STATE, REGIME AND AUTHORITARIANISM: THE BANGLADESH CASE

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In the peripheral states today one witnesses a major departure from the presumed role of the state as ‘protector’, ‘mediator’ and ‘equaliser’ to that of detached unresponsive institution posing itself as a threat to fundamental human rights, thus eroding the very rationale for its existence. The presumption of the state’s preponderant powers to influence, discipline and, where need be, coerce established interests to bring them in harmony with the national ethos and interests has also proved to be illusive.

Kothari argues that experiences in a number of peripheral states amply substantiate the contention that in the post-colonial period the presumed alliance of the masses and the state has been belied, as the state “became a prisoner of the dominant classes and their transnational patrons” and its functions have been restricted to serve “a narrow power group that is kept in power be hordes of security men at the top and a regime of repression and terror at the bottom” (Kothari, 1986:212).

In conjunction with the growth of a disproportionately large security apparatus, one witnesses state mobilisation of fundamentalist ideologies and obscurantist sentiments to detract the attention of the popular masses from problems in the socio-economic sphere. Concurrently, various laws are enacted to deal with popular unrest and suppress social movements. Coercion is used as a political strategy against opponents and dissidents and to regulate the political participation of the masses; it is directed against those elements whom the regime perceives to be a source of threat to its authority (Barraclough, 1985: 799). The regime justification ranges from upholding the rule of law to
preventing subversion and conflict. The mechanisms of coercion involve legal acts such as domestic law-making and enforcement to extra-legal methods of covert violence and liquidation. The accepted mechanisms for accountability, i.e., press, independent judiciary, unfettered political process, all become victims of arbitrariness. Democratic practices of parliamentary elections are “often little more than window dressing designed to impress the aid donors of the North” (Randall and Theobald, 1985:192).

Bangladesh’s independence following a prolonged democratic struggle and nine month armed war was expected to result in the establishment of a democratic country based on social justice and respect for the rule of law and fundamental human rights. Subsequent developments over the last two decades have frustrated that expectation with the emergence and consolidation of an authoritarian state thus affecting big changes in the nature of state domination of its citizenry. These changes provide an opportunity to discern the gradual processes of state alienation under successive regimes and the parallel growth of authoritarianism and a coercive state apparatus. The alienation of the state is manifested in the articles of the Constitution of Bangladesh and its amendments under successive regimes and in the enactments of special laws, regulations and decrees affecting fundamental rights, the press, politics, unions, judiciary, etc. It may be argued that because of their own class interests the rulers of the new state did not bring about any fundamental change in the inherited coercive apparatus of the state. They retained and nurtured the existing machinery, and instead of abrogating anti-people laws inherited from the British and Pakistani times kept them intact.

Reflecting the general spirit of the democratic struggle against Pakistani rule, the original 1972 Constitution did not contain any emergency provision not that of preventive detention, but fairly soon these were incorporated. At the same time, quasi-military repressive organs were revitalised. By the fourth year of its independence, the nation experienced single party rule only to be followed by a series of military and ‘civilianized military’ regimes.

During the course of the last two decades successive
governments in Bangladesh pursued policies which served the interest of the ruling petty bourgeoisie and which were at odds with popular aspirations. With a deteriorating economy and rising mass discontent one witnesses further consolidation of repressive laws and instruments. The absence of bourgeois-democratic restraints has led to the employment of coercive institutions, both legal and extra-legal. In the process, the broad consensus reached during the course of democratic struggle (e.g., a parliamentary form of government, secularism, clear delineation of authority between the different arms of the state, abolition of emergency powers, preventive detention and safety acts, freedom of the press and association, fundamental rights, etc.) have been violated and in some cases, reversed.

Theoretical Considerations

State and the Developed Ruling Class

The rise of industrial capital was marked by the concomitant entrenching of the bourgeoisie in the economic, political and social life of the emerging nation-states of Europe. The bourgeoisie's control over state power was essential to enforce complex patterns of rules which have been necessary for capital accumulation. The rise of the bourgeois dominated capitalist state was also complemented by the development of institutions and practices which disseminated the ideology of the dominant class. It was in line with the bourgeoisie's consolidation in the economic and political realms that seemingly class-neutral laws and institutions were developed to rally the support of other social classes under such slogans as the 'objective needs of the state' and 'national interest.' Ideological apparatuses were increasingly relied on over the coercive apparatuses of the state. However, this is not to suggest that the coercive apparatuses had no role in the developed capitalist social formations, as it has acted as the last resort to ensure continuity of bourgeois rule.

The hegemonic role of the bourgeoisie was attained by granting concessions to other classes in the form of civil rights; like the rights to vote and hold public offices, freedom of expression and thought and the freedom of association. In
other words, while the new ruling class, the bourgeoisie, used the state to develop an effective framework for efficient capital accumulation it also realised the need to democratise the state and provided the scope for the development of the civil society.

