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Countering Terrorism In Bangladesh: The Laws And Flaws

By Dalia Pervin

Perhaps the biggest challenge for a new democratic polity, when it comes to framing of its own new constitution, is to give birth to a constitution free from congenital defects – a constitution immune from the vices of its counterpart in preceding politico-legal order that the new order had superseded. Metaphorically speaking, the challenge, however, for a mature democracy is to defend its constitution against immuno - suppression, protect innate immunity of its constitution from being compromised by extra-legal and extra-constitutional – though improperly so called – pathogens. Constitutional amendments, often has the propensity to surgically implant properties alien to the body and spirit of the original constitution, as a result the constitution becomes self-reactive with one constitutional norm contesting the other, one claiming the entire territory of the other. So is the case with preventive detention provision in Article 33 of the Constitution of Bangladesh. The original Constitution did not inherit this vice from the preceding Pakistani regime; change for the worse came in 1973 as the preventive detention provision made its fateful and inglorious entry into the Constitution through an amendment by the Act XXIV of 1973. This marked the beginning of a trail of anti-terror legislation, proliferated under the aegis of Constitution itself, buttressed and entrenched by Article 33 of the Constitution and therefore apparently review-proof on constitutional grounds. Following is an evaluative account of counter-terrorism legal regime with reference to the scope and purport of major legislation in the area and a close scrutiny of its effects spilling over into human rights and fundamental freedoms.

Special Powers Act-1974: To place the Special Powers Act-1974 in appropriate context, it may be reiterated that with the preventive detention provision inserted in it, the Constitution was placed in bizarre situation with hostilities between the constitutional "safeguards as to arrest and detention" and constitutional tolerance for preventive detention for six months and beyond without any judicial supervision or scrutiny. With two conflicting provisions – mutually dismissive and belligerently coexistent – the Constitution now blew hot and cold in the same breath. Anyways, let bygones be bygones. After the Constitution paving the way for preventive detention laws, the Special Powers Act 1974 was promulgated amidst post-liberation alarming rise of the leftist activities in the county. Section 19 and 20 of the Act still bears a resonance of that background; the provisions armed the government with power to prohibit and control "subversive" associations and unions. Often condemned as "blackest of the black-laws", the Act had a human face though: the Act made provision against hoarding, black-marketing, and adulteration of food stuffs and grains. It may be recalled that hoarding and black-marketing hiked the food prices high to the embarrassment of the government.

Whatever might be the original intent behind the Act; people know it by the use which it was, and still has been, put to and the purpose which it empirically serves for the ruling party: silencing opposition and quelling protest. The Government used to arrest thousands of people, mostly the opposition activists, just before the demonstration to be staged by the opposition. Judicial intervention was minimal; the apex court in handful of individual habeus corpus writs declared detention illegal. Referring to the reports (ASK (2001) p.59-60.) of Ain O Salish Kendra (ASK), a human rights NGO, the UNDP Report on "Human Security in Bangladesh: in Search of Justice and Dignity" says that a total of 10,582 persons were arrested under Section 54 in 2000, of which 3,915 were subsequently charged with criminal offences. The said report also bears reference to a study by a Parliamentary Sub-Committee published on 7 September 2000, as many as 69,010 persons have been detained under the Special Powers Act since its enactment in 1974, and of these, and 68,195 were released on orders from the High Court Division of the Supreme Court of Bangladesh. All these were individual cases.

There was no holistic treatment of fatal erosion of political freedom until Writ Petition No. 3806/98 came before the High Court Division of the Supreme Court of Bangladesh, where the Hon'ble Court had the occasion to condemn and deprecate the practice of mass-arresting, on the basis of mere suspicion, under section 54 of the Code of Criminal Procedure and detaining the arrestees under the Special Powers Act. In its landmark judgment reported as BLAST –Vs – Bangladesh and others in 55 DLR (HCD) (2003) at page 363, the said Court declared such arrest and detention illegal. The ruling still has relevance, if at all, more in breach than in compliance as the Special Powers Act still showing its ugliest fangs to the avowed textual constitutional commitment to safeguard the people against arbitrary arrest and detention. This produces a strange phenomenon: preventive detention laws, theoretically subordinate to the Constitution, are cruelly mocking the spirit of the Constitution.

