National security laws of Bangladesh: application in 2000

ODHIKAR

THE people of Bangladesh experienced the arbitrary use and misuse of national security laws, popularly known as repressive laws, throughout the year 2000. These laws are as follows:

Article 33 of the Constitution by which safeguards on arrests and detentions were removed;

Special Powers Act of 1974;

Special Security Force Ordinance of 1986;

Public Safety (Special Provision) Act of 2000;

Section 505A of the Penal Code of 1860;

Section 99A of the Code of Criminal Procedure of 1898 and finally

Recently enacted Father of the Nation Portrait Preservation and Exhibition Act of 2001.

Apart from these some sections of the Penal Code and Criminal Procedure Code also act as repressive laws, which have also been mentioned in this article.

Special Powers Act of 1974

Constitutional limitations on the right to liberty have been supplemented by specific legislation -the Special Powers Act of 1974 ("SPA") - which provides for preventive detention. The use and abuse of the SPA in the name of protecting security interests has resulted in a steady pattern of human rights violations.

The SPA was enacted to "take special measures" for the prevention of prejudicial activities, for more speedy trial and effective punishment of grave offences." It defines a "prejudicial act" as "any act which intended or likely to:

(i) prejudice the sovereignty or defence of Bangladesh;

(ii) prejudice the maintenance of friendly relations with Bangladesh;

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

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

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

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

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

(viii) prejudice the economic or financial interests of the state."

These expansive definitions of 'prejudicial acts" grant considerable scope for their abuse by the authorities.

The SPA has been widely used to detain opposition activists, especially members of radical left organizations, under the first Awami League and BAKSAL regimes. It has also been disproportionately deployed by successive regimes against the opposition activists. On 13 June 2000, the Home Minister Mohammad Nasim, informed the Parliament that from 1 January 1996 to 31 May 2000, 17,086 persons were detained under Special Powers Act.

On 7 September 2000 a three member Sub-Committee of the Parliamentary Standing Committee submitted a 31-page report on Special Powers Act to the Parliament. The Sub-Committee mentioned that 69,010 people were detained under the controversial Special Powers Act of 1974 in the last 24 years and 68,195 persons detained under this Act were released by the order of the High Court Division of the Supreme Court. After studying the verdicts in 100 cases, the Sub-Committee identified 16 reasons for which the court declared the detentions illegal. These reasons included:

vague, indefinite and uncertain grounds for detention;

government's unlawful authority in ordering detention;

non-placement of the detainee or the grounds for detention before the Advisory Board within 120 days;

lack of basis for detention order;

different reasons mentioned for detention and in the affidavit-in-opposition;

detention for criticism of an ideology; which can not be a prejudicial act in a society that permits political activity;

mixing of good grounds with bad ones;

failure in showing reasons for detention within 15 days;

government's failure to produce necessary papers in Court and;

delayed government order for extension of detention.

Regardless of the findings of the said Sub-Committee, the Parliament has recommended the retention of this repressive law to the surprise of everybody. On 17 December 2000, the Prime Minister expressed her position on the Special Powers Act in a meeting with the Overseas Correspondences Association of Bangladesh and mentioned that, "We enacted this law and therefore there is no question of repealing it". Although top lawyers, human rights groups and print media have relentlessly acted and campaigned against Special Powers Act throughout the year 2000.

Special Security Force Ordinance of 1986

The Presidential Security Force Ordinance (PSFO) established a Security Force to be under the direct command of the President, and to be controlled and administered by a Director who may be endowed with the powers of the Chief of Army Staff in respect of operations of the Force. The Force may seek the assistance of other services, such as the law enforcing agencies, paramilitary forces, defence and intelligence agencies.