State and the Underdeveloped Ruling Class

As against the classical case stated above there is a general agreement amongst scholars that a mature form of capitalism spearheaded by an indigenous bourgeoisie and accompanied by formal aspects of bourgeois democracy has not emerged in Bangladesh. Why? This paper argues that one of the key reasons is the emergence of the petty bourgeoisie as a major class force, and that it is characteristic of the petty bourgeoisie that its emergence is accompanied by an authoritarian form of politics necessitated by its general failure to establish hegemony over civil society. The economic basis which facilitated the emergence of this class may be traced to historical patterns of development and the peculiarities of colonial Bangladesh. It is important to establish that such a class cannot be a cohesive one and as such there is a need to identify the various fractions therein and also the linkages that are forged between these fractions. A major analytical thrust of the paper, therefore, is the issue of the dominance but lack of hegemonic control of the petty bourgeoisie.

Due to its peculiar location in a class-divided society the petty bourgeoisie vacillates in its choice of political allies in the course of class struggle, i.e., it may not always see the bourgeoisie as its ally, and in certain respects may be opposed to the dominance of large capital which keeps the petty bourgeoisie ‘petty’. Braganca in his study of the African experience shows how “the petty bourgeoisie ‘oscillates’ constantly between the options of changing the status quo and aborting reform out of fear of losing privileges” (Quoted in Lopez, 1987:672). The assumption of state power by the petty bourgeoisie in the post-colonial phase exposes this inherent weakness. In the absence of the class vision possessed by the bourgeoisie, to assert and strengthen its position vis-a-vis foreign capital and to develop the productive forces to organise and expedite accumulation, the path it pursues is to
give free to its natural tendencies to become 'bourgeois',
to allow the development of a bourgeoisie of bureaucrats and
intermediaries in the trading system to transform itself into a
pseudo-bourgeois, that is to deny revolution and subject itself to
imperialist capital (Cabral, 1979: 212).

In the post-colonial phase the petty bourgeoisie's
metamorphosis into 'pseudo-bourgeois' therefore entails
compromising the ideals of national independence (economic
emancipation of the masses, respect for fundamental human
rights, etc.) and preservation and reproduction of processes
and institutions which perpetuate its domination. The state
becomes an effective instrument in performing such a task.

The petty bourgeoisie's lack of vision as a ruling class
contributes to its failure to appreciate its own role in leading
the nation which, in turn, prevents it from embarking on the
hegemonic mission more characteristic of the bourgeoisie. Its
'natural tendencies', to use Cabral's phrase, militates against
the promised restructuring of society and democratisation
of the state. Its failure to effect land reform and other necessary
measures to develop the productive forces leads to the
perpetuation of existing relations of production. In the face of
growing demands for changes from other classes the petty
bourgeoisie resorts to coercion and reorganises the laws and
institutions of the state to legitimise this role. Under such
circumstances the bourgeois-democratic institutions are
sapped of their content and there remains virtually no
distinction between the state and civil society.

There is a clear difference between the bourgeoisie as a
ruling class and a petty bourgeois ruling class. While the
former is committed, frugal, innovative and production-
oriented with a certain 'world-view' and a 'class mission', the
latter is dependent, self indulgent, wasteful and consumption-
oriented without any world vision or class mission. In its
emerging phase, the bourgeoisie had been protective of its
indigenous industries and devised programmes which
encouraged productivity and led to growth of a market. In its
turn the petty bourgeoisie is essentially compradore in nature
and is happy to perform its task as a junior partner of foreign
capital, and for this reason lacks the necessary commitment
to develop indigenous industries. This has been succinctly
described by Fanon when he states that one would not find
financiers of industrial magnates in this class. The petty bourgeoisie
is not engaged in production, nor in invention, nor building, nor
labour; it is completely canalized into activities of an intermediary
type. Its innermost vocation seems to be to keep in the running
and to be a part of the racket (Fanon, 1967:120).

The petty bourgeoisie led independence movement sets
limits to the extent the state can restructure. Independence in
such cases does not necessarily mean social revolution (Lopes,
1987: 64). The failure of the working class to lead the indepen­
dence movement circumscribes the prospects of democratising the system and to make it responsive to the
needs of the masses. A thorough reorganisation of the state
and a rupture with the colonial state apparatus is not on the
agenda in the petty bourgeois led post-colonial state. In such
a situation, it is only natural that quite soon after
independence the alienation of the state from the masses
becomes evident. In spite of the contradictions between its
different fractions the successive petty bourgeois regimes
pursue policies and take recourse to laws which are
reminiscent of colonial experiences.

This can also be attributed to the continuity in the social
character of the state. It is this same apparatus which has
been used to quell the independence struggle. The blatant use
of the state by the petty bourgeoisie to enrich itself
undermines the vitality, and works against the spirit of,
independence. There is collusion between different fractions
of the petty bourgeoisie, and the enmeshing of the interests of
commercial capitalists and that of the bureaucracy further
erode development potentialities. The tendency of the petty
bourgeoisie to accumulate and enrich itself through political
means is matched by increased bureaucratisation. It is in
such a situation of betrayal by the leadership of the petty
bourgeoisie that the ideals of the independence struggle
remain unrealised. Such a betrayal is not, however,
subjectively determined, but is an integral characteristic of
the petty bourgeoisie as a class.

