	13
July	7	4	1	2	14
August	9	6	4	1	20
September	9	3	1	3	16
October	3	2	1	0	6
November	7	0	0	0	7
December	1	2	2	0	5
Total	73	34	15	11	133

Source: Odhikar -Acid violence: 1 January-31 December 2008

GRAPH 7: ACID VIOLENCE 2008



DOWRY RELATED VIOLENCE

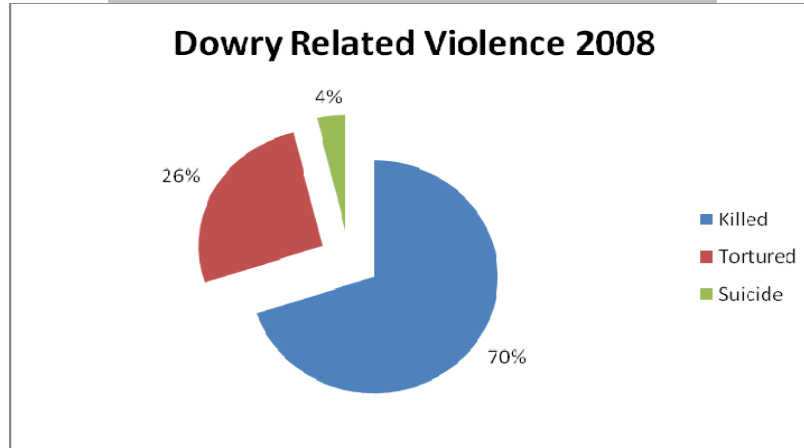
59. In 2008 a total of 269 women were victims of dowry¹⁴ violence. However Odhikar believes that the actual figure is higher than this. Many women in Bangladesh depends upon the earning of the husband and due to social pressure and having no where else to go, many women have to live with dowry related violence.

TABLE 7: DOWRY RELATED VIOLENCE 2008

Months	Killed	Tortured	Suicide	Total Incident
January	17	0	1	18
February	10	10	0	20
March	21	8	1	30
April	12	7	2	21
May	17	7	2	26
June	19	7	0	26
July	16	10	0	26
August	15	6	0	21
September	28	2	2	32
October	16	8	1	25
November	12	3	1	16
December	5	3	0	8
Total	188	71	10	269

Source: Odhikar- Dowry related violence: 01 January - 31 December, 2008

¹⁴ Giving and taking dowry are both prohibited under the Dowry Prohibition Act.

GRAPH 8: DOWRY RELATED VIOLENCE 2008**FREEDOM OF EXPRESSION/ SPEECH/PRESS AND ELECTRONIC MEDIA**

60. It is reported that in 2008 overt and covert restrictions continued on the press and electronic media. Therefore, the number of actual incidences could not be ascertained.
61. On March 21, 2008, a report was published in a national daily newspaper titled 'A youth committed suicide of starvation'. In the report, it was mentioned that the price hike during the State of Emergency was responsible for the death of the youth. The price hike was a grave problem at that time in the country and the inflation made the price of the necessary food so high that the general people were facing hardship to buy their food. After Publishing this report the reporter was called by a major of DGFI and was intimidated for publishing that particular report and he was cautioned by that major of DGFI that if he publishes this kind of report in future he would face dire consequences. After this incident the reporter has stopped writing reports which may go against the Government.

TABLE 8: FREEDOM OF EXPRESSION 2008

Month (s)	killed	Injured	Assaulted	Attacked	Arrested	Abducted	Threatened	Sued	Others	Total
January	0	4	0	0	1	0	0	0	1	6
February	0	1	0	0	0	0	2	0	0	3
March	0	0	0	0	2	0	6	0	0	8
April	0	13	2	0	0	0	1	0	2	18
May	0	5	7	0	0	0	3	0	0	15
June	0	0	4	0	0	0	4	0	1	9
July	0	3	2	0	0	0	4	0	2	11
August	0	3	0	0	0	0	0	2	0	5
September	0	6	0	0	0	0	8	0	1	15
October	0	1	1	2	1	0	0	0	0	5
November	0	0	6	6	0	0	0	0	0	12
December	0	2	3	1	0	0	2	0	0	8
Total	0	38	25	9	4	0	30	2	7	115

Source: Odhikar- Freedom of Expression: 01 January - 31 December, 2008

Note: In January Government asked TV channels to avoid all talk shows.
In April two journalists were barred to do their professional duty.
In June the journalists were barred to do their professional duty.
In July one charge frame was done against journalist Jahangir alam Akash.
In July one charge sheet was done against journalist Abdul Mannan Vuiya.
In September the election commission did not allow journalists to cover dialogue political parties on their registration. Political parties said that EC told them that it wanted to discuss some issues frankly and this is why it decided not to allow newsmen to be presented there.

