

HUMAN RIGHTS REPORT

State of Human Rights in 2011

THIS is a compilation of the Human Rights report by Odhikar for 2011. The report focuses on the violation of human rights taking different rights separately.

Throughout 2011, violence between and within major political parties continued and the rights of the people to articulate their grievances has been brutally repressed. Ethnic and religious minorities also suffered violence and injustice. Attacks against media did not subside and dissenting voices were punished in the name of 'contempt of court'.

The report mentions that there has been a decrease in number of extra-judicial killings from 127 in the year 2010 to 84 in 2011, it seems that a shift is taking place by which citizens are placed outside legal protection and legal trials by terminating them. The State might have adopted this tactic because of the national and international outcry against extra-judicial killings. The recent decline in the numbers of extrajudicial killings can only be a temporary pause.

The enforced disappearances also increased in 2011. Total 30 people disappeared.

Another alarming indication is the level of violence perpetrated against women. Dowry related violence has increased since 2009. The report shows a chart in which it is reported that the violence against women raised to 516 in 2011 from 157 in 2001.

The report emphasises that, 'Human rights is not merely defending individual rights against the State, but by itself a constitutive of democracy. From this perspective, the 15th Amendment to the Constitution Bill 2011 passed on June 30, 2011 and containing 51 politically sensitive changes is the most alarming event for Bangladesh. The 15th Amendment has fundamentally changed the nature of the Bangladesh State. A Parliament ruled by a single party and the constitutional structure by which political power is concentrated in the hands of the Prime Minister has always been a serious concern for the people of Bangladesh, but making drastic changes in the Constitution, transforming the fundamental nature of the State was unexpected and shocking and has further worsened an already precarious situation'.

The Government has failed to protect the physical integrity and safety of the people. Discrimination on grounds of gender, ethnicity, religion and race were also common in 2011. Individual's rights such as the freedoms of thought and conscience, speech and expression, the press, and movement have also been constantly violated despite Constitutional guarantees. As a result the democratic space for dialogue and consensus building shrunk to precarious levels in 2011, as evidenced even more by the introduction of the 15th Amendment to the Constitution.

Rights such as natural justice or procedural fairness in law, particularly the rights of the accused including the right to a fair trial, due process, and the right to seek redress or a legal remedy have also been violated. The violation of the rights of participation in civil society and politics, such as freedom of association, right to assembly and the right to self defence, have reached critical proportions that demand immediate attention. **Freedom of thought and speech:** Like previous years

gas blocks in the sea. Public and national interests are related to this agreement. Despite submitting a request letter as citizens of the country, they have to date not received any information in relation to this matter from Petro Bangla.

