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Report on 20 Months of Emergency in Bangladesh

The Government lacks legitimacy

The National Human Rights Commission: An institution to disappoint
Proposed Right to Information Ordinance should not restrict information
The Government must stop snooping into phones and communications

Odhikar, as a part of its commitment to uphold human rights, rule of law and democracy, has been monitoring and publishing reports of the human rights situation under the State of Emergency, each month of the military backed government which was installed on 11 January 2007. The following is the report covering 20 months of this government.

The crisis of legitimacy hamstrings the Government

The government now in power for last twenty-months, unelected, without peoples mandate, installed and controlled by the military is suffering from crisis of legitimacy and acceptability. It seems to be gradually losing its grip over situations. This has happened because of the extra-constitutional means of its installation and existence and most importantly, its attempt to prolong its regime, instead of quickly handing over power to elected representatives within a constitutionally mandated timeframe and respect precedents. Its laidback approach has created a deep crisis of confidence amongst the people. The government, for all purposes, is isolated from people. Its main tool of power, the State of Emergency, has lost its edge, and Odhikar is concerned that if the current course is not quickly reversed, and all energies are concentrated towards an early general election and the State of Emergency withdrawn, human rights situation could take a serious downturn.

Human Rights Commission won't safeguard human rights

The irony has been that this unelected, extra-constitutional, military backed government has attempted to give itself a semblance of a legitimate government by picking up issues long demanded by the people and human rights activists. One such demand has been the establishment of a National Human Rights Commission, independent and empowered to take action in line with internationally set standards. However, in doing so, it overlooked its main operational tool - the state of emergency - that denies people of their most fundamental rights.

While keeping basic rights suspended, the government gave effect to its own law, the National Human Rights Commission Ordinance, 2007 on 1 September. It 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.

The Ordinance stipulates that the Human Rights Commission will investigate allegations of human rights violations by any individual or quarter and try to resolve the cases through arbitration or mediation, discouraging, and eventually preventing, the trials of the perpetrators. Human rights violations are too serious an offence to be dealt with by mere arbitration or mediation. Any act of human rights violation should be tried in a court of law and the perpetrator exemplarily punished. There should be no two ways about it.

Odhikar finds that the government has made the move to establish a Human Rights Commission only to shore up their credibility before the international community.

Odhikar has always advocated for a Human Rights Commission, which will be independent, both financially and functionally, from the control of the government. Most importantly, whatever recommendations the Commission comes up with should be binding upon the government. The kind of Commission that the National Human Rights Commission Ordinance proposes, in Odhikar's view, will not be the safeguard for human rights in Bangladesh.

Right to Information Ordinance-but not to curb press freedom

The latest public relations product of the Government has been the preparation of a draft of the Right to Information Ordinance. Experts and stakeholders of right to information law have already rejected the draft, approved in principle by the interim cabinet on June 18, 2008. Leading journalists have characterised it as a 'black law' and demanded redrafting.

Odhikar also believes that the draft Ordinance will curb, rather than extend press freedom, and the people's right to know. The draft Ordinance proposes the establishment of an Information Commission, which will eventually help the authorities concerned to evade the responsibility of giving information. If the Ordinance is promulgated, a person- even a journalist - will need to apply in a prescribed form for information and the authority will have the power to reject the application or provide the information sought.

Odhikar is concerned about reports that the draft Ordinance was prepared by a Committee dominated by bureaucrats, who ignored submissions made by key stakeholders like the Federal Union of Journalists, the National Press Club and the South Asian Free Media Association.

Freedom of expression and privacy in jeopardy

The government has revealed its character - and its growing sense of insecurity - in its reported decision to monitor and coordinate the tapping of telephone calls and other communications through a national monitoring centre under the Home Ministry.

According to reports, the monitoring centre will be made up of representatives from the law enforcement and intelligence agencies. A Brigadier General of the Directorate General of Forces Intelligence will head the centre.

This centre is being established despite a still-pending rule issued by the High Court Division of the Supreme Court, asking the government to explain why the provisions made for telephone tapping would not be declared unconstitutional.

The Bangladesh Nationalist Party-led alliance government wanted to introduce phone tapping during its tenure and enacted the Telecommunications (Amendment) Act 2006 in February 2006. In May of that same year, a writ petition was filed challenging the law and on May 18, 2006, a High Court issued a rule on the government to explain why the amended Telecommunications Act should not be declared illegal.

Odhikar observes that phone tapping by the State is a direct contravention of Article 43 (b) of the Constitution that guarantees a person's right to the privacy of his correspondence and other means of communication. It infringes also the constitutionally granted freedom of thought and conscience, and of speech and expression. It is intrusive, intimidating and unconstitutional; and is yet another significant step towards our nation becoming a police state.

Constitutionality aside, Odhikar does not believe that public safety can be enhanced by taking hostage the civil liberties of the citizens. Odhikar demands the military backed regime abandon such plans to phone tapping, while the matter is still pending with the court.

Truth Commission should be disbanded

The Truth and Accountability Commission (TAC), setup by the government for five months, to allow people to admit to their corruption and obtain mercy by depositing ill-gotten wealth, is a creature of this government that is not only unconstitutional but outright illegal. It is a body that deals with criminal offences, but is not a lawfully established court. This is why the High Court on August 26, 2008 asked the government to explain why the Voluntary Disclosure Ordinance 2008, under which the Truth Commission was formed on July 30, would not be declared illegal and void.