FREEDOM OF ASSEMBLY AND ASSOCIATION

62. Odhikar is seriously concerned over the infringement of right to freedom of association by the Government in at least two recent incidents, by compelling professional bodies to postpone the elections. Odhikar maintains that the Government exceeded its authority and interfered in the running of these professional bodies.
63. The Government forcibly postponed the elections to the Executive Committee of the Dhaka University Teachers Association (DUTA) scheduled for March 27, 2008 and the Supreme Court Bar Association (SCBA) polls scheduled for March 24-25, 2008. According to reports, the SCBA had to defer its polls to April 28-29, 2008 as a result of high drama featured in two rounds of behind the scene negotiations between the Law Advisor and the Bar leaders at an intelligence agency office in Gulshan in presence of the Chief of the intelligence agency. The DUTA said that four members of the joint forces went to the residence of the Election Commissioner of the Teachers' Association in the early hours of March 26 and asked him to postpone the polls or step down from his position.
64. The Special Powers Act 1974 gave the law enforcement agencies the power to disperse or arrest four or more people gathered in one place. This power has been used in a wide variety of occasions since, throughout the State of Emergency. In particular, it has been used to stop protests; some of which have been directed at the military-backed government itself, but others have been directed towards more specific demands.
65. It is reported that on 18 September 2008, 10 Hizbut Tahrir activists including three university teachers were arrested in Rajshahi as 'suspected militants' on the eve of their press conference at the local press club. Arresting them without any specific grounds violates freedom of assembly as in Article 37 of the Constitution of the Peoples Republic of Bangladesh, which states, 'Every citizen shall have the right to assemble and to participate in public meetings and processions peacefully and without arms, subject to any reasonable restrictions imposed by law in the interests of public order or public health'.

MINORITY GROUPS

66. Religious minority groups on some occasions, like celebrating Puja etc, receive police protection though there were some targeted attacks. In 2008, campaigns against Ahmedia community to declare them non-Muslims by obscurantist continued.

TABLE 9: VIOLENCE AGAINST RELIGIOUS MINORITY 2008

Month	Killed	Injured	Assaulted	Grabbing		Attack		Looted	Total
				L	H	Property	Religious Property		
January	0	6	0	0	0	0	4	0	10
February	0	45	0	0	0	1	1	2	49
March	0	0	0	3	0	0	0	0	3
April	1	0	0	0	0	0	3	0	4
May	0	6	0	1	0	1	1	0	9
June	0	0	1	1	0	0	1	2	5
July	0	0	0	0	0	0	0	0	0
August	0	1	0	0	0	0	1	0	2
September	0	2	0	1	0	0	6	1	10
October	0	30	0	0	0	0	5	1	36
November	0	0	0	0	0	0	0	0	0
December	0	0	0	1	0	0	2	0	3
TOTAL	1	90	1	7	0	2	24	6	131

Source : Odhikar

67. In a single incident of arson on 20 April 2008, 132 houses in the Rangamati Hill District were set ablaze. The homes belonged to both members of Hill people and Bangali settlers in Bagaichari Upazila. Among those houses burnt down, 53 belonged to Hill people while 79 houses were Bangali homesteads. Such incidents are outcomes of continued militarization of the region disregarding internationally recognized rights of ethnic minority people.

