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1. The Special Powers Act

The Special Powers Act (SPA) was enacted in 1974 (Odhikar 2013, 93; Redress and ALRC Oct. 2013, 42; Bangladesh 1974). The Act allows for the preventive detention of individuals (Odhikar 2013, 93; Redress and ALRC Oct. 2013; Professor 19 Aug. 2014). Section 3(1) of the SPA provides that the government may have a person detained "with a view to preventing him from doing any prejudicial act" (Bangladesh 1974). Section 2(f) of the SPA provides the following:

(f) "prejudicial act" means any act which is intended or likely-

to prejudice the sovereignty or defence of Bangladesh;

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

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

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

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

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

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

to prejudice the economic or financial interests of the State (Bangladesh 1974)

A copy of the Special Powers Act is attached to this Response.

2. Implementation of the SPA

A 2013 report by the NGOs Redress [1] and the Asian Legal Resource Centre (ALRC) [2] explains that these provisions "grant the State extraordinarily broad powers of arrest and detention" (Redress and ALRC Oct. 2013, 42). In a telephone interview with the Research Directorate, a program coordinator for the ALRC who specializes in Bangladesh said that there are no set procedures for the use of the SPA and that there is "no transparency in record keeping or exercising the law" (ALRC 22 Aug. 2014). Similarly, in a telephone interview with the Research Directorate, a professor and chair of the department of politics and government at an American university who specializes in Bangladesh said that there is "no clear pattern" on the use of the SPA (Professor 19 Aug. 2014).

Sources report that statistics on the use of the SPA are not publicly available (ALRC 22 Aug. 2014; Professor 19 Aug. 2014; Odhikar 21 Aug. 2014). According to the ALRC Program Coordinator, information about the use of the SPA is not shared with human rights defenders and it is difficult for them to monitor the situation (ALRC 22 Aug. 2014). He was aware of a case in which a human rights defender was trying to help a person being detained under the SPA, but was denied access to the detainee (ibid.). In correspondence with the Research Directorate, a representative of the Dhaka-based NGO Odhikar [3] said that it is difficult to collect information about the use of the SPA because of its secretive nature (Odhikar 21 Aug. 2014).

According to the Professor, the SPA has been used by all Bangladeshi governments regardless of the party in power (Professor 19 Aug. 2014). The ALRC Program Coordinator said that the SPA is used in secret and that he could not estimate the current frequency of its use, although he noted that it has been used less since 2009 and was used more often and indiscriminately between 2007 and 2008 when the military controlled the government (ALRC 22 Aug. 2014).

According to the Odhikar representative, most SPA cases are unreported, and few cases involving local activists are publicized (Odhikar 21 Aug. 2014).

Both the Professor and the ALRC Program Coordinator said that the SPA primarily targets political activists, the opposition and other critics of the government (Professor 19 Aug. 2014; ALRC 22 Aug. 2014). The Odhikar representative said that the SPA "has been used as one of the prime weapons to violate human rights and prevent dissenting voices" (21 Aug. 2014). The Odhikar representative provided a recent example in which an instructor in the Law Department of the Northern University in Khulna was arrested and detained under the SPA in July 2014 for allegedly making comments criticizing the President, Prime Minister and former president of Bangladesh during his class (Odhikar 21 Aug. 2014). An article in the Dhaka Tribune corroborates this information (10 July 2014). The instructor was reportedly detained and released from jail on

bail a week after he was arrested (Odhikar 21 Aug. 2014; Dhaka Tribune 10 July 2014). The investigating police officer claimed that there was no proof in support of the allegations (Odhikar 21 Aug. 2014; Dhaka Tribune 10 July 2014). Odhikar expressed the opinion that these types of cases "are violations to freedom of thought, speech and conscience" (21 Aug. 2014).

According to a 2012 report submitted to the UN Human Rights Council for the Universal Periodic Review by the Human Rights Forum [4], which consists of a coalition of 18 NGOs, the SPA has been used to detain trade union activists (Human Rights Forum 9 Oct. 2012, 10). A 2012 report about the violation of trade union rights in Bangladesh by the International Trade Union Confederation (ITUC) [5] notes that if a strike is considered a "threat to national interest," the SPA can be used to detain trade union activists without charge (ITUC 6 June 2012).

Freedom House notes that journalists who write stories that are critical of the government can be arrested under the SPA (2013b). In contrast, in a report submitted to the UN Human Rights Council, Bangladesh authorities stated that "[t]he provisions of Special Powers Act, 1974 relating to the control of media have been withdrawn to make the media free from any form of control" (Bangladesh 7 Feb. 2013, para. 60).

Cases of arrests under the SPA reported by Bangladeshi media sources include:

Arrest of an employee in connection to a case of a "fake homeopathic medicine factory" (UNB 27 Aug. 2011).

Arrest of a former army personnel and his son in connection to possession of arms, ammunition and fake money; charges were brought under both the SPA and the Arms Act (The New Nation 13 Oct. 2012).

Arrest of the Chairman, Managing Director and seven employees of a cosmetics company for allegedly using harmful chemicals in their products (UNB 17 Nov. 2012).

Arrest of a district leader and activists of the Islamist group Hefajat-e-Islam (The New Nation 18 Sept. 2013).

Arrest of a managing director of a shipping company (Financial Express 10 Oct. 2013). The Bangladesh Shipping Agents Association reportedly spoke out against "illogical" cases against shipping agents by customs officials, such as filing cases against shipping agents for missing cargo or for importing goods under false declaration (ibid.).

Arrests of leaders and activists of Jamaat-i-Islami [6] and of its student wing Islami Chhatra Shibir for allegedly planning "to carry out subversive activities" (UNB 23 Oct. 2013)

3. Procedures for Detention Under the SPA

Freedom House reports that the SPA "permits arbitrary detention without charge" (2013a). The Professor said that "[t]he aspect of the SPA that is most abused and misused is the use of preventive detention" (19 Aug. 2014). According to Sec. 10 of the SPA, the government can detain a person under the SPA without trial for as long as 120 days (FIDH and Odhikar Oct. 2010, 27; Bangladesh 1974, Sec. 10).

The ALRC Program Coordinator explained the procedures as follows:

The use of the SPA usually originates with the Ministry of Home Affairs. They give directions at the district level to the Deputy Commissioner about which people to arrest under the SPA. The Deputy Commissioners give the instructions to the police to arrest and detain the people under the SPA.

Less often, the use of the SPA may originate with the police. Sec. 54 of the Criminal Code empowers the police to arrest a person without a warrant. Under this section, they can keep a person for days (1-7 days) ... the police may communicate to authorities to see if they can continue the detention under the SPA...

The detainees are usually held for a minimum of 30 days, and their detention is usually extended another 30 or 60 days. Under the SPA, detainees are allowed to be held a maximum of 120 days without government evidence. (ALRC 22 Aug. 2014)

The Odhikar representative explained the police procedures when detaining someone under the SPA as follows:

Generally, police arrest someone under Section 54 of the Code of Criminal Procedure and then detain that person initially for 30 days and then extend the detention for another 90 days or detain that person for 120 days with the initial order from the Ministry of Home Affairs, which is channeled through the Deputy Commissioner. (21 Aug. 2014)

The Professor explained the process as follows:

If someone is picked up and charged under the SPA, the person is supposed to be brought before the local court (magistrate) within 24 hours. Usually bail is denied. The government is allowed to detain the person for 30 days, but must provide the grounds for the detention within those 30 days. Often the grounds are vague. After the detainee receives the grounds, he or she can go to the court to challenge it. If the detainee does not challenge the grounds, the government can extend the detention for another 90 days. By then, the government either charges the detainee under a law in the criminal code or the person is released. (Professor 19 Aug. 2014)

The ALRC Program Coordinator also said that when someone is detained, the matter is brought before the magistrate within 24 hours, but that sometimes, the paperwork is manipulated so that it is actually after 24 hours (ALRC 22 Aug. 2014). However, the same source noted that in SPA cases, the person is not normally brought before the magistrate in person and instead the paper is filed and the person is put in prison (ALRC 22 Aug. 2014). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The ALRC Program Coordinator said that, legally, authorities are required to provide the detainee with a notice regarding the reasons for the detention within 30 days of the detention (*ibid.*). However, he expressed concern at the lack of accountability and a pattern of authorities manipulating dates (*ibid.*).

According to the ALRC Program Coordinator, SPA detention review is handled by the High Court and the case is usually heard in the presence of the detainee's lawyer and a relative, who files the petition on behalf of the detainee (ALRC 22 Aug. 2014). He said that the Court may order authorities to bring the detainee before the court, otherwise the detainee does not appear in person (*ibid.*). The same source noted that many of the judiciary appointed to the High Court are appointed based on their politics and that politics is often a factor in the case (*ibid.*). Freedom House also expressed concern that appointments to the High Judiciary sometimes demonstrate "an overt political bias" (2013a).

Both the Professor and the ALRC Program Coordinator said that sometimes, after a detainee is released, he or she may be charged soon afterwards on another count under the SPA (Professor 19 Aug. 2014; ALRC 22 Aug. 2014). According to the ALRC Program Coordinator, this sometimes happens right at the prison gate at the time of the detainee's release (*ibid.*). According to the Professor, there are no stipulations in the law preventing its multiple use (Professor 19 Aug. 2014).

According to the ALRC Program Coordinator, SPA detainees are "normally" subjected to beatings, "torture" and abusive language by the police (ALRC 22 Aug. 2014). Freedom House reports that suspects, in general, "are routinely subject to arbitrary arrest and detention, demands for bribes, and physical abuse by the police. Torture is often used to extract confessions and intimidate political detainees" (2013a).

3.1 Use of Warrants, Notifications and Criminal Case Numbers

Several sources indicate that warrants are not typically issued in connection to SPA cases (Odhikar 21 Aug. 2014; ALRC 22 Aug. 2014; Professor 19 Aug. 2014). The Professor explained that this is because the SPA is designed to prevent action, so the arrest is made first (*ibid.*).

According to the ALRC Program Coordinator, a detention reference number is assigned to the SPA case related to the detention (22 Aug. 2014). The Professor said that the detainee is given a written notice when informed of the grounds for the use of the SPA, and that there is a number assigned to this notice (19 Aug. 2014).

According to the Professor, an SPA case is not assigned a criminal case number because SPA cases are not criminal charges under the criminal code (Professor 19 Aug. 2014). He noted, though, that criminal charges are sometimes also brought against people detained under the SPA (*ibid.*). Similarly, the ALRC Program Coordinator said that whether a criminal case number is assigned depends on the case and whether a criminal charge is also brought forward at the same time as the SPA charge (ALRC 22 Aug. 2014). He claimed that authorities sometimes fabricate criminal charges, often under the Arms Act, claiming that the person smuggled goods or weapons (*ibid.*). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The Odhikar representative said that he is aware of some SPA cases that he was involved with from the Chittagong Hill Tracts [7] that were assigned criminal case numbers (21 Aug. 2014).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] Redress is a London-based NGO that "helps torture survivors obtain justice and reparations" (Redress n.d.).

[2] The Asian Legal Resource Centre is a Hong-Kong-based NGO "committed to the development of legal self-reliance and empowerment of people" (ALRC n.d.). It has general consultative status with the UN Economic and Social Council (*ibid.*).

[3] Odhikar is a human rights organization in Bangladesh that was formed in 1994 "with the aim to create a wider monitoring and awareness raising system on the abuse of civil and political rights" (Odhikar n.d.). It is a member of the International Federation of Human Rights (Fédération internationale des droits de l'homme, FIDH), the World Organization Against Torture (OMCT), the International Commission of Jurists (ICT) and several other human rights networks (*ibid.*).

[4] The Human Rights Forum is a coalition of 18 human rights and development organizations that was formed to prepare a stakeholders' report to the UN Universal Periodic Review: Ain Shalish Kendra, Acid Survivors Foundation, Bandhu Social Welfare Society, Bangladesh Adivasi Forum, Bangladesh Dalit and Excluded Rights Movement, Bangladesh Institute of Labor Studies, Bangladesh Legal Aid and Services Trust, Bangladesh Mohila Parishad, Boys of Bangladesh, FAIR, Karmojibi Nari, Kapaeeng Foundation, Manusher Jonno Foundation, National Alliance of

Disabled Peoples' Organizations, Nagorik Uddyog, Nari Pokkho, Nijera Kori, Steps Towards Development, Transparency International Bangladesh (Human Rights Forum 9 Oct. 2012).

[5] The ITUC is a Belgium-based international organization whose mission is "the promotion and defence of workers' rights and interest, through international cooperation between trade unions, global campaigning and advocacy within the major global institutions" (ITUC n.d.).

[6] According to Political Handbook of the World, Jamaat-i-Islami (JI) is a political party that traces its origin to pre-partition India (PHW 2013, 1115). It was banned after the 1971 war of independence for "alleged pro-Pakistani leanings," but was allowed to resume political activities later in the 1970s (ibid.). JI won 2 seats in the December 2008 election (ibid.).

[7] Freedom House reports that "Bengali-speaking settlers continue to encroach on tribal lands in the Chittagong Hill Tracts" and that security forces have occasionally suppressed protests, arrested political activists, and carried out extrajudicial killings in the area (Freedom House 2013a).

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Additional Sources Consulted

Oral sources: Attempts to contact representatives of the following organizations were unsuccessful within the time constraints of this Response: Asian Forum for Human Rights and Development; Bangladesh - Bangladesh Police, Embassy of Bangladesh in Ottawa, National Human Rights Commission; Bangladesh Institute of Labour Studies; Bangladesh Legal Aid Services Trust; Canada - High Commission in Dhaka; Nagorik Uddyog .

Internet sites, including: Amnesty International; Asian Centre for Human Rights; Asian Forum for Human Rights and Development; Bangladesh - Bangladesh Police, Ministry of Home Affairs, National Human Rights Commission; Bangladesh Institute of Labour Studies; Bangladesh Legal Aid Services Trust; ecoi.net; Human Rights Watch; International Federation for Human Rights; Kapaeeng Foundation; Nogorik Uddyog; Transparency International Bangladesh; United Nations - Integrated Regional Information Networks, Office of the High Commissioner for Human Rights, Refworld.

Attachment

Bengladesh. 1974. The Special Powers Act. [Accessed 26 Aug. 2014]

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