Moreover, TAC's purported objective to re-energise the economy has failed. The business community, so far, has altogether shied away from availing of this facility. Also, politicians accused of similar wrongdoings are not allowed to avail the same facility as businessmen and bureaucrats. Businessmen and bureaucrats are allowed to continue their business and services, while politicians are barred from contesting in polls after being bestowed with mercy from the Truth Commission.

Considering that the Truth and Accountability Commission has not only failed to attain its desired objective but is also contrary to the constitutional provisions and the spirit of the rule of law, Odhikar sees no justification for it to continue to exist. The government would do well to dismantle it and allow the law to take its own course in cases of financial corruption, as with any other criminal offence.

Workers get raw deals

The workers have been singled out for discrimination by the government and even with limited restoration of right to association, basic rights of workers continue to be denied. The workers have not been effectively able to press for their demand of higher wages because trade union activities remain suspended. The work force is the foundation and creator of wealth and workers rights are recognised under international laws as well as by the Constitution.

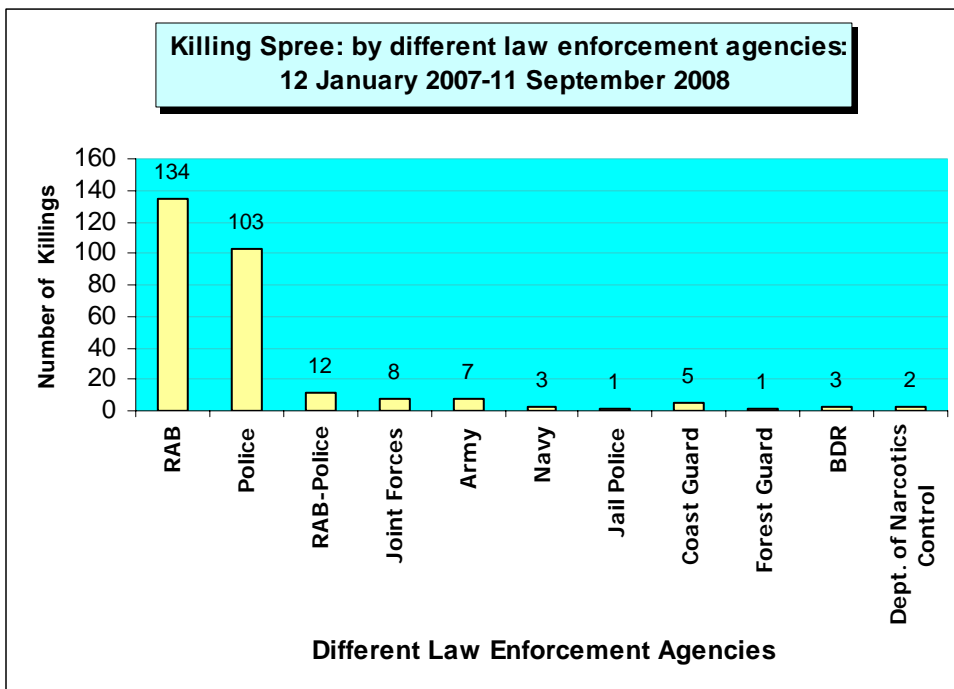
While Odhikar does not support the vandalism that wrecked some industries, it observes that most of such incidents are a result of the movement of frustrated labours demanding their due wages and allowances. To deal with the issues, the government must identify the causes behind them and the owners must ensure the proper payment of the labours, instead of using strong arm techniques. Workers are no threat to the law; rather, widespread disregard of workers rights, even by the government, has been threatening the economy and livelihood of workers.

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 labour standards and has become a compliance requirement. Instead of controlling trade union rights, the government should shed their perceived bias against the working class 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.

Extra-Judicial Killings continues

Since the proclamation of the State of Emergency between 12 January 2007 and 11 September 2008, a total of 279 persons were allegedly extra judicially killed by law enforcement agencies.

Reported Extra Judicial Killings: 12 January 2007 to 11 September 2008



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

Circumstance Reported	Number of Deaths
"Crossfire"/encounter/gunfight/shootout	219
Tortured to death	35
Shot dead in circumstances other than "crossfire"/encounter/gunfight/shootout	14
Other circumstances	11
Total	279

Recommendations

1. The government should speedily end its lack of legitimacy by forthright withdrawal of state of emergency and holding a parliamentary election before the year is out.
2. The National Human Rights Commission Ordinance must meet the standards included in the internationally accepted Paris Principles for Human Rights Commissions and be redrafted accordingly.
3. The Truth and Accountability Commission should be scrapped as it negates rule of law.
4. The draft Right to Information Ordinance must be revised to incorporate suggestions offered by various stakeholders and appropriately drafted for an open and democratic society.
5. The reported move for a telephone tapping authority must be cancelled and freedom of expression must be upheld.
6. The government must offer and ensure rights to workers, granted under national and international laws.
7. Extrajudicial killings must stop and all such incidents must be investigated independently. Those found responsible for giving orders and carrying out these killings must be made accountable to law and victims adequately compensated.

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Notes:

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