TABLE 10: VIOLENCE AGAINST ETHNIC MINORITY 2008

Month	Killed	Injured	Assaulted	Property Damage	Abducted	Land Grabbing	Looted	Miscellaneous	Total
January	0	0	0	0	0	0	0	0	0
February	0	1	0	0	0	0	0	0	1
March	0	0	1	0	0	0	1	0	2
April	0	20	0	0	0	2	0	0	22
May	0	1	0	0	0	0	0	0	1
June	3	0	0	0	0	0	0	0	3
July	0	0	0	0	0	0	0	1	1
August	1	5	0	0	0	0	1	0	7
September	0	20	0	0	0	0	0	0	20
October	1	0	0	1	0	1	0	0	3
November	3	0	0	0	0	0	0	0	3
December	0	10	0	0	2	0	0	0	12
Total	8	57	1	1	2	3	2	1	75

Source : Odhikar

WORKERS RIGHTS

68. During the State of Emergency, freedom of association, in particular, rights of the workers in jute mills and garments factories were ignored and often received brutal response from the government. Non payment of workers was widespread and when they publicly demanded payment of wages and rights under labour laws, many of these workers were arrested for violating the State of Emergency. A number of cases

- were filed against jute mill and garments factory workers for violating the State of Emergency.
69. Although in most cases garments workers' unrest was because of the violation of their rightful demands, to which factory managements remain apathetic, there have been a few cases when unrest among the workers flared based on apparent rumors. However, in almost every case, the police had to be called in to reach a settlement and calm down the situation. The trend quite plainly points out that there is no effective means of negotiation between the workers and the management.
 70. There are ample evidence that an elected group of workers' representatives at garment factories could provide the management with an effective means to negotiate and settle disputes, since generally, workers are equally committed to keep the factory running and more or less aware of the uncertainties of the international market. Labour unions, as has been proven in the industrialised countries, contribute towards healthy industrial relations necessary for sustainable growth in this age of hard competition.
 71. Rights of association and electing workers' representatives for collective bargaining are not only a question of human rights but an essential component of production floor management.
 72. According to newspaper reports published on July 7, 2008, the government decided to lift the ban on trade union activities, albeit partially. The key to sustainable growth and a wholesome evolution of industries lies in good industrial relations whereby labourers and factory management are able to maintain a mutually beneficial relationship through constant dialogue and interaction. With Bangladesh apparently poised to leap into the next level of transition through further industrialisation, good industrial relations must remain among the top concerns of industrialists as well as the government.
 73. In sharp contrast, similar associations, including those of teachers, industrialists, businessmen or lawyers, were allowed to conduct their regular activities besides holding elections. These associations hold public discussions, lobby with the government, put forward their demands and carry on with the activities necessary for the welfare of their members. Unfortunately the workers have not been effectively able to press for their demands of higher wages because trade union activities remain suspended. In limiting the scope of trade union activities, the incumbents are, in effect, prohibiting activities that strive to ensure the welfare of certain groups of professionals, most of whom happen to be labourers and workers. Moreover, the clear indication that full-fledged trade unionism would not be allowed may also be construed as the present government's double standards and bias in favour of the upper-class citizens.
 74. In this day and age of global competition, local industries cannot afford to do away with a proven and potent tool to increase their efficiency and at the same time abide by core labour standards, since collective bargaining is among the core requirements of international buyers and has become a requirement. Instead of keeping trade unionism at bay, the incumbents should shed their perceived bias against the working classes and encourage responsible trade unionism across all the sectors to ensure a sustainable and healthy growth of the economy in general and industries in particular.
 75. Workers rights have routinely been ignored by their employers as well by the Government. At least 20 people, including five lawmen, were injured and scores of vehicles damaged as workers of a garment manufacturing factory, who were yet to get their salaries and festival allowances, clashed with the law enforcers blocking the Dhaka-Sylhet highway at Kanchpur point in Narayanganj on September 28. A number of similar incidents were observed throughout September, 2008.
 76. A leading English daily, the New Age, reported on September 30, 2008 that at least a half of the country's garment workers had to spend Eid-ul-Fitr without a festival

allowance while some of their fellows were lucky enough to get meagre amounts. However, a 14-hour workday, abysmal working conditions, non payment of workers made their condition miserable. The minimum wage of Tk 1,662.50 (24 USD)¹⁵ per month is proving to be extremely inadequate – inadequate for a reasonably acceptable standard of living that is – for an individual, let alone a family. In this regard, the continual demand of the garment workers to increase their wages is not only justified but necessary just as it is necessary for the entire industry to thrive. Without restoring rule of law and respecting workers rights, the existing conditions look set to cause more divisions and mistrust in the industry, jeopardising its future in the long term.