Using the police for partisan application of national security Laws deminishes the institutional cretibility of the force

The Force was originally intended to "provide physical security" both to the President, wherever he may be, and to the VIPs (including any Head of State or Government or any person declared to be a VIP by the government). Following restoration of the parliamentary system, it was renamed the Special Security Force ("SSF"), its primary function is to protect the Prime Minister, the President and other VIPs. Its work also includes "collecting and communicating intelligence affecting the physical security of the Prime Minister, the President or a VIP" (Section 8). The SSF is now accountable to the Prime Minister under the present parliamentary system. The SSF are given the following powers:

"arrest without warrant any person when there is reason to believe that the presence or movement of such person at or near the place where the Prime Minister, the President or a VIP is living or staying or through which he is passing or about to pass is prejudicial to the physical security of the Prime Minister, the President or such VIP and if such person forcibly resists the endeavour to arrest him or attempts to evade arrest, such officer may use all means necessary to effect the arrest and may, if necessary and after giving such warning as may be appropriate in the circumstances of the case or otherwise, so use force against him as to cause death" (Section 8).

The wide and unfettered powers granted to the authorities under the SSFO are exacerbated by section 11, which prevents prosecution for such acts without government sanction. The SSF presently has strength of 100 plus army personnel under the command of a Major General. Last year, some of the SSF personnel were accused to harass the Deputy Commissioner of Chittagong, which attracted considerable public attention.

The Public Safety (Special Provisions) Act 2000

The provisions of the Public Safety (Special Provisions) Act 2000 would make inventors of "Draconian" laws blush. Despite criticism from different sectors, the present Government of Bangladesh passed this law arbitrarily. It was enacted in the absence of the Opposition in the Parliament, on 14 February 2000.

Eight leading human rights organisations, including Odhikar, had fruitlessly appealed to the President of Bangladesh not to give his assent to the said law, as they found it went against universally recognised principles of the criminal justice system and criminal procedural laws. Furthermore, this law is but a repetition of existing preventive laws in Bangladesh. Provisions for all the crimes referred to in the Public Security (Special Provision) Act 2000 are already contained in the Penal Code prevalent in Bangladesh.

This Act was not only enacted to curb crime and terrorism in Bangladesh, in view of the delay in disposal of cases, occasioned by lengthy litigation, the Act recognizes certain crimes as non-bailable offences and seeks for the summary trial of alleged criminals. Although because of the intervention of the President section16 (3) of this Act was amended and new words were incorporated by replacing the previous words, which were, "If any person is sentenced to imprisonment for a period of 2 years or more or has been imprisoned for life and if there is an Appeal against that sentence, Appellate Court or any other Court will not grant him bail till that Appeal is disposed off" by the new words "after examining the gravity of the offence, related information and evidences if it becomes satisfactory the accused may be granted bail". But no Court can grant during the 30-day investigation period. However, the investigation might take a longer period.

Many people are already in detention under the Public Safety (Special Provisions) Act. From 14 February 2000 (the date the Act was enforced) to 10 August 2000, 737 cases have been brought under the Public Safety Act. First Information Report (FIR) named accused persons number 3763. According to Odhikar report, 313 cases were filed in 10 police stations alone in the Dhaka city from 1 January 2000 to 31 December 2000.

Furthermore, partisan application of this act has already created lots of controversy. According to the press reports, political activists and supporters belonging to the ruling party, who are engaged in terrorising people were enjoying immunity, whereas, the supporters and activists of the opposition political parties became regular victims.

On 11 January 2000 a Division Bench of the High Court Division of the Supreme Court issued rule nisi upon the government to show cause within two weeks why the Public Safety Act shall not be declared ultra vires of the Constitution. The rule was issued after the hearing of the petition filed by the BNP Parliament Member M. Morshed Khan and his son Faisal M. Khan who were charged by the police on the basis of a controversial case filed in Chittagong. This was the first case to challenge the Public Safety (Special Provision) Act 2000 since its enactment.

Intelligence services

The following intelligence agencies operate to protect internal or national security: National Security Intelligence (NSI), Directorate General of Forces Intelligence (DGFI), Special Branch (SB), Special Security Force (SSF) and the Detective Branch (DB). The NSI, DGFI and SSF are directly accountable only to the Prime Minister. The NSI was created by a cabinet decision in 1972 without having any statutory basis for its creation. The SB and DB are, however, parts of the police and are accountable to the Home Ministry.

These agencies are intimately involved in the application of national security legislation. In many cases, detainees have been illegally kept in the custody of the intelligence services for interrogation purposes. On 29 May 2000 newspapers reported about the handing over of 3 persons to the police of Savar Police Station, who were illegally detained in Savar Cantonment for 36 days. Members of the intelligence services have reported many cases of custodial violence against political activists. Surveillance of political, socio-cultural and human rights organisations is also conducted by such agencies. NGOs require prior clearance by the NSI and SB to initiate projects.

These agencies have placed themselves in a position beyond the reach of law. Recently their activities including the interrogations by establishing 'Joint Interrogation Cell' are appearing in the press on a regular basis

This trend of introducing repressive laws is nothing new to the people of this country. Whenever the political elite feel threatened, mainly due to their own failure in delivering service to the common people; when the administration loses its transparency and bad governance becomes the policy of the day, then is the time to opt for draconian and repressive laws in order to gain protection from the wrath of the masses. Historically, it has been proven that although governments enact draconian or repressive laws in the name of peoples security', ultimately these laws are always used to suppress the legitimate and democratic voice of the common people and the opposition movements.

Advocate Adilur Rahman Khan has prepared this report for Odhikar, a coalition for human rights.

Women's Rights and Personal Law Board

ASGHAR ALI ENGINEER

LIKE other women, Muslim women are also becoming increasingly conscious of their rights and are asserting themselves for realisation of their rights. Women in general and Muslim women in particular are suffering because of denial of their rights in this patriarchal society. The greater the degree of illiteracy, the greater the lack of consciousness and hence greater their suffering. There being much greater illiteracy among Muslim women in India there is a woeful lack of awareness among them about their own Islamic rights. Islam, as I have repeatedly pointed out, lays great emphasis on sexual equality and, accordingly, grants women equal rights in marriage, divorce, ownership of property etc. However, except for very brief periods of early Islam, women could never enjoy equality of these rights. The 'Ulama, with all their sincere commitment to Islam, were after all products of their time and interpreted the Divine word from a male perspective. They were also influenced by dominant male attitudes of their times and took for granted the prevalent male attitude towards women.

One of the prevailing assumptions in medieval ages was that women had deficient intelligence (naqis al-a1l) and hence should not be entrusted with responsible jobs. As late as the mid-twenties of the twentieth century Maulana Ashraf Thanavi, a great 'alim in his own right said that since women were deficient in intelligence they should not be entrusted with the responsibility of pronouncing divorce. Recently when Hosni Mubarak, President of Egypt, got a law passed in Egyptian Parliament empowering women to divorce their husbands, the 'Ulama opposed it vehemently saying that women were emotional and hasty in decision-making and if women were given right to divorce family life would be destablished. The opposition from the "Ulama was so intense that Mubarak had to drop other measures in order to get the law giving women right to divorce passed.

Many rights which were accorded to women by the Qur'an were denied to them under such assumptions. It is important to note that the Quar'an by itself does not make any such pronouncements. It addresses all human beings men or women as u'lil albab (i.e, people of intelligence) and makes no discrimination between men and women on certain functional on such counts. Though there is a difference between men and women on certain functional maters there is no difference between them in matters of right. Also, though the Qur'an nowhere says that a woman's duty is to look after her husband and children and do household work, the whole Islamic juristic literature is full of such assertions. Such assumptions come not from the Qur'an but from the prevailing social ethos.

The Muslim Personal Law in India is also based on many such assumptions. As pointed out above, Maulana Ashraf Thanavi himself thought that the women were deficient in intelligence, and from such assumptions all the problems of Muslim women flow. What is shocking is that despite evidence to the contrary the 'Ulama's assumptions acquire divine status and are thought to be immutable. The Qur'an grants women right to divorce on giving fudyah (compensation) if she fears she cannot observe Allah's limits, the 'Ulama made it subject to husband's consent on the assumption that she would take hasty decisions and would destabilise family life.

The Muslim women today are demanding their Qur'anic rights. They want to liberate themselves from medieval interpretations of the Qur'an. However, the Muslim personal law board is resisting such demands from women. Some Muslim women, aware of their Islamic rights, drafted a standard Nikahnama and submitted it to the Board. Since marriage is a contract into marital contract. A women thus can lay down a condition that her husband will not take a second wife, or that he will delegate right to divorce to his wife (talaq-e-tafwid) These conditions and similar other conditions, if incorporated into a standard Nikahnama as prepared by some Muslim women and men, could solve much of the problems being faced today by Muslim women without bringing any change in the personal law.

Such Nikahnama is well within Islamic law and even the 'Ulama of the stature of Maulana Ashraf Thanavi had drawn up such a standard Nikahnama way back in the thirties of the twentieth century. However, the members of the Muslim personal law board are sitting tight over the proposal. The Nikahnama submitted to the Board more than an year ago was sent to several 'Ulama for their approval before it was submitted to the Board and it received their approval. There is no condition in it which can be construed as un-Islamic. Even then the members of personal law board are reluctant to approve it.

Recently there was news that the Board is going to consider the Nikahnama in its sitting in October in Bangalore. According to some sources, there are differences among the members of the Board regarding the draft Niakahnama. It is reported that the Board has scripted its own Nikahnama which is a rather watered down version of the one submitted by the Muslim women from Bombay. A five member panel set up by the Board for this purpose has prepared this script. A spokesman of the Board has said that once this standard Nikahnama comes into force triple divorce on account of which many Muslim women are suffering today, will no more be possible. Abolition of triple divorce in one sitting will be a great relief for Muslim women. This form of divorce which all 'Ulama agree is an altered form of divorce and one which has been condemned by the Prophet (PBUH) is still valid in India though it has long been abolished in other Muslim countries including Bangladesh.

It is reported that the Nikahnama being considered by the Board lays down special conditions for divorce, including the right of wife to claim khula' (divorce initiated by wife). The Nikahnama under consideration of the Board is also likely to restrict polygamy. Like triple divorce, polygamy is another serious problem for Muslim women. The Qur'an has permitted it under exceptional conditions but these conditions are violated in practice. The Board should strictly regulate it as has been done in other countries including Pakistan.

With restriction of triple divorce and polygamy Muslim women will not face much legal problems. Other laws of Islam are very fair to them and do not pose any problem. Triple divorce also is not universally practised by all Muslims. The Shi'ah Muslims do not recognise it and even among the Sunni Muslims Ahl-e-Hadith reject this concept. But the Shi'as and Ahle-Hadith are in minority and hence a large number of Muslim women continue to suffer.

It will be a great change if the Muslims personal law board approves of the Nikahnama, which its own sub-committee has drafted. Its present chairman Maulana Mujahidul Qasmi is more liberal and is in favour of approving the new Nikahnama. He is also connected with the Fiqh Academy (the academy of the Islamic jurisprudence) which is actively engaged in taking up newly emerging problems and proposing changes. The Fiqh Academy has also prepared a volume on Ishtiarat fi al-Nikah (The conditions in Marriage). This volume has examined in great detail the conditions which can be stipulated by husband and wife at the time of marriage and has the approval of large number of "Ulama in India from different schools of thought.

Thus it is good news that the Muslim Personal Law Board has almost decided to finally approve the standard Nikahnama in its sitting at Bangalore on 29th October. If finally approved it will be a first significant step in the direction of the reform of Muslim personal law in India. Most of the Muslim countries, with some exceptions, have already carried out reforms benefiting women. In fact secular India should have taken the lead in this direction. However, things seem to be moving, although belatedly and these changes should be welcome by all those concerned with the plight of Muslim women.

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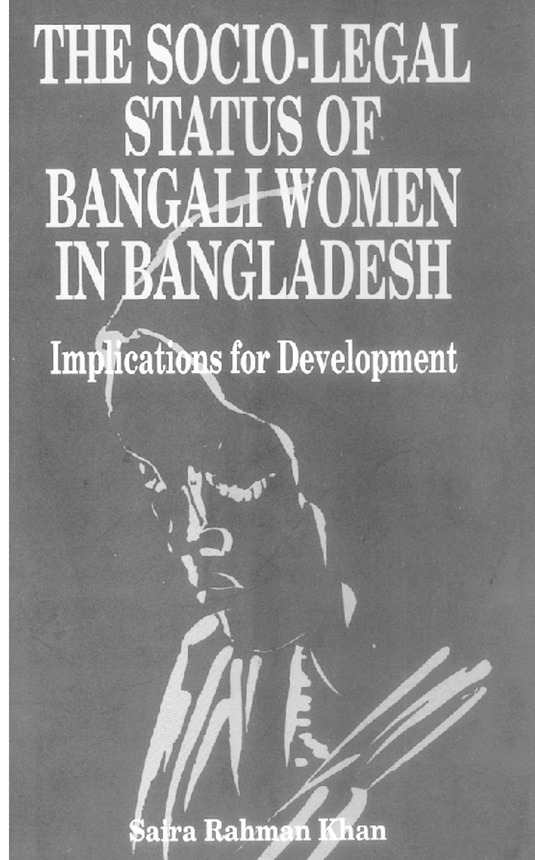
BOOK REVIEW

Judging the socio-legal status of women in Bangladesh

A. H. MONJURUL KABIR

There has been a number of studies on Bangladesh women in the past, which have dealt with either the empowerment of rural women, Muslim women or women in industrial sector. A broad-based socio-legal study on women in Bangladesh is overlooked in the academic discourse. Saira Rahman's scholarly work on the 'Socio-legal status of Bengali Women in Bangladesh' is a valuable and timely addition to this somehow neglected discourse.

The book is divided into IX chapters. The chapter I discusses different options for women in development. It argues that Bangladesh requires a 'plan for gender and development' and not 'women in development'. Development of the social-legal history of Bengali women is mooted in chapter II. Distinct contributions of women for legal and societal reform in the sub-continent have been reflected here. The author examines the legal status of women in the prisms of four specific categories in chapter III: civil laws, personal laws, the family court, and the uniform family code. Aspects of violence against women are analysed in the next chapter. It attempts to show how the lack of implementation of law protecting women and how the actions of vested interest groups are destroying the lives and livelihood of women from both inside the home and in the public. Chapter V focuses another significant aspect, 'Violence in the guise of religion'. The issue of religion and the practice of fatwa, its legality, state response to it and the 'fundamentalists' of human rights in the Quran are some of the points that have been well covered. This chapter has a phenomenal relevance with the recent political scenario of the country, which will, no doubt, help clarifying the ongoing discourse on Islam, fatwa and politics.



Chapter VI discusses the role of nom-government organisations (NGOs) and the Grameen Bank in the lives of women in Bangladesh. The young scholar critically analyses the policies, the method of policy planning, and the forms of hierarchy present in the large NGOs of the country. The role of international financial institutions including the World Bank and the International Monetary Fund (IMF) has been focused in chapter VII. The position of the government of Bangladesh regarding international instruments devised for the protection of women and children is an interesting addition. The writer limits her discussion with relevant provisions of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) in chapter VIII. She could have ventured to accommodate a broader perspective discussing relevant provisions of other international instruments.

The concluding chapter endeavours to amalgamate all the recommendations discussed in previous chapters to formulate a future agenda for action. Appendices including the different institutions of family law in Bangladesh and instances of fatwa pronounced on women add value to the study.

Saira Rahman Khan, a British Chevening Scholar, presently works as a free lance legal researcher in the realm of women, law and developmental issues. She is also an occasional contributor to this page. The book is a revised edition of her Ph.D. thesis obtained in Socio-Legal Studies from the University of Kent, Canterbury, England in 1998.

As usual UPL maintains its standard of quality publication. The price of the book is also reasonable. The analysis, recommendations and suggestions of this book will act as important reference point for academic studies and further research.

The Socio-Legal Status of Bengali Women in Bangladesh: Implications for Development

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