Suppression of Terrorist Offences Act, 1992: The Act, following The Suppression of Terrorist Offences Ordinance, 1992 (Ordinance No.7, 1992), was enacted for, as its short-title suggests, "suppression of terrorist offences". The Act, initially entering into force for a period of two years, in its definition of "terrorist offences" included a heterogeneous category of offences. It is, however, believed that at least one purpose of promulgating the aforesaid Ordinance and later the Act was to punish offences committed during strikes and hartals, most of which never met any punishment. It may be noted that the Act did not follow through on the issue of subversive activities of the organized terrorist groups, probably because terrorist activities by the militant and extremist group was something that Bangladesh did not yet bump up against. The wind of international terrorism and militancy was still to blow over the country. The Act, however, expired on 5th November, 1994 but the pending proceedings initiated under the expired Act were continued under the provisions of Suppression of Terrorist Offences (Special Provisions) Act, 1994.

The Public Safety (Special Provisions) Act-2000: After the Special Powers Act 1974, no other anti-terrorism legislation drew more criticism than this Act. The criticism was partly because the Act was passed in inordinate haste through procedural impropriety. The Act, having a controversial birth, was subject to criticism as an instrument of political victimization. Presented in the Parliament in the absence of the majority of the members, the Act was passed in just two working days making the opposition suspicious of the real purpose and intent behind it. The most controversial issue related to the Act was whether classifying the bill as a 'money bill' was at all justified. The opposition believed that the government had willfully classified the bill as a "money bill" to expedite the legislative process. The Act did not have to pass through the judicial ordeal on this ground as nobody challenged its procedural impropriety.

The Act was passed in order to deal with crimes of extortion, kidnapping, snatching, collection of ransom, damaging public property, obstruction of traffic movement and damaging vehicles, manipulating tenders and other such offences. A writ petition was filed at the end of 2000

challenging the validity of the Public Safety Act upon which the Hon'ble High Court Division of the Supreme Court of Bangladesh passed a 'split verdict'–one Judge ruled the entire Act "unconstitutional" and the other struck down only part thereof. Before any decision could be reached by the third Judge the Act was repealed by the Government. Under this Act, the UNDP Report on "Human Security in Bangladesh: in Search of Justice and Dignity" says, 4216 (First Information Report) FIR was lodged naming 33809 people as accused, out of which 9056 accused were arrested.

Anti-Terrorism Act-2009: By the end of 2003, newspapers started reporting sporadic activities of now outlawed militant group Jama'atul Mujahideen Bangladesh (JMB). Initially, the newspapers reported incidences of JMB men brutally killing the activists of left wing extremist and some underground militant group who created rein of terror in the northern part of the country. Up to this point JMB did not appear as any threat to national security or sovereignty. Things changed quickly, JMB went out of the grip of local administration as JMB militants attacked a police station and looted arms of the policemen. This time the government had something to be really worried about.

On August 21, 2004 a grenade attack, allegedly committed by the JMB men, – the grenade attack case is now pending trial – killed many Awami League leaders and activists and many were injured. The incidence is considered to be the most heinous and organized terrorist attack in country's history. Another subversive activity that rocked the whole country with evidence of strong presence of militants in the country was the August 17, 2005 incidence of simultaneous bomb blast by the JMB men in 63 of the 64 Districts in Bangladesh. This was a new dimension; previously terrorist activities were confined to private acts committed against private persons. For the first time terrorist activities, particularly those committed by the militant groups came to be conceptualized as subversive to the sovereignty of the State. But this was however not the first time government felt the scorching heat of global terrorism. On April 2, 2004, policemen seized biggest-ever arms haul in country's history: 10 trucks of illegal weapons and ammunition from the Chittagong Urea Fertilizer Ltd (CUFL) jetty in Chittagong which were being smuggled allegedly for use by the extremist groups. This incidence, along with few cases of suicide bomb attack, should have been a wake-up call for the Government. Clear was the message: the wildfire of global terrorism that we so far had seen sweeping through others' territory was now burning the yard of our own house.

We recalled the incidences to suggest that this new dimension of terrorism opened our eyes to three aspects of contemporary terrorist activities in the country: first, terrorist groups operating in Bangladesh did have an affiliation with their counterparts in other region of the world; second, the groups having roots in some other territory they were being nourished by terrorist funding from abroad; and third, the militants had secret organizational presence in the country, often under the disguise of a benign religious organization, and outfit they wore for hiding their malignancy. This is perhaps the reason why Islam and terrorism, two deeply mismatching theme have been supposed to have an easy to believe but difficult, if not impossible, to grasp, similitude between them.