77. On October 22, 2008 garment workers' demonstrated and clashed with the police at Fatullah .It has become increasingly evident both from the garment workers' demands and the factory owners' declaration of ration distribution, that the minimum wage decided upon in 2006 was not sufficient to meet the skyrocketing costs of living as inflation continued to remain high on the back of high prices of essential food items.
78. However, the current minimum wage, though apparently decided upon after a rigorous exercise, is not based on any benchmark as such. The figure was arrived at by way of a compromise between what the factory owners claimed they could afford to pay and what their employees demanded. That is hardly how a minimum wage, which in this context is far below a living wage, should be determined. Consequently then, the primary responsibility of the Wage Commission should be to ascertain a benchmark or yardstick in terms of food, shelter, clothing, medical expenses, children's education and other necessities as the Commission deems fit. When translated into monetary terms, the minimum wage must be equivalent, at least, to a minimum living wage.
79. As part of the government's measures to ensure that garment workers receive living wages, the price tag of the bundle of necessities that constitute the minimum wage benchmark should be reviewed periodically, every six months or so, in order to avoid periodic outbursts of the garment workers demanding pay hikes. The entire process will undoubtedly require serious discussions between the members of the Wage Commission and the garment workers' representatives. On the Commission should be those who are credible and genuine representatives of the workers. Towards that end, Odhikar asks that the relevant quarters – workers, owners as well as the government – should actively work towards instituting a meaningful collective bargaining mechanism, pending full-fledged trade unions, in the interest of the industry in particular and the economy in general.

FARMERS' SITUATION

80. Farmer's rights were violated in 2008 as they were losing their rights of seeds and not getting fertilizer properly. The food distribution network and the introducing of genetically modified hybrid seeds already started to show a negative impact on agricultural outputs.

FOOD CRISIS

81. In 2008, the price of rice, milk and other essentials skyrocketed and this made the life of lower income groups miserable. Such staple foods are important to ensure meeting the minimum nutritional needs to survive. On 10 May a child fainted and an adult died of heatstroke standing in queue for open market sales. on April 4 Police

¹⁵ 1 USD= 68.40 Taka (24 December 2008)

baton - charged on hungry people who gathered at the Kalkond Union Parishad complex in Gangachara upazila in Rangpur to collect rice, under the Vulnerable Group Feeding Scheme. The action left at least 13 persons injured. The police picked five people up from the scene. On April 7 Anser¹⁶ personnel used truncheons on people desperately trying to buy rice in Chittagong, when the stock ran out. On April 9 in Dhaka and Lalmonirhat, Bangladesh Rifles (BDR) members were seen grappling with people, people in line at the BDR and Open Market Sale (OMS) shop were also seen manhandling each other and there were more incidents of people fainting in the queue.

HOUSING RIGHTS/ EVICTION OF SLUMS

82. The Government demolished a number of slums and evicted the slum dwellers in many areas and many locations in Bangladesh. The Road and Highways Department demolished more than 400 homes of slum dwellers in February, 2008. The eviction of poor people caused serious human rights violations as the actions directly affected their rights to livelihood and shelter.
83. The administration once again on June 1, 2008 demolished hundreds of shanties and a number of shops at the Hatirjheel-Begunbari area. Scores of people were rendered homeless; a large number lost their source of income as their outlets, most of which are small engineering workshops, were pulled to the ground. Though what Rajuk- (a city development authority) did was very much within the purview of law, as these establishments were built illegally, one giant structure named the BGMEA Bhaban, built equally without authorization, was spared, at least for the time being.
84. While the Rajuk personnel went on with their demolition drive on the rest of the not so privileged and posh structures, reportedly, they did not bother issuing an eviction notice to the inhabitants nor did the authorities offer a rehabilitation scheme to the uprooted. Such apathy is, though shocking, hardly surprising, as the government did not bother complying with the High Court directive that no slum dwellers would be evicted without taking steps for rehabilitation. This drive symbolises the mentality and standing of the policymakers and reflects the very attitude of the administration towards the disempowered. For democracy to be established, respect towards the lives and livelihood of the mass population is a prerequisite which those in power tend to overlook. In the meantime, disparity widens and discontent increases.

