Power and Public Safety

Imagination is more important than knowledge
— Albert Einstein

Special Power Act

People or Regime Security?

by Zakia Haque

"For a democratically elected government, SPA cannot be a tool to govern the State, this black law must go. There is no other alternative if we have any belief in the rule of law - the ultimate destination for any democracy".

THE Special Powers Act is an Act to provide for Special measures for the prevention of certain prejudicial activities, for more speedy trial and effective punishment of certain grave offences and for matters connected therewith. In this Act, unless there is anything repugnant in the subject or context.

a) "Code" means the Code of Criminal Procedure, 1998 (V of 1898);

b) "Dealing in the black-market" means selling or buying anything for purposes of trade at a price higher than the maximum price fixed by or under any law, or otherwise than in accordance with any law;

c) "Detention order" means an order of detention made under section 3;

d) Clause (d) was omitted by Act No. 18 of 1991 (w.e.f. 26.2.1991);

e) "Hoarding" means stocking or storing anything in excess of the maximum quantity of that thing allowed to be held in stock or shortage at any one time by any person by or under any law;

f) "Prejudicial act" means any act which is intended or likely –

i) to prejudice the sovereignty or defense of Bangladesh.

ii) to prejudice the maintenance of friendly relations of Bangladesh with foreign states;

iii) to prejudice the security of Bangladesh or to endanger public safety on the maintenance of public order;

iv) to create or excite feelings of enmity or hatred between different communities, classes or sections of people;

v) to interfere with or encourage or incite interference with the administration of law or the maintenance of law and order;

vi) to prejudice the maintenance of supplies and services essential to the community;

vii) to cause fear or alarm to the public or to any section of the public;

viii) to prejudice the economic or financial interests of the state.

g) Clause (g) was omitted by Act No. 18 of 1991 (w.e.f. 26.2.91).

The SPA is an amalgamation of both procedural and substantial measures with 36 sections and one schedule.

It is not out of place to mention here that the post independence grim and grave situation inspired the Government to promulgate Scheduled Offenses Special Tribunal order P.O. 50 in May 1972. But due to serious lapses in the application of such laws (including P.O. 8) innocent people were harassed and victimised routinely. Misapplication of P.S. 50 of 1972 caused severe public criticism and this law together with the Security Act. 1952 and Public Safety Act Ordinance 1958 was repealed on 9 February 1974 by the Special Powers Act. The Act was adopted essentially keeping line with the Maintenance of Indian Security Act (MISA), 1971 and the East Pakistan Public Safety Act, 1958. But the provision of the Special Powers Act were made more draconian than those of the other two laws.

Most of the political parties have termed the SPA as a black law

The SPA: Black vs. White Debate

Most of the political parties have termed the Act as a black law and even promised to repeal it if voted to power, but which ever party went to power in the last 25 years conveniently forgot the promise. It was the Awami League which placed a bill on 20th September, 1958 to repeal the tyrannical black law of the British era the public Safety Act (Awami League suffered immensely under such various security laws); but while discussing on the Special Powers Bill in the parliament in 1974, ruling Party MP Serajul Huq termed the proposed law (The SPA) as -

"The whitest law that we are bringing against the blackest background".

The then Law Minister Manarajan Dhar also assured the House that the law would be used only to prevent massive smuggling, hoarding, black marketing, killing, etc. prevailing at that time. But in fact the law has been used widely over the years by all successive Governments to oppress the political opponents of the ruling party.

During the anti-autocracy movement one of the demands of the three alliance of the political parties was the repeal of the SPA. In the first election during post autocracy era all the political parties pledged to repeal it after assuming power. But the then Prime Minister Begum Khaleda Zia emphatically said that without this law the country could not be administered. Likewise before coming to power incumbent Prime Minister Sheikh Hasina gave an avowed commitment to repeal this law. In 1996 several influential leaders including some of the cabinet members of the present Awami League government were detained under the SPA. Before the last Parliamentary election held on 12th June 1996 the present ruling party promised to repeal all black laws including the ones of its own creation. But after assumption of power Hasina pulled her tune in quite opposite direction by saying,

"The Act has been identified by the previous government as an essential law to run the state ..... . So, question does not arise to abrogate the Act during our rule".