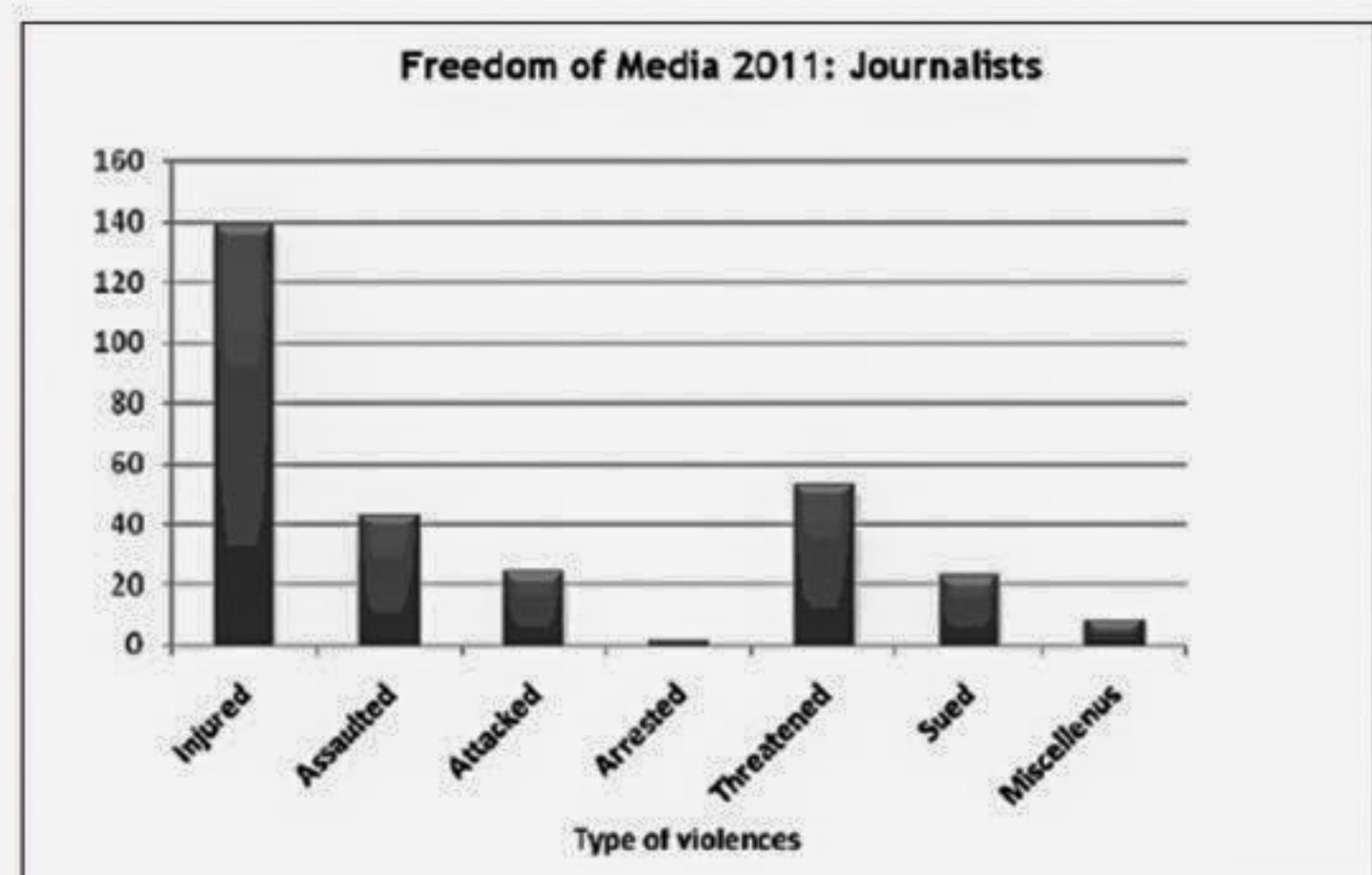
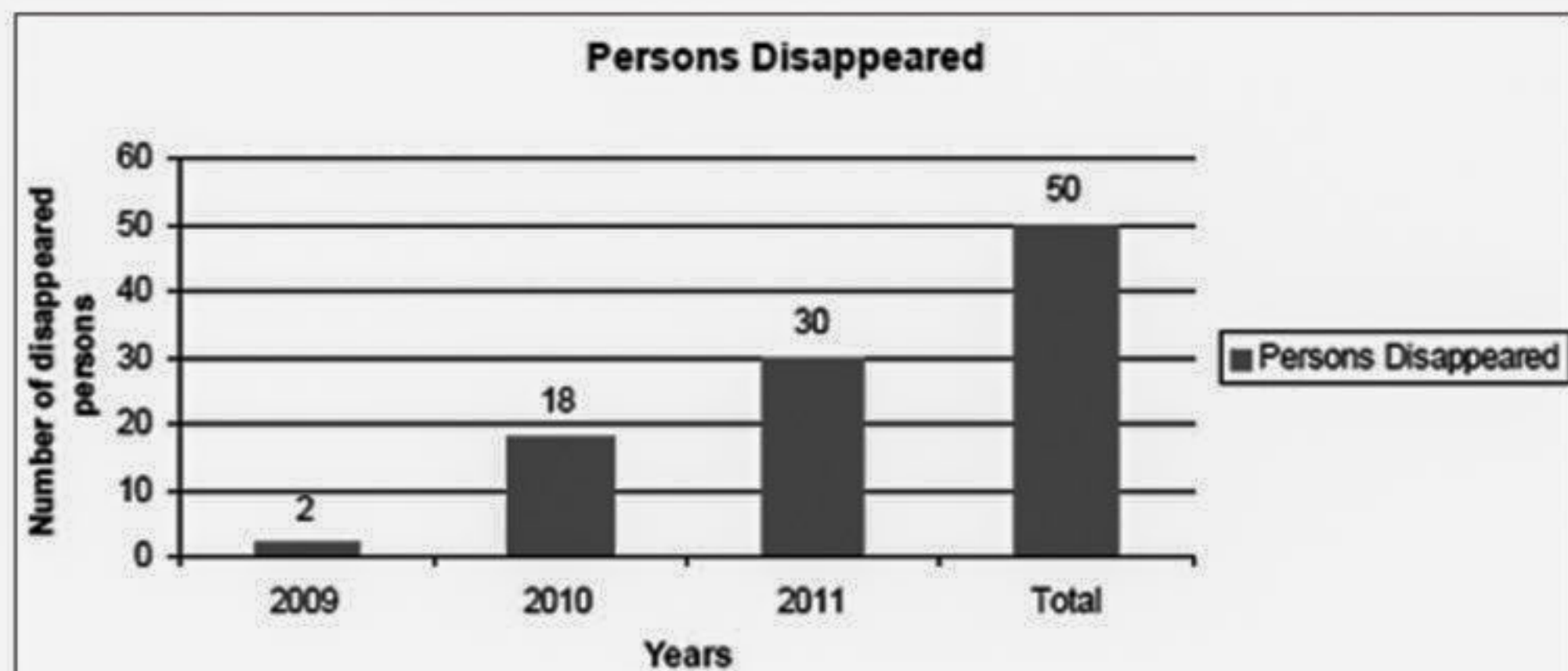
Ethnic minorities: Article 28 of the Constitution of Bangladesh states that 'The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth'. However, the rights of the other ethnic minority communities has been denied by adopting 'Bangalee Nationalism' privileging one language and nation by replacing Article 9 by the 15th Amendment of the Constitution. The amendment also stated in Article 6(2) that 'the people of Bangladesh shall be known as Bangalees as a nationexplicitly denies the existence of non Bengali ethnic minority communities. From January to December 2011, 40 people belonging to ethnic minority groups were killed, 94 injured, 17 abducted, 18 raped and 40 families had their houses destroyed.