VII. 9th Parliamentary Election

1. The general election for the 9th Parliament was held on 29 December 2008. Odhikar observers monitored the election and noticed irregularities and violations of Election Codes. Those irregularities did not significantly influenced election results. However, Odhikar is concerned mainly about post-election violence.

POST-ELECTION VIOLENCE

2. According to Odhikar's documentation, six persons were reported killed and 206 people were injured in post-election violence in different places across the country. Supporters of AL and its grand alliance, and the BNP led Four-Party alliances were found to be involved in such clashes. In many districts AL activists attacked the houses and shops of the Four-Party alliance supporters and vandalised their property. On the other hand it is also reported that BNP led Four- Party alliance attacked around 20

¹⁶ Auxiliary force of law enforcement agencies

people as they did not vote for them. This section of the report reflects the incidents of post-election violence that took place between 29-31 December 2008.

3. In Pabna, a BNP activist was killed and his associate injured when Awami League supporters attacked them at village Dighi-Goalmari under Sadar Upazila on 30 December 2008. The deceased was identified as Shahabuddin Pramanik alias Saheb Ali (35). AL supporters attacked his house at about 7:00am and severely beat him and his associate Alauddin. Shahabuddin died on the spot. They also set the house on fire. Later that day, Alauddin died in hospital.
4. In Chittagong, a Juba League activist, Rahim Badsha (25) was stabbed to death at Bhatiary under Sitakunda upazila at about 11:30pm on 29 December following an altercation over the polls. He was called on by Shibir activists from Moulabipara, who cut the tendon of his foot. BNP activists allegedly beat up four AL men Abul Hashem, Abul Kalam, Abdus Salam and Anik and also vandalised a house at Dakkhin Rajanagar in Rangunia Upazila.
5. In Mymensingh, AL activist Jamaluddin was physically assaulted and killed by Sharful of Jamaat-e-Islam.
6. In Savar, an AL activist was allegedly beaten to death by BNP activists on 31 December, 2008. The deceased was identified as Habibur Rahman Hobi, a residence of Yarpur Union.
7. In Pabna, a BNP activist Tokai Mia and Kamal Azad were allegedly attacked by AL activists. Tokai Mia was killed and Azad was severely injured.
8. Six AL supporters were injured as local BNP activists allegedly attacked them at Sheikhpura village under Terokhada upazila in Khulna. AL supporters also occupied a local BNP office.
9. In another incident, unidentified persons severely beat BNP leader Abdul Hye, also Manikhat Union Parishad Chairman in Sujanagar, leaving him critically injured. He was admitted to a clinic.
10. In Bagerhat, AL men allegedly attacked the houses of BNP leader, Abul Kalam, and his relatives at Panchakaran of Morolganj upazila and looted valuables. Seven persons, including two women, were reportedly injured in the attack.
11. At least 25 leaders and activists of BNP and its front organisations were injured in attacks allegedly led by AL activists at Sharsha, Jhikargachha and Monirampur upazilas, in Jessore.
12. In Moulvibazar, at least 20 workers of Rajghat Tea Garden were injured in an attack allegedly by the activists of the BNP-led Four Party Alliance following the announcement of the election results on the night of 29 December.

VIII. Conclusion

1. While the year ended through a positive development as the people of Bangladesh exercised their right to vote and thus brought an end to an undemocratic military backed government, Odhikar remained concerned about the human rights situation.
2. Human rights are not merely a judicial issue or a matter of violation of international covenants and human rights principles; human rights cannot be adequately addressed by human rights and legal activism only. There is a serious lack of awareness in the human rights situations those are related to the overall social, economic, political and cultural conditions of the country. Given the present character of the State of Bangladesh and lack of awareness, we can hardly expect any prospect of improvement in the immediate future. We urge policy makers and development partners of Bangladesh to address the human rights impact of macroeconomic policies, environment, ecology, agricultural and industrial policies. Without further democratisation of the constitution and the polity, any anticipation to see improvement in the human rights situation in the future is a far cry away.

