

## RIGHT TO ASSEMBLY AND FREEDOM OF ASSOCIATION

*This chapter examines the roll-back of Emergency Rules to allow full political activity and trade union activity as well as the selective application of such Rules to allow protests by religious right groups amongst a few others while severe restrictions continued to apply to others. It also highlights the resort to mass arrests in the course of ‘anti shontrash [violence] drive’ as well as cases of violence resulting from conflicts between political parties that occurred during the year.*

### Legal and Policy Framework

The state is bound under the Constitution and international treaty obligations to ensure freedom of assembly, freedom of movement and freedom of association, including for trade unions.<sup>1</sup> Since the declaration of the State of Emergency (SoE) on 11 January 2007 until its lifting on 17 December these rights were suspended, as was the right to enforce them by way of constitutional writs. In the interim, in May and September respectively some of the Emergency Rules relating to political and trade union activity were relaxed.

### Part Withdrawal of Emergency Regulations

The Emergency Rules imposed in January 2007 had restricted meetings, assemblies and demonstrations by political parties, trade unions (with an exception for religious, social, state or government functions) and political activities by all professional groups, including students and teachers. Breach of any of these sections was made punishable by a maximum of five years imprisonment. On 12 May 2008, the Chief Advisor announced the part withdrawal of restrictions on political activities, permitting ‘indoor politics’. The holding of outdoor public meetings and assemblies remained prohibited until December.

### Trade Union Activity Restored in Stages

The restrictions on trade union activities following the promulgation of the EPR had brought trade union activities to a stand still for almost two years throughout the country. On 3 September 2008, the Government issued an order relaxing the restrictions but subjecting them to nine conditions.<sup>2</sup> These specified that trade union activities could be carried out indoors only, that CBA (Collective Bargaining Agent) elections could be held with prior permission from the relevant Metropolitan Police Commission or in some places, the District Magistrate; that the concerned authority (the Metropolitan Police Commission, the District Magistrate or the Upazila Executive Officer) should receive 48 hours prior notice for any meeting.

That a maximum of one hundred persons could participate at such meetings; that the police or administration would have to issue prior permission for any meeting involving 500 or more persons, and that meetings should be held in the trade union office or indoors. Restrictions were also imposed on broadcasting any such meeting over the media, or using mikes.

On 17 December, the State of Emergency was withdrawn and the right to seek enforcement of fundamental rights to assembly and association was restored.<sup>3</sup>

### Selective Application of Emergency Rules

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<sup>1</sup> Article 37 of the Constitution provides that all citizens have the right to participate in peaceful and quiet assemblies and processions. Again, under Article 38, every citizen has the right to form associations. These rights may be subject to reasonable restriction by law in the interests of public order and public health.

<sup>2</sup> “Trade Union Prohibition Relaxed on Nine Conditions”, *Shamokal*, 8 September 2008.

<sup>3</sup> See also Chapter on Rights of Workers.

The EPR prohibitions were selectively applied by the law enforcement agencies in a number of cases. The failure of the law enforcement agencies to curb violent protests by religious parties in March against the Women's Development Policy and later in the year, attempts by such groups to break down public monuments and statues, contrasted sharply with the continuing restrictions on other forms of protests, and indeed with the refusal to grant permission to campaigners in favour of the Policy to hold outdoor meetings.

#### *Protest against Women's Development Policy*

On 8 March after the Government announced that it had adopted the National Women's Development Policy, several religious groups including the Khelafat Majlish (a political party) commenced a countrywide demonstration against this policy on 9 March. Their actions on 14 March included a huge procession starting from the Baitul Muqarram Mosque (the national mosque), Dhaka, which faced no police obstruction. Indeed the Government, through its Advisor on Religious Affairs, held talks with these groups and declared that they respected their demands.<sup>4</sup> Some 30 religious groups, including Hizbut Tahrir, Khelafat Majlis, Khelafat Andolan, Islami Opposition Committee, Shariah Protection Committee, Islami Shashon Andolan reportedly held demonstrations in mosques and madrassahs against the Government, inciting violence, in many cases even attacking the police, with little or no response from the state authorities.<sup>5</sup>

On 10 November 2008, two persons accused of corruption, Matiur Rahman Nizami, and Ali Ahsan Mohammad Mujahid, both former Ministers of the Four Party Alliance, and Amir and Secretary of the Jamat i Islami respectively, presented themselves before the Special Court to seek bail. The Court however refused their application and remanded them to prison. Jamat cadres staged a seven hour siege in front of the Special Court located in the Parliament area, and blocked all movement in the area with no immediate action by the authorities.<sup>6</sup>