Violence against religious minorities leveled up to 183 people starting from simple injury to rape.

Election: Democracy is a form of the State and not merely an electoral process. However, the fundamentals of democracy are often marginalized and ignored, privileging the singular ritual of election. Yet, in countries like Bangladesh where a democratic state is yet to be constituted the electoral process contributes to the formation of the democratic political sphere. Electoral practice signifies the extent of the political autonomy, respect and rights assigned to the citizens to elect a government. A healthy practice of electoral process signifies the institutional strength of the State to articulate the will of the people and the ability of the political parties and citizens to realise democracy. Yet, irrespective of the regimes, elections in Bangladesh have not taken their rightful place as facilitators of the public will. In 2011, most of the elections have been tainted by allegations of corruption, violence and lack of transparency. The Election Commission was not strong enough either. In parliamentary by elections of January 27 and Narayanganj City Corporation polls in November 30, the Government did not comply with the request of the Election Commission to deploy the Army. Article 126 of the Constitution of Bangladesh stipulates that "It shall be the duty of all Executive authorities to assist the Election Commission in the discharge of its functions." The Election Commission should be strengthened to act independently in all situations to hold free, fair and credible elections.

We look forward to a better year with less violation of our human rights, less crimes and better protection of our families and friends.

Compiled by Noor Jahan Punam.



journalists have been victims of attacks and physical assault in 2011. From January to December 2011, according to information gathered by Odhikar, due to professional grounds 139 journalists were injured, 53 threatened, 24 journalists attacked, 43 assaulted and case was filed against 23 journalists. Freedom of Assembly has been infringed at large as well by political groups and also by the police. **Right to Information:** On October 2, 2011 four citizens of the country, political analyst and poet Farhad Mazhar; Professor of BRAC University, Dr. Manjur Karim; New Age Editor, Nurul Kabir; and Odhikar Secretary Advocate Adilur Rahman Khan submitted a letter to the Chairman of Petro Bangla, according to Section 8 of the Information Act 2009, in order to get a certified copy of the agreement signed between it and multi national company Conoco Philips. In the letter, they mentioned that a PSC agreement was signed between Petro Bangla and Conoco Philips on June 16, 2011 for exploring two



YOUR ADVOCATE

This week Your Advocate is Barrister Tanjib-ul Alam Advocate, Supreme Court of Bangladesh. He is the head of the chamber of a renowned law firm, namely, 'Tanjib-ul Alam and Associates ', which has expertise mainly in commercial law, corporate law, admiralty, employment and labor law, land law, banking law, constitutional law, telecom law, energy law, Alternative Dispute Resolution, Intellectual Property Rights and in conducting litigations before courts of different hierarchies.

Query

Many people do not know that there is a general mode of winding up of company by the Court under section 241 of the Companies Act, 1994. For example: some persons have incorporated 7 different companies at a time but they do not run business of any of them for more than 6 years. Those companies are in on their name merely. No sorts of practical activities have ever followed of those companies. Now, the director-shareholders of the company wishes to wind up those companies. Would you please enlighten me about the procedure and the nature of particular undertaking which the aforesaid persons might have taken aftermath for winding up those companies?

Shariful Islam
Dhanmondi

Response

The concept of winding up of a company is quite elaborate. This forum may not be suitable to discuss all issues involving winding up. However, I will try to give some basic features of winding up.

There are at least three modes of winding up a company namely (a) by the Court, (b) voluntary and (c) subject to the supervisions of the Court.

A company may be wound up by the Court is six situations namely (i) if the company has by a special resolution resolved that the company be wound up by the Court; or (ii) if default is made in filing the statutory report or in holding the statutory meeting; or (iii) if the com-

pany does not commence its business within a year from its incorporation, or suspends its business for a whole year; or (iv) if the number of members is reduced, in the case of private company below two, or, in the case of any other company, below seven; or (v) in the company is unable to pay its debts; or (vi) if the Court is of opinion that it is just and equitable

voluntarily; (b) if the company resolves by special resolution that the company be wound up voluntarily; and (c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

A company may be wound by the creditors in compliance with the procedure



that the company should be wound up.

A company may be wound up by the shareholders voluntarily in the following circumstances, namely (a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any occur, on the occurrence of which article provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up

prescribed in section 298-305 of the Companies Act.

Considering the above scenario, I understand that you are interested to know about procedure to be followed by the shareholders to wind up dormant companies. As indicated above, a dormant company may be wind up either under the supervision of the court or by the shareholders voluntarily. If the shareholders of dormant company wishes to avoid going

to the Court, they can avail the procedure prescribed under section 287-296 and achieve voluntary winding up.

A voluntary winding up procedure will involve the following steps:

- Holding Board Meeting for taking decision on fixing a date of EGM;
- Declaration of solvency by all the Directors of the company and delivery of the same to RJSC;
- Holding EGM for passing Special Resolution;
- Publication of notice of Special Resolution in the Gazette and local newspapers;
- Appointment of Liquidator;
- Meeting of the shareholders at the instance of the Liquidator;
- Audit of the Company and submission of Financial Report to the shareholders;
- Distribution of assets to the creditors and contributories if there is any surplus;
- Submission of Return to the RJSC.

After three months of submission of the Return by the Liquidator, the company shall be deemed to have dissolved.

Apart from the above mentioned lengthy procedure, section 346 of the Companies Act confers power upon the Registrar to strike defunct company off the register. If any person wishes to avoid the winding up procedure, it may cause the Registrar to invoke its jurisdiction under section 346 of the Companies Act.

For detailed query contact: info@tanjibalam.com.