3. As an immediate step, the government must end impunity by instituting independent investigations and the prosecution of those involved in extrajudicial killings. Members of law enforcement agencies should no longer enjoy impunity and get away with serious violations of rights. Members of law enforcing agencies must be educated and trained in human rights issues so that they can comprehend that killing without any judicial process is a serious violation and punishable by law.
4. The Government of Bangladesh must be convinced to dismantle those paramilitary forces with executive power to engage in extra-judicial killing. The presence of such institutions, by now identified with extra-judicial killing, are causing fear and increasing discontent among the people. Such a situation may fast erode the space within which people and the regular law enforcing agencies could function to address criminal acts and violence not only as 'crime', but as symptoms of social and economic, political and cultural malaise as well.
5. The system of 'Caretaker Government' has proved to be a serious flaw in the machinery of the State, and a loophole for the ascendancy of unconstitutional and undemocratic powers. Odhikar believes that the Caretaker System brought into the Constitution as an amendment has to be re-examined and the constitutional role of the Election Commission should be reviewed and reinstated in order to strengthen the processes of democratic transition of power so that in the future, people do not live under an unelected oppressive regime.
6. It is also necessary to look at the constitutional provision of Emergency, a provision that was not in the original Constitution of Bangladesh but introduced later. The Emergency and the Caretaker Government, when combined, develop situations where violations to basic rights are abused with no recourse.
7. Odhikar demands that the next Parliament should not grant blanket impunity and ratify the Ordinances of the Caretaker Government. There are a number of Ordinances such as the Anti Terrorism Ordinance, Right to Information Ordinance and others that should not be approved without major reviews and changes. In Odhikar's opinion, if Parliament prefers to retain the positive elements of any Ordinance, it should be moved as a new law, rather than a reform of an Ordinance enacted by an unconstitutional and unelected regime.
8. The next Parliament must carefully review the constitutional legitimacy of the past regime in order to permanently deter any attempt in the future to grab power and establish illegitimate rule by anyone through an unconstitutional act or by extra constitutional means.
9. The Parliament should discard immediately those Ordinances promulgated during the State of Emergency that are not consistent to international human rights norms and standards and contradicts the constitutional rights of the citizens of Bangladesh. The Parliament must make sure that the Emergency provisions, after withdrawal, do not continue to violate human rights and the states obligations to her citizens. Cases filed under the Emergency provisions should no longer run under these laws, but under the usual criminal laws of Bangladesh.
10. Arbitrary arrests and detentions should stop and government must legislate criminalizing torture without further delay, in line with its obligations as a party to the Convention Against Torture. The newly elected political government should guarantee that they will not use torture and that if anyone was found employing torture he would be brought to account. Victims of torture should be compensated.
11. The Judiciary has to be made truly separate by removing all obstacles in its way and by removing the controls of the Executive or Legislature and providing it with a separate Secretariat; and by strengthening the Judicial Service Commission. All financing for the judicial system must come from the State budget. The process of selection of judicial officers and judges has to be made transparent. The prosecution department has to be insulated from extra-judicial manipulation and intervention either from the Executive or the Legislative organ of the state.

12. While success in installing an elected government is a positive achievement of the people of Bangladesh, the result is a dictatorial rule of an elected Prime Minister, in accordance with the power that is directly vested upon the PM and also what can be derived by her from the existing Constitution, e.g., Article 70. Odhikar demands this Article be deleted or effectively amended for elected Members of Parliament in order to effectively represent their constituents and not only to kow-tow the Prime Minister's wishes.
13. Despite certain irregularities, violence and in some cases post-election incidents of deaths, it is difficult to raise any major allegations against the conduct of the December 28, 2008 elections. Despite facing humiliating defeat, the decision of the Bangladesh Nationalist Party to accept the result of the election is very positive and constructive. However, post-election violence has remained a concern, since it may disrupt the political environment very fast.
14. To strengthen this constructive gesture it is important to address the complaints raised by the Bangladesh Nationalist Party and others. They have expressed their concern about the overwhelming number of votes cast in certain constituencies, alleging that in certain cases the time of vote casting was 1 minute per vote.
15. Odhikar urges all parties to respect democratic and human rights norms and reminds the newly elected government of its obligations to create an environment for the Opposition to play a due role and make positive and constructive contributions towards the creation of a successful and democratic government.