#### **Mass Arrest**

In addition to the earlier practice of resorting to powers of arrest without warrant existing criminal laws, under the Emergency section 16(2) of the EPR was added to the arsenal of instruments of 'mass arrest'.<sup>7</sup> A country wide special operation against terrorism (*Shontrash Birodhi Bishesh Obhijan*) held from 29 May to 12 June reportedly resulted in the arrest of more than 20,000 people.<sup>8</sup> During the period of emergency, section 16(2) of the EPR was resorted to (with the consequence that no bail could be sought in such cases), alongside the more com-

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4 All national dailies, 14 March 2008.

5 "Repeated breaches of Emergency Rules, Police being beaten up, Government unmoved", *Sangbad*, 12 April 2008.

6 "5-Day Programme for demand of release of Nizami and Mujahid", *Prothom Alo*, 11 November 2008.

7 Section 54 of the CrPC had earlier been resorted to widely when carrying out such mass arrests. Under this section, the police can arrest any person without any warrant on suspicion of their committing any offence. In Dhaka Metropolitan City, under sections 86 and 100 of the Dhaka Metropolitan (DMP) Ordinance, the metropolitan police can arrest any person without a warrant on suspicion of committing an offence. Similar laws are applicable in other Metropolitan Cities of Khulna, Rajshahi and Chittagong. ASK, BLAST and other organizations together filed a writ petition in 2003 challenging arbitrary arrest under section 54, and the Government's appeal against the judgment in their favour is currently pending in the Appellate Division (Civil Appeal No. 53 of 2004.). In 2004, they also filed another writ petition (No 2192 of 2004) challenging the mass arrests under section 86 of the DMP Ordinance. In both cases, the High Court directed the police not to arrest innocent people. However, incidents of mass arrest recurred as noted.

8 ASK Documentation Unit.

monplace cases under sections 54 of CrPC and section 86 of DMP Ordinance. On 9 June, police headquarters confirmed that out of a total of 20,002 arrests during the special operations, 13,778 were arrested under warrants, 120 under the Arms Act and Explosives Act, 5,913 in other criminal cases and 191 under the EPR.<sup>9</sup> Later, the Adviser for Home Affairs suggested a rise in number of arrests, confirming that about 25,000 persons had been arrested in the country wide operation against terrorism between 29 May to 12 June 2008, 16,997 of them under warrants related to specific offences.<sup>10</sup> However, one newspaper claimed that the majority of some 12,000 people arrested over eight days from 29 May to 4 June, had been held under section 16(2) of the EPR.<sup>11</sup>

### Use of Section 144

Although Emergency Rules were in place restricting public meetings, the authorities invoked their powers under Section 144 of the CrPC, to prevent public protests in a number of instances. For example, in June 2008 when Exim Agro Industries took possession of 250 acres of land in Lama, Cox's Bazar district including the land belonging to 18 indigenous peoples; hired gangsters, acting on behalf of the company, were reported to have cut down more than 50,000 trees to clear the area and orders were passed under section 144 to prevent local protests.<sup>12</sup> In another incident, when two groups of the BNP announced plans to hold events in the same place in Habiganj on 31 August, orders were passed under section 144 preventing the meetings from taking place.<sup>13</sup>

### Local Government Election held under Emergency

Four city corporations<sup>14</sup> and nine municipal corporation elections were held on 4 August under the SoE. The Emergency Powers Rules were relaxed by a notification issued by the Home Ministry on 20 June with effect from 14 July and 2 August midnight. Permission was given to the candidates to hold meetings and assemblies during this period. The Government citing the peaceful conduct of these elections, claimed that national elections could also be held keeping SoE in place.<sup>15</sup> Later, questions were raised in the media in respect of the elections in Barisal and Khulna City Corporations, as ballot papers were seen lying on the streets of Khulna after the election.<sup>16</sup>

### National Elections held after withdrawal of Emergency

The parliamentary elections originally scheduled for 22 January 2007 were postponed following declaration of a state of emergency on 11 January, 2007 in the wake of massive levels of violence and inter-party conflicts which had brought the country to a virtual standstill over two years ago. The Government announced that elections would be held within two years, that is by December 2008. Keeping to this schedule, the Election Commission finally announced the election schedule on 2 November 2008, which was changed three times (following intense parleying with the two major political alliances) and fixed 20 November as the last date for submission of nomination papers. However, after further negotiation with the parties on 22 November, the Election Commission declared a fresh schedule fixing the date of submission of nominations at 30 November and re-scheduling the election to 29 December 2008.<sup>17</sup>

After the announcement of the first election schedule, the Emergency Rules were amended on 3 November removing restrictions on holding meetings and assemblies. Police Headquarters confirmed that meetings,

9 *Ittefaq*, 10 June 2008.

10 *Shamokal*, 10 June 2008.

11 *Sangbad*, 5 June 2008.

12 "Allegations of cutting and removing 50 sapling trees of Exim Agro in Lama: section 144 imposed to prevent outbreak", *Shamokal*, 24 June 2008.

13 "BNP Alternating Programmes: section 144 imposed in Madhabpur, Habiganj", *Shamokal*, 1 September 2008

14 Rajshahi, Barisal, Sylhet and Khulna City Corporations.

15 "New Calculations Commenced", *Shamokal*, 6 August 2008.

16 "Elections to be held with Emergency Rules in Place and Government's Imaginary Fears", *Noya Digonto*, 18 August 2008.

17 Nazrul Islam and Khadimul Islam, "JS elections on Dec 29", *New Age*, 24 November 2008.

assemblies and election campaign could be held from twenty one days before the election.<sup>18</sup> The Government also withdrew the deployment of army personnel which had continued since 9 November 2006.<sup>19</sup> The state of emergency was withdrawn on 16 December and Parliamentary Elections were held on schedule.<sup>20</sup>

### Upazila Council Elections

The Election Commission announced a fresh schedule for Upazila Council elections, fixing the last date for withdrawal of candidature on 31 December 2008 (ie two days after the national elections), and elections on 22 January 2009.<sup>21</sup>

### Follow up: Dhaka University Incident

In relation to the incident in the Dhaka University Campus in August 2007, the four teachers who had been arrested were all released on 11 January 2008. Final reports were submitted in 39 out of the 53 cases filed, that is the investigations concluded with no evidence being found of any offence; however charge sheets were issued in the remaining fourteen cases naming various persons which remain pending to date.<sup>22</sup>

The report of the one person inquiry commission into the incident, chaired by Justice Habibur Rahman, was published on 11 March 2008 (one of the few such reports ever to be published). Its findings concluded that the teachers had not played any part in the incident but merely stood by students, the report did not address any issues regarding the presence of army personnel on campus. The Commission recommended an end to teacher-student politics in the university, but no further action was taken to discuss this recommendation or to act on them.<sup>23</sup>



*Protest by the students for release of Teachers and students*

### Political Party Conflicts

The incidence of political violence was comparatively lower in 2008, presumably due to the prohibition on political activities under the SoE. However, it was not completely absent, and until October this year, six such incidents were reported, between the AL and BNP on the one hand, and between the AL and the Jamaat's student wing, Islami Chattro Shibir, on the other, as well as inter-party conflicts within the BNP.<sup>24</sup>

18 "rajnaitic michil-shomabesh joruri ainer poriponthe, shonsod nirbachoner tarik 18 Decemberer tin shoptaho agee orthat 27 November theke procharona chalano jabe- Police Sador Daptor" [Political Processions-Assemblies may be held from three weeks before the date of Parliamentary Elections of 18 December, that is, from 27 November, According to Emergency Laws – Police Metropolitan Office], *Prothom Alo*, 12 November 2008.

19 "Decision to Withdraw Army, Relaxation of Emergency Laws, No Prohibition on Election Processions and Assemblies and Public Media", *Prothom Alo*, 4 November 2008.

20 "AL, allies head for landslide victory", *New Age*, 30 December 2008.

21 "Shangsod nirbachon 29 December, Upazila 22 January" *Prothom Alo*, 24 November 2008; Nazrul Islam and Khadimul Islam, "JS elections on Dec 29", *New Age*, 24 November 2008.

22 "Seven Cases still Remaining", *Shamokal*, 24 January 2008.

23 "Dhaka bishobiddaloy: jono shomukkhe ashche je report" [Dhaka University: the Report that is coming before the eyes of the Public], *Shamokal*, 12 March 2008.

24 ASK Documentation Unit.

These incidents left two dead and 125 persons injured. Apart from this, in clashes between the BNP and the police one person died and 100 others were injured.<sup>25</sup>

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<sup>25</sup> See Table IV.2: Political Violence in 2008 at page 55.