On 13 August 1999 replying to a journalist of the Dhaka Courier Law Minister Abdul Matin Khasru said,

"This sort of Law is there in almost all countries to ensure safety, security and lives of the innocent citizens but the misuse of the law should be strictly prevented by the government functioning".

But we as conscious citizens would like to see this scrapped for the following reasons:

• In the presence of the section 54 of Criminal Procedure Code, there is no justification of a similar Act like the SPA.

• In the Act, the crucial term, "Prejudicial Act" is not defined precisely which creates scope for gross abuse of the law.

• There is a serious critique on prevention detention - a concept of the SPA, which is to prevent someone from committing any probable injurious activities. The power of the executive authority to arrest someone under preventive detention depends on the subjective satisfaction of the concerned executive officer. If such officer is personally satisfied against the arrested person, he can give order for preventive detention. And thus the doctrine of subjective satisfaction has scope of abusing the power. In fact the subjective satisfaction of a civil servant is not always beyond controversy.

• The SPA provides for the detention by the government of any person without trial. The detenu may be kept inside the prison for years without any specific allegation of offense. The initial period of preventive detention is six months under the Constitution. Neither the SPA nor the Constitution specifies any fixed period. So, here a person can be detained for an indefinite period.

• The Act also denies the Constitutional safeguards like the right to consult and be defended by a legal practitioner of the detenu's choice. Because the detenu has no right to legal representation before the Advisory Board, the detenu becomes helpless without having any right to visit by lawyers or relative. Detenu may only submit a representation for writing against the detention to the Board.

• Although a detenu can exercise his/her right to representation under Article 35(3) of the Constitution but this right is dependent on the right to communication of ground of detention. In most of the detention orders under the SPA, the detaining authority does not disclose facts on grounds in the name of so called state secrecy and unnecessary confidentiality which creates problem for the detenu to take an effective representation and this right becomes illusory.

• The procedural safeguard for an innocent detenu is too lengthy.

• Although detention order can be challenged before the High Court Division, poor detenus cannot afford the costly and time consuming process.

• Most of the detention done under SPA were declared illegal by higher courts and sometimes such detention causes embarrassment to the government. In more than 90% cases the court found detention order invalid. The common grounds of such findings of the Supreme judiciary are:

— the grounds of detention in most cases are vague, indefinite and lacking in material particulars.

— failure to inform the detenu of this right to representation.

— failure to serve the detenu of detention within 15 days.

— lack of nexus between the order of detention and grounds of detention.

— failure to procedure the detenu before the Advisory Board within a certain time.

— retrospective issuance of orders.

• The Act does not provide any compensation in favour of the detenus even for the grossly wrongful detention. However, in the order against arrest of four BNP leaders in 1997, the High Court of Bangladesh not only declared the detention illegal but also ordered to pay them compensation of Tk. one lakh each.

Ershad's Claim of Scrapping the SPA

Deposed President H.M. Ershad recently kicked off a fresh controversy accusing President Justice Shahuddin Ahmed of ignoring an order signed by him for repealing the SPA on December 6, 1990. The Bangabhaban officials, however, dismissed the allegation as false. From a statement issued by the Bangabhaban, it transpired that President Justice Shahabuddin Ahmed after taking over in 1990 knew about the ordinance, but he did not take action since officials did not refer it to him. The Ministry of Law on the other hand, reiterated that the SPA of 1974 was never scrapped.

So, in this controversy, our views on the issues are as follows:

• Before his ouster in 1990, Ershad signed 3 orders relating to University affairs, District Council affairs and the SPA, but these orders could not be given effect to because those were not numbered and notified in the government gazette.