LAW WEEK

Ex-DMCH director lands in jail for graft

A Dhaka court on January 18 sent former director of Dhaka Medical College Hospital Brig Gen Bazle Quader to jail custody on his surrender before the court in connection with 10 graft cases. Metropolitan Magistrate Kamrunnahr Rumi passed the order after the accused appeared before the court and sought bail in the cases. Syed Tahsinul Haque, an assistant director of the ACC, filed the cases with Shahbagh Police Station on November 16, 2011. In between July 2009 and June 2010, a group of DMCH staff including Bazle Qader purchased 7,409 ampoules of the drug causing a loss of over Tk 1.34 crore to the state coffers, according to the ACC. During that period, seven DMCH staff in collaboration with a Public Works Department official and 10 private drug store owners misappropriated over Tk 6.68 crore, show case documents. - *The Daily Star online edition January 18 2012.*

HC to make Kuakata beach ideal for

tourists

The High Court on January 18 suggested the government to make a master plan to turn Kuakata Sea Beach into an ideal tourist spot. It asked the government to immediately remove all structures from Kuakata sea beach built by any individual or company. The HC bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Jahangir Hossain Salim came up with the order after hearing a writ petition filed by Human Rights and Peace for Bangladesh (HRPB) on June 2 last year. - *The Daily Star online edition January 18 2012.*

Prime accused freed on bail in Lokman

killing

Salaudin Ahmed Bacchu, younger brother of a minister and prime accused in Lokman murder case, was freed on bail along with two others on January 17, although the chief judicial magistrate's court had ordered sending them to jail. Though, the investigating officer of the case produced Salaudin, Amir Hossain Amu and Mamun before the court on completion of their one-day remand but when lawyers of the trio appealed to the district and session judge's court for bail and after a brief hearing the judge granted their prayer. Earlier on different dates, Narsingdi court granted bail to eleven others implicated in the murder of mayor Lokman Hossain. Of the total accused, only Ashraf Hossain Sarkar is now in prison. - *The Daily Star January 18 2012.*

Decision on Kamaruzzaman's charges

Jan 31

International Crimes Tribunal will pass its decision on January 31 whether it would accept or not charges against Jamaat-e-Islami leader Mohammad Kamaruzzaman in connection with his alleged involvement in crimes against humanity during the 1971 Liberation War. The court fixed the date on January 18 when it was scheduled to make its decision public. The three-judge tribunal headed by its Chairman Justice Nizamul Huq said the date was re-fixed as they could not finish scrutinising the formal charges and relevant documents regarding the detained Jamaat assistant secretary general's 1971 role. - *The Daily Star online edition January 18 2012.*

HC summons Rajuk boss, officials

The High Court on January 17 summoned the Rajuk chief and officials concerned in connection with the incidents of land grabbing of Gulshan Lake and collapse of a portion of the Circuit House road in the city. In a suomoto order, the court directed Rajuk Chairman Nurul Huda, its Ramna zone engineer, and authorised officers of Ramna and Gulshan zones to appear before it on January 24 to explain why the have failed to protect the lake's land and the road. It also directed the officials concerned to take steps so that such incident of collapse does not repeat. The HC bench of Justice AHM Shamsuddin Choudhury Manik and Justice Jahangir Hossain Selim came up with the order following two reports published on The Daily Star and the daily Prothom Alo on January 17. - *The Daily Star January 18, 2012.*

HC to take action against Rab

The High Court on January 16 directed the government to take departmental action against a Rapid Action Battalion official for illegally detaining a person for 27 hours in Narayanganj in 2004. The authorities have to take action against Lt BN Firoze Khan, then in Rab-3 of Adamji Nagar in Narayanganj, as he neither did produce Mohammad Dolon, an accused of an arms case, in the police station concerned nor file a case against him within 24 hours after picking him up, the court said in a verdict. The HC bench of Justice M Enayetur Rahim and Justice Sheikh Md Zakir Hossain delivered the verdict after hearing an appeal filed by Dolon challenging a lower court verdict that convicted and sentenced him to 10 years' imprisonment in 2009. The HC bench exonerated Dolon in the case filed by Firoze Khan in connection with recovery of arms from him. - *The Daily Star January 17 2012.*

Dear reader,

You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those.

Please send your mails, queries, and opinions to: Law Desk, The Daily Star 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel: