

LEGISLATIVE AND POLICY DEVELOPMENTS

This chapter outlines new laws and policies adopted or proposed during the year which impacted on human rights. The withdrawal of the State of Emergency (SoE, by the President on 16 December 2008, was preceded by a year which saw some key laws enacted focusing on institutional reform within the judiciary, addressing long-standing demands regarding the right to information, and more disturbingly, involving the creation of a raft of new offences on 'terrorism'. Major policy developments addressed women's rights, and renewable energy sources.¹ Laws proposed or drafted but not ultimately adopted by year end concerned violence against women (on domestic violence and sexual harassment) and on police reform.

The Anti Terrorism Ordinance 2008, promulgated on 11 June 2008, defines an “act of terrorism” across a broad spectrum, including ‘any act that poses a threat to the sovereignty, unity, integrity or security of Bangladesh or creates panic among the general masses or obstructs official activities’.² It defines a terrorist activity as a person killing another, inflicting serious injuries, detaining or kidnapping, or causing loss of property to any person, as well as using or keeping any explosive and flammable materials, firearms or any kind of chemical substances in his or her possession.³ It also establishes an offence of financing terrorist groups, punishable with a minimum of three and maximum of 20 years’ imprisonment, along with fines.⁴ Sheltering a terrorist is punishable by a maximum of five years’ imprisonment.⁵ Anyone who carries informational material or broadcasts in support of an outlawed party can be imprisoned for a minimum of two years and a maximum of seven, along with a financial penalty. The death penalty is applicable for terror financing and staging murder to create panic and jeopardise the country’s sovereignty.⁶

ASK has condemned the promulgation of the new law without any public consultation, particularly in view of the harsh penalties including the death penalty which it imposes, and for the wide powers of arrest and detention which it provides to the government. It has expressed concern, based on its experience of abuse of similar laws by past governments, that the law may be invoked to curtail voices of dissent rather than against terrorists or terrorism.⁷ Disturbingly, most of the new offences of “terrorism” are triable under the previous criminal laws of the country.⁸

The Contempt of Court Ordinance 2008 was promulgated on 25 May 2008 replacing the Contempt of Court Act 1926. It specifies that any wilful act, statement, or expression that may violate any verdict, decree, order, writ or warrant issued by a court that affects the normal course of the trial process may constitute contempt. Contempt may also include obstruction of justice.⁹ It permits comments in the press on any “normal” court proceedings and functions or seeking disciplinary proceedings against any judge as long as it is done in “good faith” and through “restrained language”. It also allows reports of a judge's alleged corruption or incompetence and their extra-judicial activities outside their judicial functions as well as constructive criticism of any judg-

1 “Renewable Energy Policy of Bangladesh”, www.powerdivision.gov.bd.

2 Anti Terrorism Ordinance 2008, section 2.

3 *Ibid*, section 6.

4 *Ibid*, section 7.

5 *Ibid*, section 14.

6 *Ibid*, section 12.

7 “Council of Advisers approve the Anti Terrorism Ordinance 2008”, ASK Press Release, 20 May 2008.

8 “Legal experts oppose anti terror ordinance”, www.bangladeshnews.com.bd, 16 June 2008. (Criminal law expert and human rights activist Shahdeen Malik said there was no need for a fresh law and that offenders could be prosecuted under existing laws).

9 Section 2, Contempt of Court Ordinance 2008.

ment.¹⁰ The ordinance provides that contempt proceedings must be resolved within two years, and within one year in cases where the proceeding is deemed to adversely impact the country. Punishment for contempt of court is maximum six months of simple imprisonment, a fine, or both.¹¹

The High Court Division declared this Ordinance invalid, and observed that it undermines the spirit of the constitution and independence of the judiciary.¹² Citing Article 58 (D) of the constitution,¹³ the Court said enacting a new law repealing an existing one was a policy decision and since it was not connected with elections it was done without lawful authority. It also held that section 10(1) of the Ordinance which exempts public servants accused of contempt from personally appearing before courts violates the principle of equality before law.¹⁴

The Supreme Judicial Commission Ordinance 2008, promulgated on 16 June 2008 establishes a nine-member body to make proposals regarding judicial appointments for the Supreme Court. This body is headed by the Chief Justice, and includes the Law minister, the two senior most judges of the Appellate Division, two senior most judges from the High Court Division, the Attorney General of Bangladesh and the President of the Supreme Court Bar Association.¹⁵

The initial proposals of names for appointment will be made through the Law Ministry, of upto five names per vacancy, and the Commission shall select a maximum of two names per vacancy. The Commission may consider names other than those proposed by the Ministry,¹⁶ and will make decisions by consensus or in default, on the basis of majority vote.¹⁷

The President is to appoint judges on the Commission's recommendation and may return any recommendation for reconsideration. In such case the Commission may reconsider and send in a new recommendation, or again forward its original recommendations. If the President does not act on any recommendation, he must give reasons for doing so.¹⁸

Critical comments from the media and legal experts on the Ordinance noted that it had effectively undermined the spirit behind it by extending the role of the executive over the judiciary, by empowering the Law Ministry to make the initial proposals.¹⁹ Disproportionate weight appears to be given to the executive, given that four out of nine members of the Commission are the Law Minister, the Law Secretary, the Attorney and a ruling party MP; this is exacerbated by the fact that only five persons (including the CJ) would form a quorum. The membership of the Law Secretary in such a position is unprecedented, and the involvement of members of the executive offends the doctrine of separation of powers.²⁰ Some commentators noted that the Law Ministry's nomination would breach the convention of appointment by seniority to the Appellate Division.²¹

These new rules do not establish any criteria for selection of judges. Thus, although they President may ignore the recommendation of the Commission wholly. Though he is required to put in writing the reasons

10 Section 3, *ibid.*

11 Section 5, *ibid.*

12 Ruling on a writ petition challenging the legality of some provisions of the Contempt of Court Ordinance 2008, an HC bench comprising Justices ABM Khairul Haque and Md Abu Tariq also observed that the ordinance curtails the magistracy of the Supreme Court.

13 Art. 58(D) provides that the Caretaker Government (CTG) shall confine itself to discharging routine functions and tasks relating to the conduct of general election. It shall not make any policy decision except in the case of necessity.

14 Zahurul Alam, "Bangladesh HC Declares Contempt of Court Ordinance Invalid", www.news.voa.com, 24 July 2008.

15 Section 3, The Supreme Judicial Commission Ordinance 2008.

16 Section 6, *ibid.*

17 Section 4(7), *ibid.*

18 Section 9, *ibid.*

19 M. Jashim Ali Choudhury, "Supreme Judicial Commission needs readjustment", *The Daily Star*, 10 May 2008.

20 Mizanur Rahman Khan, "Bicharpoti Nioge Ain Montronaloyer Shadinota Ghoshona", *Prothom Alo*, 24 March 2008; Shahdin Malik, "Bichar poti niyoger udvot odhadesh" [Peculiar Ordinance for appointing Justices], *Prothom Alo*, 26 March 2008.

21 Sections 6(1) and (2), Supreme Judicial Commission Ordinance 2008.

behind his so doing, there is no express provision for publication of the reasons. So the reasoning may be withheld from public on the excuse of the security of the State or public policy.

The Right to Information (RTI) Ordinance 2008, promulgated on 20 October 2008, aims to “empower people as well as ensure transparency, accountability and establish good governance”.

This law provides that any person may seek information from the government and certain other institutions using public funds and obtain the same within 20 days of applying for it. It also provides for establishment of a five member Information Commission. A five member selection committee, headed by an Appellate Division Judge, is envisaged as naming three persons against each post, one of whom will be appointed by the President. Any individual aggrieved at not getting information or being supplied with incorrect information can first appeal to the organisation concerned, and then to the Information commission. The penalty for failure to provide information, or providing wrong information is Taka 25,000 and departmental action.

The Government drafting committee had initially barred disclosure of information on grounds of “public interest” and “state honour” [what is bangla phrase] but withdraw this on public criticism. However, the draft ultimately excluded a number of sectors and a number of agencies, including eight major intelligence agencies, from the obligation to disclose information.²²

The Representation of People (Amendment) Ordinance 2008, promulgated on 19 August 2008, introduced a set of new disqualifications for candidates for parliamentary elections and also set down criteria for registration of political parties. Such bars apply to any convicted war criminals,²³ or former members of the civil service, defence forces or any public authority, or the defence services, or former chiefs of NGOs (for three years from their resignation/retirement)²⁴ (such persons would also not be eligible to serve as Advisors to any CTG).²⁵ The bar extends to financial defaulters including those defaulting on utility service bills.²⁶ However, earlier plans to bar any person convicted of an offence of moral turpitude were not carried through following protests from political parties (with both political parties ultimately fielding persons, who had been convicted of such offences but obtained bail pending appeal).

Parties intending to run in parliamentary elections are required to meet certain criteria, including severing relations with front organisations and dissolving overseas units.

Political party registration was made subject to some certain conditions laid down in Article 90B including securing at least one seat with its electoral symbol in any parliamentary election held since the independence of Bangladesh or securing five percent of total votes cast in the constituencies in which its candidates took part in any of the aforesaid parliamentary elections; or establishing a functional central office, by whatever name it may be called, with a central committee and district offices in at least ten administrative districts and offices in at least fifty Upazilas or Metropolitan Thanas. Parties were also required to fix the goal in their party constitutions of reserving at least 33% of all committee positions for women including the central committee and successively achieving this goal by the year 2020. Finally they were required to prohibit the formation of any organization or body as its affiliated or associated body consisting of the teachers or students of any educational institution or the employees or labourers of any financial, commercial or industrial institution or establishment or the members of any other profession.

The RPO further specified certain disqualifications for registration, including if the objectives of any party constitution are contrary to the Constitution or manifest any discrimination regarding religion, race,

22 “Right to Information Ordinance Okayed”, *The Daily Star*, 19 June 2008. Also see www.bangladeshnews.com.bd, 19 June 2008.

23 Article 12(a), Representation of People (Amendment) Ordinance 2008.

24 *Ibid.*

25 *Ibid.*

26 *Ibid.*

caste, language or sex. A party could also face cancellation of its registration if it fails to participate in the parliamentary elections for two consecutive terms or is banned by the Government.²⁷

The EC has also recovered the power to cancel candidatures for gross violation of electoral laws and misconduct (this power was taken away following pressure from political parties).²⁸

An option to cast a 'no vote' in the parliamentary polls has been included for the first time; with the scope for the election in any constituency where such no-votes exceed 50 percent to be cancelled and a bye-election held.

The Bangladesh Labour Law (Amendment) Ordinance 2008, promulgated on 8 May 2008 brought in a number of changes regarding trade unions operations in the ports. It dissolved the Dock Workers' Management Board, arranging for the port authorities to absorb Board personnel, prohibited trade unions from setting up any office within 200 metres of the ports,²⁹ and required a deposit of, 50 per cent of any donation to the port's welfare fund to be given to the labour welfare fund.³⁰ It also enhanced penalties for violation of labour laws to three months' imprisonment and a fine of taka 25,000 (increasing the earlier Taka 10,000 penalty).

The Attorney Service Ordinance 2008, promulgated on 18 May 2008 established an Attorney Department to deal with all litigation on behalf of the state.³¹ The Department proposed recruiting 197 Law Officers (Attorneys) for the Supreme Court and 1,799 others for the subordinate courts to be approved by the ministries concerned. The High Court on 29 July issued an order of stay on the Ordinance and any appointments to be made under it. The High Court also asked the government to explain in four weeks why the ordinance would not be declared illegal and void, after hearing a public interest litigation writ petition filed by four Supreme Court lawyers Abdul Mannan Khan, Chanchal Kumar Dutta and Khandaker Anzuman Ara Shelly challenging the legality of the ordinance.³²

The Council of Advisers approved amendment of the Attorney Service Ordinance on 20 November so that it would only apply to the subordinate court. At the district level, district attorney services would be constituted comprising of a district attorney, additional attorney, joint attorney and assistant attorney.³³ Lawyers in the Attorney General's Office in the Supreme Court would continue to be appointed in accordance with earlier practice, and would not be subject to this law.

The Money Laundering Prevention Ordinance 2008, promulgated on 15 April 2008 provides that the Bangladesh Bank can seek help from countries or agencies to investigate and recover assets through memoranda of understanding (MoU), contracts and conventions with governments or organisations.³⁴ The ordinance allows the Government to seek help from any country and assist investigative agencies to probe crimes linked to money laundering, and confiscate laundered money. The ordinance allows the Bangladesh Bank to fine courier services, micro credit institutions, NGOs, and share and security brokers, if they violate 17 "predicate offences" comprising the ordinance rules.³⁵ Such offences include corruption and bribery, forgery of currencies and documents, extortion, cheating, dealing in illegal arms and drugs, smuggling, abduction for ransom, murder, sexual harassment, smuggling of local and foreign currencies and human trafficking.³⁶

27 Article 90G, *ibid*.

28 Article 91E, Representation of People (Amendment) Ordinance 2008.

29 Section 2, Bangladesh Labour Law (amendment) Ordinance 2008.

30 "Govt to Allow Limited Scale Trade Union Activities" www.bangladeshnews.com.bd, 7 May 2008.

31 Section 3, Attorney Service Ordinance 2008.

32 "Attorney services ordinance stayed", *New age*, 30 July 2008. The High Court bench comprised of Justice Khademul Islam Chowdhury and Justice Mashuque Hosain Ahmed.

33 "Cabinet okays two ordinances", *New Age*, 21 November 2008.

34 Section 26, The Money Laundering Prevention Ordinance 2008.

35 Section 23, *ibid*.

36 Ashfaq Wares Khan, "Contempt of Court Ordinance Okayed", *The Daily Star*, 3 March 2008; "Contempt ordinance approved in principle", *New Age*, 3 March 2008.

The Local Government (Upazila Parishad) (Amendment) Ordinance 2008, promulgated on 25 November 2008 disqualifies candidates for the parliamentary election for contesting the Upazila election.³⁷ An earlier amendment to this law in June had barred any candidate from standing for more than one post in an Upazilla election. The new amendment also empowered the EC to cancel candidatures for violation of the code of conduct.³⁸

Citizenship (Amendment) Ordinance 2008, amends sections 4 and 5 of the Citizenship Act 1951 allowing husbands of Bangladeshi women to apply for citizenship and also permitting the acquisition of citizenship by birth through both mother and father removing the earlier gender-discriminatory provisions of the law which prevented a woman from transmitting nationality to her spouse or child.³⁹

The Ain Sringkhala Bignokari Aporad (Druta Bichar) (Amendment) Ordinance 2008 promulgated on 7 April 2008 increases the penalty⁴⁰ of “Six years” provided in section 1(2) of the Ain Sringkhala Bighnakari (Speedy Tribunal) Act 2002 to “Eight years”.

Protection of Consumer Rights Ordinance 2008 was promulgated on 13 October.⁴¹ The Ordinance provides that failure to exhibit a fixed price list of items to be sold,⁴² charging a higher price than the fixed price,⁴³ creating discrepancies in the weight of goods,⁴⁴ attempting to trick consumers with false advertising,⁴⁵ amongst others, would be considered offences under the ordinance. Breach of any provision of the Ordinance is punishable by up to three years imprisonment or a fine of Taka 200,000 or both.⁴⁶

Draft Laws

A Draft Police Ordinance

It has been drawn up to replace the Police Act 1861, in an attempt to improve accountability and the quality of service of the police force,⁴⁷ and unusually for new or proposed legislation, has been posted on the Government website for public comment.⁴⁸

Part-II of the draft Ordinance outlines the police’s duties to the general public, and specifies that the general public, in particular women and children should be treated with care, that the fundamental rights of citizens should be protected at all times and that a sense of safety should be cultivated in particular with regard to the underprivileged members of society.⁴⁹ The draft ordinance further makes provision for respect for freedom of religion of the public and protection of the rights of an arrested person.⁵⁰

At Part-VIII of the draft provides the procedures to be followed for making complaints against any police officers. A body is to be set up under the ordinance to receive complaints and to carry out investigations.

The draft ordinance has not clearly delineated the provisions relating to a decentralisation of the police. Commentators have noted that in order to bring about quality and efficiency in the service, a devolution of authority from the top to the lower rungs of the police administration as well as a definition of powers enjoyed by police personnel away from headquarters are an imperative not to be ignored. Consultation on the draft through eliciting the opinions of experts, politicians, civil society members and associating them in the

37 Section 3, The Local Government (Upazila Parishad) (Amendment) Ordinance 2008.

38 “JS Poll Runners Barred from Contesting in Upazila Race”, *www.Bangladeshnews.com.bd*, 2 December 2008.

39 “CG assigns council committee to resolve 27th BCS crisis” *The Independent* (Internet edition archives)

40 Section 2, The Ain Sringkhala Bighnakari (Speedy Tribunal) (Amendment) Ordinance 2008.

41 Ordinance 49 of 2008.

42 Section 39, *ibid.*

43 Section 40, *ibid.*

44 Section 46, *ibid.*

45 Section 44, *ibid.*

46 Chapter VI, *ibid.*

47 ‘Draft of Police Ordinance 2007 Prepared, *New Age*, 10 April 2008.

48 “Govt Invites Public View on Draft Police Law”, *BD News 24*, 2 December 2008. See <http://www.bdnews24.com/details.php?id=70173&cid=2>.

49 Section 3, Draft Police Ordinance 2007, at: <http://www.mha.gov.bd/pdf/policeord08.pdf>

50 *Ibid*, section 4.

reform of the police administration still has to take place.⁵¹ A website was launched for this purpose by the Ministry of Home Affairs - but by year end no further action had been taken to revise the Draft.⁵²

Domestic Violence (Prevention and Protection) Bill

A coalition of forty human rights and women organisations on 30 June submitted this Draft Bill, prepared through extensive national consultations, to the Advisor, Ministry of Women and Children Affairs, following on from efforts to draft a bill by the Law Commission in 2005. The Bill defines domestic violence, and provides protection under civil law to any woman affected by such violence. But to date no action has been taken by the Ministry to progress work on this Draft Bill (See Women's Rights Chapter).

Policies

National Women's Development Policy 2008

On International Women's Day, the Chief Advisor announced National Women's Development Policy 2008. The present Policy announced an increase of the duration of maternity leave provisions (to five months from four) and reiteration of the creation of the necessary environment for increased participation of women in the foreign labour market, reservation of one-third seats in the National Parliament for women and taking steps to ensure transparent elections to the reserved seats.

The announced policy of 2008 was condemned by a section of Muslim clerics as un-Islamic. Specifically, the clerics objected to any possible change to the inheritance laws that would allow women to get equal inheritance rights as men. In fact the new policy included no such provision (unlike the original policy of 1997). On 11 March, the Government announced that it had no intention of passing any law that is "anti-Islam."⁵³ On March 27, the Government formed a 20-member committee to identify inconsistencies in the policy as per Islamic rules on 17 April, the committee recommended that the government amend the announced policy, replacing any commitment to equality between the sexes with "just rights" for women⁵⁴ (see Women's Rights Chapter).

Guidelines

Draft Guidelines to Prevent Sexual Harassment in Higher Educational Institutions

A set of regulations to prevent and punish sexual harassment at higher educational institutions has been drafted by a committee established by the University Grants Commission; reportedly it was to be submitted to the education ministry on 7 December.⁵⁵ The draft defines sexual harassment and also provides that university authorities should establish inquiry committees to examine any allegation. It has also stipulated that teachers, students, officials and employees should be involved in a mass awareness campaign on the nature of sexual harassment and their responsibilities to prevent it. The regulations may be enforced at college-level institutions and other workplaces. The need to enforce regulations against sexual harassment came to the forefront after a number of such allegations in educational institutions and the Committee began its work after the most recent such scandal at Jahangirnagar University (see Chapter on Women's Rights).

51 "Draft Police Ordinance", *The Daily Star*, 14 August 2007.

52 "Website launched to elicit public opinion", *The Daily Star*, 3 December 2008.

53 Jyoti Rahman, Lessons from the Women Development Policy Debacle, in Forum Vol 3 Issue 6, 2008. Available at: http://www.thedailystar.net/forum/2008/june/women_development.htm

54 *Ibid.*

55 "Sexual harassment rules drafted", www.bdnews24.com, 3 December 2008.