• In the orders made by Ershad, dates, SRO number, name and signature of person responsible for promulgation were absent. Those were mere informal orders signed by him and not ordinances. So, undisputedly, Ershad could not repeal the SPA by any ordinance and Ershad never scrapped the SPA.

From the foregoing discussion, it is aptly clear that the SPA has been greatly abused in the last 25 years since its enactment. There occurred no situation of war, or external aggression or internal disturbance, threatening the security of the state, but the SPA has been used by every government, even in peace time as a brutal weapon to suppress anti-government movement, sometimes democratic movements. The motion of the rule of law cannot exist let alone flourish in presence of such black law. Unfortunately, there exists colonial tendency of every government to regard the challenge to their authority, as a threat to the life of the nation. Of course they do it very purposefully, this is particularly true of regimes which do not provide any lawful means for the transfer of the political power and which in consequence are inclined to regard any criticism of the government as an act subversive of public order. Detention law is still applied for harassing the political opponents of the ruling party, for suppressing the anti-government, democratic movement. This is the greatest instance of mutual distrust of the political parties. The power in the law to issue order of detention is so arbitrary that it is used indiscriminately without minimum care of civil rights. More than 80,000 people were detained under this law in the past 25 years. And the worst sufferers of this law are the general people of the country who carried forward democratic movements during different regimes. So, we believe that,

"For a democratically elected government, SPA cannot be a tool to govern the State, this black law must go. There is no other alternative if we have any belief in the rule of law - the ultimate destination for any democracy".

Report prepared by Md. Sultan Uddin, Maliha Ahad, Tasnim Haque, Zakia Haque, Nigar Sultana, Israt Ara, Farhana Yunus, Farhana Ahmed and Nusrat Zahan.

Power and Public Safety: A Report

by Sohela Nazneen

A public dialogue on Power and Public Safety was organized by the Center for Alternatives (CA) at Natmondol, Dhaka University on April 30,2000. The objective of the dialogue was to provide a forum for the people to express their views and opinions about the black laws enacted by the various governments for public 'safety.' Participants from diverse backgrounds also analyzed and discussed the reasons behind enactment of and effectiveness and abuse of such laws. Moreover, they made general suggestions for rectifying the current situation.

The dialogue was divided into two parts. Zakia Haque and Sharif Atiqur Rahman, MSS students of the Department of International Relations, University of Dhaka made two separate presentations on the "Special Powers Act 1974" and the "Public Safety Act 2000" in the first half of the dialogue. The floor was opened for discussion in the second half of the dialogue.

The presentation on SPA 1974 revealed that in the past 25 years it has been used indiscriminately to harass and repress the opposition political parties and the common people. About 80,000 people have been detained under this Act at various times. This Act allows arbitrary detention without trial of any persons who is suspected of engaging in any act 'prejudicial' to public safety, public order, security, or acts that may incite hatred, fear, enmity among different sections of the people, etc. The High Court has ruled 90% of the cases under SPA to be invalid. However, the Act has no provisions for compensating the accused. It was pointed out that though both BNP and AL promised to repeal the law during the democracy movement of 1990, once in power both the parties declared the Act 'essential' for good administration.

The second presentation laid out the result of a survey on PSA 2000. About 200 persons were surveyed for their opinions on PSA 2000. The survey results reveal the following interesting facts:

• About 64% of the respondents did not know whether the provisions of PSA, 2000 violated any human rights.

• Almost 60% thought the law making process of PSA was not transparent, especially the surreptitious way in which it was introduced and passed in the JS. Approximately 47% did not approve of PSA, 2000 being placed in the JS as a money bill. About 58% of the respondents thought the absence of the opposition during the law making process raise doubts about the validity of PSA.

• A surprising 71% of the respondents favored the nonbailable provision of PSA.

• However, among those who favored the nonbailable provision, 84% thought the provisions for punishment of law enforcing officials for undue harassment should not have been amended.

• Moreover, about 64% of the respondents felt that the PSA, 2000 was redundant.

The presenter also drew attention to the fact that corruption among the police and lower judiciary needed to be eradicated to provide public safety.

After the presentations the floor was opened for discussion and the comments, remarks, and questions voiced by the participants broadly fall into the following three categories:

I. **Reasons behind the Enactment of Black Laws and the Absence of an Effective Movement against them:**

The participants listed various reasons why no strong movement formed against enactment of such laws, though many opposed these laws and feel that they are unnecessary. They also presented an analysis of why these laws are enacted by every single democratic government in Bangladesh. The reasons contributing to this situation are:

(a) Lack of Dialogue: One of the major reasons identified by the participants behind the enactment of such laws was the lack of dialogue between people and the government, and among various political/ interest/civil society groups. Imtiaz Ahmed of Department of International Relations, DU drew attention to the fact that the scope for discussion in public forum about the laws that would be enacted is limited and the government does not seek public opinion before making laws that would drastically affect the people. Hameeda Hossain from *Ain o Salish Kendra (ASK)* pointed out that though the political parties themselves have fought against the tyranny of black laws to establish democratic rights (AL during Pakistan period, AL and BNP during Ershad regime), they have not repealed these laws once in power. Furthermore, both of these parties enacted new black laws once they were in power (Anti terrorism Act, 1992; PSA, 2000). Hameeda drew attention to the fact that people have wanted to establish democracy, and actions of GOB/people reflected that during the post liberation period in the Constitution of 1972. However, these provisions individual political freedom eroded slowly over the years. She stressed that the total socio-political process of this erosion needs to be studied, as the black laws were not enacted out of the blue. She also pointed out that the society is sharply polarized along party lines and the distrust, lack of dialogue, less emphasis on institution building leads to the passage of black laws.

(b) Insecure Government: Participants argued that feeling of insecurity in the government is a major impetus behind enactment of black laws. Muzaffer Ahmad from IBA, DU stressed that the government passes these laws when it feels that the existing laws do not serve its interest. He pointed out that to allay the feeling of insecurity and to maintain its position of power insecure governments in weak states have a tendency to enact such 'special' laws, and the history of Bangladesh illustrates this fact.

(c) Tendency to Think That 'Special' Laws Will Solve Social Problems: Salma Sobhan from *ASK* pointed out that the law is not viewed as an aid/ instrument for tackling social problems. She argued that the existing perception about the law is that tougher sentences and stringent laws would solve social problems. Sobhan felt that such "problem with the house, so burn the house down" mentality led to the enactment of laws that violate the fundamental essence of the law.

(d) Weak Role of the Opposition Parties: Many of the participants expressed that the opposition did not play an effective role when the various black laws were enacted. Md. Jahangir, noted media critic, stated that the activities of the mainstream opposition centered on certain issues, i.e., CHT treaty, transit etc, they did not play a proactive role in building any effective movement in and outside the parliament against PSA, 2000. The participants also pointed out that the reason behind the opposition inertia is that they also hope to use these laws to suppress people/ opposition when they are in power. None of the major parties trust the democratic system to function properly and in their desperation to cling to power, enact new black laws.

(e) Weak Role of the Civil Society: The majority of the participants felt that the civil society did not play an effective role in opposing the enactment of such black laws. Furthermore, over the years they failed to create a strong movement for repealing such laws. Many thought that the weak voice of the civil society was due to the partisan nature of Bangladeshi civil society. Sharp polarization among the members of civil society diminished the possibility of a dialogue among them and development of an effective movement against such laws. Muzaffer Ahmad argued that the dominant role played by the NGOs reduced the effectiveness of the civil society, as many NGOs are more concerned with their institutional interest than the public interest. However, Salma and Hameeda stressed that the NGOs have not "highjacked" the civil society as stated by Muzaffer Ahmad. Salma agreed that since other sections of the civil society are less organized than the NGOs they do not play a more visible role as the NGOs. Furthermore, both Salma and Hameeda emphasized that the partisan nature of the civil society was the major factor behind its ineffectiveness.

(f) Low Level of Awareness: The participants pointed out that a strong opposition did not materialize because the majority of the people are not aware about the provisions and dangers posed by these black laws. General Jamil of BIISS argued that the common people felt that the debate about whether human rights are violated by the black laws are issues with which only the 'educated' sections are preoccupied. The participants maintained that ordinary citizens always felt confused by archaic language of the various laws. They also stressed that the media, the civil society, the political opposition failed to present the provisions of the black laws and their likely misuse to the people in a language which is simple and easy to understand.

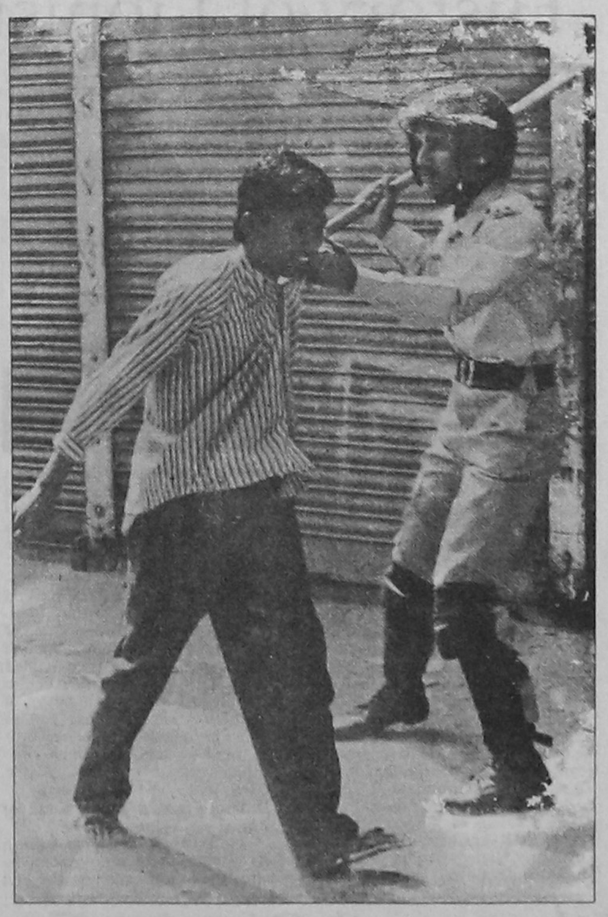
Abuse

A major part of the discussion focused on the abuse of these black laws. The participants voiced that the enactment of PSA increased their feeling of insecurity instead of making them feel safe! They felt that since the police was corrupt the abuse of the provisions of PSA was inevitable. Many voiced their concern about the fact that the provisions designed to redress the abuse by the police was no longer in place.

Extensive discussion took place about the corruption inside the police force. Faisal from BIISS, an ex-police officer, detailed his experience as an employee. He pointed out that low salary, inadequate logistic support (that has to be met by the police staff) contributed to the rampant corruption. He said that at the police-training academy, a recruit has to pay a 'salami' to the instructors to pass the fitness and other tests. He also stated that a percentage of the salary has to be handed over to the immediate superior police officer, which is used to buy grocery for the superior officer. Faisal stressed that with the immense power placed in the hands of the police after enactment of PSA, selective use of this law, incidents of corruption will increase.

The participants also felt that PSA would be used to stifle the voice of dissent. Saleem Samad, journalist cited examples of how SPA and other black laws were used to apprehend journalists. He also narrated the case of a *Janakantha* reporter who was arrested under the PSA. Saleem mentioned that the present Law Minister had promised that no journalist would be victimized for carrying out journalistic duties, but that is what has been done earlier.

Moreover, the participants feared that the criminals and influential people would be able to bypass these stringent provisions of PSA. Network and contact in the right places will enable them to walk scott free even if they belonged to the opposition political party! Many cited the recent case of the Chief Whip's son who was not apprehended even after it was widely publicized that he was forcibly occupying an apartment in Kalabagan, Dhaka. Meghna Guhathakurata of department of International Relations, DU narrated a case about her caretaker's son who was arrested under the PSA and was able to get bail. He was arrested because his employer failed to pay toll money to the police sergeant in charge of the area where the son sells flowers. The bail was arranged after certain amount of money exchanged hands. The participants stressed that those without connections would be harassed but PSA would not be effective in curbing extortion and other mastan related violence.



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Recommendations

The participants came up with a wide range of recommendations. Some of them were drastic, while others were very basic but essential for rectifying the situation.

(a) Policing the Police? The large numbers of suggestions put forward by the participants in this category perhaps indicate the extent of fear and mistrust participants have about the police force because of the corruption, abuse by and ineptness of the law enforcing officials. Many of the participants argued that the salary and other benefits of the force needed to be raised in order to curb the incentive for corruption among the police personnel. They also mentioned that the government needed to provide adequate logistic support (i.e. papers for filing cases, vehicles for transporting bodies of murder victims etc), which at present has to be borne by the police officials.

Some suggested that the whole force should go through repeated training, fresh orientation and reform. Shabnaz from British Council pointed out that channels of communication should be built between the police and the community. She stressed that lack of interaction and communication creates a sense of indifference among the police personnel and the community is not aware about the services they can rightfully demand from the local force.

Some felt that the culture of corruption was so deeply entrenched in the police force that no amount of training, fresh orientation would eradicate or reduce corruption. Rob Khan of BIISS pointed out that increasing salary and range of benefits may not curb corruption among the police, as it would be like "pouring more ghee into the fire." Shaheen Afroze from BIISS felt that the existing police personnel would have to be retrenched and a new force should be formed! Some suggested that an independent agency should be created to monitor the activities of the police.

(b) Reforming the Existing Laws: Many of the participants stressed some of the existing laws in the Penal Code needed to be reformed, reinterpreted and made applicable to the present situation. Salma and others pointed out that the basic rights provided in the legal system should not be suspended in the name of tackling present disorder. The focus should be on which specific part of the old laws are not applicable and only those need to be changed.

(c) Reaching Out to the Grassroots: The participants, mostly students, suggested that the media, the civil society (even the political opposition) ought to try to build a strong people's movement for repealing black laws. The focus of these agencies should be on communication with the public in a simple language. Guhathakurata felt that a case-by-case analysis of various black laws, how they violate human rights should to be conducted. Md Jahangir suggested reports of Law Commission reviews could be publicized in 'understandable' language. Also public opinion can be gathered on what type of laws people relay want. The participants felt that limiting the civil society and the media efforts to just high flown dialogues, seminars and reporting these to the newspapers is not enough. Although how a people's movement would be formed was not discussed.

(d) The Civil Society Finding A Neutral Ground: The proactive role of the civil society was identified as a way for creating an effective movement against the black laws. To tackle the partisan nature of the civil society that might effect the movement, Rob Khan suggested they needed to find a neutral ground. He pointed out that the movement to protect Osmani Uddyan was successful because it was not a political issue. The anti-PSA movement by civil society should focus on the basic rights violated by the sections of this law, not on AL-BNP mudslinging. This suggestion is directly related to the point made by Hameeda and Salma that a dialogue was needed among the various sections of the civil society.

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The topic of our next issue is: **Power and Public Safety-II**. Creative suggestions are invited from our esteemed readers. Please send your materials to: Dr Imtiaz Ahmed, Executive Director, Centre for Alternatives, Room No 431, Lecture Theatre, Arts Building, Dhaka University, Dhaka-1000. Tel: 9661900-19, Ext 4550; Fax (8802) 8316769; E-mail: imtiaz@bangla.net.