Anti-Terrorism Act 2009, following Anti-Terrorism Ordinance-2008, is distinct from the foregoing anti-terrorism legislation in many respects; wider perception of terrorism filled in it a broad range of counter-terrorism strategic measures. The Act, having retrospective operation from June 11, 2008, has extra-territorial application (Section -5). Section 18 of the Act empowers the Government to proscribe a terrorist and militant organization and Sections 8 and 9 prescribe punishment for supporting such organization either as a member thereof or otherwise. Moreover, Section 20 confers upon the Government wide powers to eradicate the malignant activities of such organizations. Measures preventive of terrorist funding through money laundering is also distinctive. Sections 15 and 16 of the Act, coupled with detailed provisions of the Money Laundering Prevention Act-2002, have installed a surveillance system under which the Central Bank keeps a hawk eye on every suspicious foreign currency transaction to cut off any possible funding duct of militant and terrorist organizations. Another important feature of the Act is Section 34 which dries out the fruits

of terrorism by making provision of seizure of the gains and proceeds of terrorist activities. Government's surveillance mechanism was strengthened by the Telecommunication (Amendment) Act-2006 which empowered the Government to track suspicious communications and thus revel and counter conspiracies.

This discussion will remain incomplete without few lines on the twilight zone of counter-terrorism drive. Extra-judicial killing, notoriously known as "cross-fire", by the Law Enforcing Agencies took away the lives of 77 persons during January-September 2011, according to the statistics of Ain O Salish Kendra (ASK). Recently, a poor teenager named Limon was shot in the leg by the Rapid Action Battalion (RAB), an elite counter-terrorism force, on mere suspicion of his involvement in terrorist activities, which immediately proved false. This incidence stirred up the whole nation and National Human Rights Commission demanded inquiry into this incidences. The fact that emerges on the ground is, counter-terrorism laws and counter-terrorism forces have been creating a legal vacuum, a domain beyond the reach of laws and the Constitution. It is undeniable that the Sate should further streamline its counter-terrorism crackdown, intelligence and surveillance. Failure of our intelligence department to reveal and prevent the conspiracy and incidence of brutal carnage at the Bangladesh Rifles (BDR) Headquarter on February 25, 2009 reminded us of the feebleness of our anemic crackdown on terrorism. Hence a broader-range strategic drive has to be conducted if the vice of terrorism is to be eradicated. But the rules of fair play should always be kept in mind so that innocent people do not have to pay the price, so that the constitutional values are not compromised even in the tough time the nation has been going through.

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SAHR Regional Workshop on Human Rights and Counter-Terrorism Measures in South Asia, to develop guidelines for states to observe when carrying out counter-terrorism measures

SAHR held a 2 day regional workshop on human rights and counter-terrorism measures in South Asia. The workshop, titled "SAHR Regional Workshop on Human Rights and Counter-Terrorism Measures in South Asia, to develop guidelines for states to observe when carrying out counter-terrorism measures", was held at Hotel Himalaya in Kathmandu, Nepal, on the 17th and 18th of September 2011. The workshop brought together 22 human rights activists, lawyers, academics and politicians from across the region.

The workshop commenced with an opening address from SAHR Chairperson Hina Jilani via video conference, and was followed by presentations on the country situations and perspectives on anti-terrorism laws in Afghanistan, Bangladesh, India, Maldives, Nepal, Pakistan and Sri Lanka. Some of these presentations and discussions were derived from background papers that SAHR commissioned. These papers dealt with the history and scope of anti-terrorism and emergency laws in each country, also considering the constitutionality of the laws, their effects, and actions taken by branches of government to cease or prolong them.

Once the country situations were laid out, discussions shifted to the areas for deliberation on the guidelines, and aspects that merited inclusion in the deliberations.

The rest of the workshop consisted of the drafting of the guidelines, and then a session to finalise and adopt them.

A formal document comprising the guidelines, background papers and other relevant material, is currently being compiled.

Group deliberations on the guidelines

The participants

SAHR Chairperson, Hina Jilani, addresses the workshop via video conference

Group discussion

Mohammed Latheef, Vrinda Grover and Dinesh Tripathi

SAHR Consultation on IDPs - Sri Lanka

SAHR's IDP programmes stem from one of the organisation's three Key Programme Areas, Displacement, which aims to promote and uphold the rights of the displaced. Past activities under this programme area have included fact-findings on Bhutanese refugees, as well as on IDPs in Baluchistan and in Sri Lanka's North and East.

The latest phase of the IDP programme began with background papers being commissioned on some of the South Asian countries. These papers will form part of the foundation for upcoming national level consultations in the region, similar to the one that took place in Sri Lanka. The aim is to utilise the findings from these consultations to develop strategies to operationalise the United Nations Guiding Principles on Displacement at the national level, in each of the South Asian countries.

A National Level Consultation provided the opportunity for an assortment of Sri Lankan human rights defenders, academics, professionals and cultural activists, together with international humanitarian organizations, to share their views on dealing with the issue of Internally Displaced Persons (IDPs) within the country. The "SAHR consultation on IDPs - Sri Lanka" was held on the 25th of November, at Hotel Renuka in Colombo.

At the recent consultation, approximately 30 participants engaged in discussions which focused primarily on the current IDP situation in the country, the provision of humanitarian assistance to these populations and the path to early recovery. The issues faced by different displaced and returning communities was also considered with special focus on the Muslim returnees to the North, IDPs in the East, Vanni returnees and IDPs in high security zones such as Jaffna.

Furthermore, the challenges faced by organisations working with IDP populations were brought to light and strategies employed to combat these, both at the national and international level, were discussed.

Sri Lanka National Consultation on IDPs, in pictures

A panelist speaks on Vanni returnees

A range of people representing local and international organisations attended the consultation

"From humanitarian assistance to early recovery: Challenges and the way forward"

A presentation about providing humanitarian assistance within the context of shrinking humanitarian space

Participants at the SAHR Consultation on IDPs - Sri Lanka

A co-author of the background paper on begins the context setting

The National Consultation on Operationalizing the UN Guidelines on IDPs - Pakistan

The National Consultation on Operationalizing the UN Guidelines on IDPs was held on 13th December 2011, at the Human Rights Commission of Pakistan's Committee Room. The objective of the discussion was to discuss the issue of UN Guidelines on Displacement, and to come up with suggestions for future implementation of these principles and improvement in their current implementation.

The consultation brought together 20 politicians, lawyers, media personnel as well as SAHR members, including the SAHR Chairperson, to discuss a variety of issues including: defining IDPs, the lack of laws in Pakistan that deal with refugees and IDPs, and the effect that IDPs can have on their host communities.

An introduction to SAHR and its current programme on IDPs, by SAHR Chairperson, Hina Jilani, opened proceedings. This was followed by presentations on the UN Guiding Principles on Displacement, the SAHR background paper on IDPs in Pakistan, current issues that IDPs face, and a review of past responses by both the humanitarian community and the government, in dealing with IDPs. The remainder of the consultation was concerned with discussing and suggesting ways to operationalize the UN Guiding Principles on Displacement, at a national level in Pakistan.

Some of the key recommendations derived from the consultation were: the formation of a working group to ensure that legislation and policy making were in keeping with the UN guidelines, a review of the current coordination between various actors on IDPs as well as clearly defining roles of said actors to reduce overlap and inefficiency, as well as ensuring essential services in IDP camps that uphold the safety and wellbeing of the displaced.

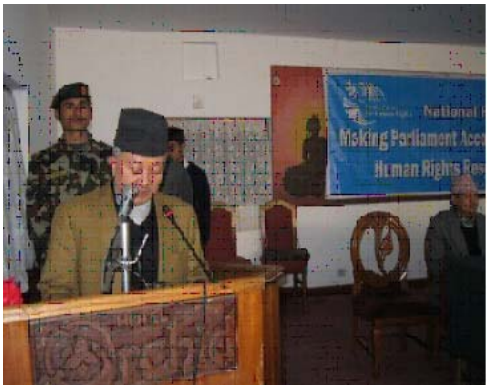
A complete report on the national consultation, with the full set of key discussion points and recommendations, can be found on the SAHR website at http://www.southasianrights.org/?p=4671

Nepal - National Forum on "Making Parliament Accountable and Human Rights Responsive"

The National Forum titled "Making Parliament Accountable and Human Rights Responsive" was held on 30th December 2011 at Hotel Orchid, Kathmandu with the Speaker of the House Honourable Subhash Chandra Nembang as a chief guest. Constitutional Assembly (CA) member and former home minister Honourable Bhim Rawal, CA member and Former Minister of Local Development Honourable Bimalendra Nidhi, CA member and former Foreign Minister Honourable Upendra Yadav and many other CA members voiced their opinion regarding importance of accountability and transparency in parliament. Also, prominent civil society leaders such as Mr. Padma Ratna Tuladhar, Mr. Charan Prasai and Mr. Subodh Pyakurel and renowned media figures including Mr. Yubraj Ghimire, Mr. Kashi Raj Dahal and Ms. Yasoda Timilsina expressed their views on their respective roles for making the parliament accountable and responsive to human rights.

The objective of the national consultation was to share the findings of the Parliament Watch study being conducted by Transparency International Nepal and invoke a discussion among parliamentarians, civil society leaders, media and academics alike about the necessity and importance of making the parliament accountable and responsive to human rights. The program was divided into three sessions in which Parliamentarian's role, civil society and citizen's role, and the media's role in making a transparent and accountable parliament, was voiced. As well as politicians, participants included many SAHR members, representatives of human rights organizations, and students.

The event was one of a series of national level consultations held under SAHR's Parliament Watch programme, and was covered by several media outlets.



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