List of Ordinances Proclaimed by 'Caretaker' Government:

1. বর্তমান গণপ্রজাতন্ত্রী বাংলাদেশ সরকার, 2006
2. বিচারিক গণপ্রজাতন্ত্রী বাংলাদেশ সরকার, 2006
3. বিচারিক তত্ত্বাবধানে রাষ্ট্রপতির কার্যালয় বিচারিক মন্ত্রণালয়, 2006
4. বিচারিক তত্ত্বাবধানে সরকার, 2007
5. Code of Criminal Procedure (Amendment) Ordinance, 2007
6. Special Powers (Amendment) Ordinance, 2007
7. Code of Criminal Procedure (Second Amendment) Ordinance, 2007
8. অর্থ-কাজের নিয়ন্ত্রণ আইন (সংশোধন) (মন্ত্রণালয়) সরকার, 2007
9. বিচারিক তত্ত্বাবধানে সরকার, 2007
10. পানি ও বিদ্যুৎ (মন্ত্রণালয়) সরকার, 2007
11. Criminal Law Amendment (Amendment) Ordinance, 2007
12. Members of Parliament (Remuneration and Allowances) (Amendment) Ordinance, 2007
13. অর্থ-কাজের নিয়ন্ত্রণ আইন, 2007
14. মন্ত্রণালয় (মন্ত্রণালয়) আইন (সংশোধন) (মন্ত্রণালয়) সরকার, 2007
15. মন্ত্রণালয় (মন্ত্রণালয়) আইন (সংশোধন) (মন্ত্রণালয়) সরকার, 2007
16. Bangladesh Biman Corporation (Amendment) Ordinance, 2007
17. চট্টগ্রাম বন্দর কর্তৃক (মন্ত্রণালয়) সরকার, 2007
18. বিচারিক তত্ত্বাবধানে সরকার, 2007
19. বিচারিক তত্ত্বাবধানে সরকার, 2007
20. গণপ্রজাতন্ত্রী বাংলাদেশ সরকার (মন্ত্রণালয়) সরকার, 2007
21. বিচারিক তত্ত্বাবধানে সরকার, 2007

22. Bangladesh Flag Vessels (Protection) (Amendment) Ordinance, 2007
23. President's (Remuneration and Privileges) (Amendment) Ordinance, 2007
24. Paurashava (Amendment) Ordinance, 2007
25. e'vsK-tKv'úvbx (mst'kvab) Aa'v'` k, 2007
26. Chittagong City Corporation (Amendment) Ordinance, 2007
27. Dhaka City Corporation (Amendment) Ordinance, 2007
28. Khulna City Corporation (Amendment) Ordinance, 2007
29. i vRkvnx v'v'U K'tc'í kb (mst'kvab) Aa'v'` k, 2007
30. v'v'tj U v'v'U K'tc'í kb (mst'kvab) Aa'v'` k, 2007
31. vi kvj v'v'U K'tc'í kb (mst'kvab) Aa'v'` k, 2007
32. Av` vj Z ms`vi ev`evqb (mrvqK weavb) (mst'kvab) Aa'v'` k, 2007
33. Pesticides (Amendment) Ordinance, 2007
34. tgvevBj tKvU'Aa'v'` k, 2007
35. Income Tax (Amendment) Ordinance, 2007
36. B'ic'tRW k'igK msN I v'k'í m'úK'(mst'kvab) Aa'v'` k, 2007
37. `p'Z `gb K'igkb (v'Ziq mst'kvab) Aa'v'` k, 2007
38. Islamic University (Amendment) Ordinance, 2007
39. Islamic University (Amendment) (Amendment) Ordinance, 2007
40. Bmj vgx wek'pe`vj q (mst'kvab) Aa'v'` k, 2007
41. Jamuna Multipurpose Bridge Authority (Amendment) Ordinance, 2007
42. A_`FY Av` vj Z (mst'kvab) Aa'v'` k, 2007
43. RvZiq gvbevaKvi K'igkb Aa'v'` k, 2007
44. G'v'v' v'v'q's'Y (mst'kvab) Aa'v'` k, 2007
45. Income Tax (Second Amendment) Ordinance, 2007
46. Income Tax (Amendment) Ordinance, 2008
47. tU'WgvK'Aa'v'` k, 2008
48. Muslim Marriages and Divorces (Registration) (Amendment) Ordinance, 2008
49. Grameen Bank (Amendment) Ordinance, 2008
50. v'be'Pb K'igkb m'v'Pe'j q Aa'v'` k, 2008
51. m'c'ig R'v'v'v'q'j K'igkb Aa'v'` k, 2008
52. mvi (e'e`vc'v) (mst'kvab) Aa'v'` k, 2008
53. Members of the Bangladesh Public Service Commission (Terms and Conditions of Service (Amendment) Ordinance, 2008
54. AvBb-k;Lj v weN'k'v'x Ac'iva (`Z we'v'ri) (mst'kvab) Aa'v'` k, 2008
55. evi KvD'v'Yj (A`v'q'x weavb) (mst'kvab) Aa'v'` k, 2008
56. Dc'tRj v cwi l` (mst'kvab) Aa'v'` k, 2008
57. g'v'v' j Ú'v'v' s c'Z't'iva Aa'v'` k, 2008
58. Income Tax (Second Amendment) Ordinance, 2008

96. Bangladesh Laws (Revision and Declaration) (Amendment) Ordinance, 2008
97. Representation of the People (Third Amendment) Ordinance, 2008
98. ˆvbxq mi Kvi (tcŠi mfv) (mstkvab) Aaˆvˆ` k, 2008
99. ˆvbxq mi Kvi (Dc†Rj v cwi l ˆ) (mstkvab) Aaˆvˆ` k, 2008
100. AˆvUlbˆmwfˆ Aaˆvˆ` k, 2008
101. wi †qj G†=U Dbqb l eˆeˆˆvcbv Aaˆvˆ` k, 2008
102. Riˆix ¶†gZv (iˆnZKiY) Aaˆvˆ` k, 2008
103. evsj vˆ` k †Uwj †hvMv†hvM (mstkvab) Aaˆvˆ` k, 2008
104. Bangladesh Shilpa Bank (Amendment) Ordinance, 2008
105. ˆvbxq mi Kvi (BDˆlqb cwi l ˆ) Aaˆvˆ` k, 2008
106. AˆwZ mˆúwE cZˆcˆ (mstkvab) Aaˆvˆ` k, 2008
107. temi Kvi x ˆek†eˆˆvj q Aaˆvˆ` k, 2008
108. National Curriculum and Textbook Board (Amendment) Ordinance, 2008
109. dvBbwYqj wi †cˆwUˆ Aaˆvˆ` k, 2008
110. Medical and Dental Council (Second Amendment) Ordinance, 2008
111. The Citizenship (Amendment) Ordinance, 2008
112. XvKv ˆkiˆ nˆmˆcˆvZvj Aaˆvˆ` k, 2008
113. mi Kvi x Aˆˆ ev†RU eˆeˆˆvcbv Aaˆvˆ` k, 2008
114. evsj v GKv†Wˆg Aaˆvˆ` k, 2008
115. Bangladesh Export Processing Zones Authority (Amendment) Ordinance, 2008
116. Supreme Court Judges (Remuneration and Privileges) (Amendment) Ordinance, 2008
117. evsj vˆ` k AˆˆwZK Aˆj Aaˆvˆ` k, 2008
118. †emi Kvi x ˆk†v cˆZˆvb cwi Pvj bv Kˆgˆw Aaˆvˆ` k, 2009
119. evsj vˆ` k RvZxq Aˆj ˆúK Kˆgˆw Aaˆvˆ` k, 2009
120. Town Improvement (Amendment) Ordinance, 2009
121. ˆvbxq mi Kvi (ˆwˆw K†c†i kb) (mstkvab) Aaˆvˆ` k, 2009
122. †UW gvKˆ (mstkvab) Aaˆvˆ` k, 2009

Notes:

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