The state in Bangladesh cannot be seen as a class state at
the political level in simple or reductionist sense. It should
rather be viewed in terms of certain institutions and
apparatuses, over which certain class fractions engage in
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contest. And in Bangladesh’s case the only agents which can contest these political institutions are the fractions of the petty bourgeoisie. What is being argued therefore, is that for the ‘the state’ to pursue certain interests is a matter of contest and strategy, rather than a pure expression of class interest. Thus the state, rather than being unified in its existence by virtue of its functions, as hegemonic or coercive force for a particular unified class, becomes a set of institutions over which different class-fractions contest.

Further, this approach affords us the possibility of overlooking the logical difficulties of reconciling two ‘different levels’ of interests. For there is no such thing as the interests of the petty bourgeoisie per se which translate from the economic to the political realm. What interests there are, are fractional interests. Consequently, the state is not a mere political expression of the petty-bourgeoisie. The nature of the state is not directly an outcome of the strategy and contest of the various fractions and is not unified in any necessary way. The state and the institutions that constitute it are thus perceived problematically, differentially, heterogeneously, rather than as a unified identity. By addressing the problem this way we distance ourselves from the traditional Marxist economistic problematic which has long enfeebled serious engagement with ‘Superstructural’ entities.

Once the petty bourgeoisie establishes its control over the state, fractional interests take over. In the typical Marxist problematic there are two levels of interests operating. Fundamental or objective interests and the levels of subordinate interests, fractional interests. But if we look as above, the petty bourgeoisie cannot be perceived simply as a political force with certain objective interests ascribed to it. This is to say, determinate political forces such as fractions are not mechanically reducible to an economically defined category. The fractions of the petty bourgeoisie are not unified, politically, as the bourgeoisie. While they remain members of the petty bourgeois class, those petty bourgeois interests which unite them (such as maintenance of the status quo) are not necessarily sufficient to provide cohesion to the political aspirations of the fractions of this class. There is contest over the different state apparatuses and, of course,
this takes place under specific conditions: for instance how the different state apparatuses relate to each other institutionally, legally, etc. State apparatuses are not at par with one another, they have their own hierarchies; some wield more power than others (the military bureaucrats over education bureaucrats, etc.). There are different fractions in the petty bourgeoisie and the relationship between them is very fluid and highly problematic. The petty bourgeoisie, therefore, is not a monolithic bloc.

**The Underdeveloped Ruling Class of Bangladesh**

In Bangladesh the dominant class force is the petty bourgeoisie. It is a heterogeneous group and there are different relations within the petty bourgeoisie as well as with fractions outside it. Interlinkages between various sections of the petty bourgeoisie are multiple and complex. The middle and the rich peasants, the *phoria* traders and merchants, and the *lootera* capitalists forming the core of the petty bourgeoisie, wield social, economic and political power. The state functionaries, civil and military, help perpetuate the petty bourgeois domination. In that respect the state is hardly autonomous. It is these sections of the petty bourgeoisie who control the decision making bodies at different tiers. Their sectoral interest is furthered and promoted by their dominance over state and linkages to international capital.

The narrow social basis and the dependent nature of the Bangladeshi petty bourgeois ruling class has placed it in an antagonistic relationship with the masses. In a situation in which there is underdeveloped productive forces, disorganised bourgeois-democratic institutions, and in the absence of a hegemonic bourgeoisie it is inevitable that the petty bourgeois ruling class will attempt to win acceptance by nepotism, clientelism and corruption, to manipulation of the electoral process to outright terror and assassination (Thomas, 1984: 16).

In Bangladesh today, a small section of the people close to the centre of the state power thrive and prosper, but the vast masses of impoverished people can barely maintain a subsistence existence. While the cost of living index rises, the real wage of the workers and other wage earners decreases. Their demands for higher wages and better living conditions
go unheeded, while any attempt to organise and express protest and dissent prompts the ruling class to act directly and forcibly, taking a direct hand in the business of establishing order.

An analogy of this situation can be drawn to that of what Poulantzas describes as “intensified state control over every sphere of socio-economic life combined with the radical decline of the institutions of political democracy and with draconian and multiform curtailment of so-called ‘formal liberties’ (1973: 203). With mounting pressure from the masses demanding democratisation of the political process, the state acts in a pre-emptive capacity to police popular struggles and other threats to petty bourgeois rule.

The other features of the political state include the strengthening of the state bureaucracy, as the institution of parliament is made a mere ‘registration chamber’ with the real power rapidly becoming concentrated and centralised at the summits of governmental administrative systems and indeed, is increasingly focussed in the offices of President, Prime Minister or Chief Martial Law Administrator.

Rise of the Authoritarian State in Bangladesh

The 1972 Constitution of Bangladesh, which was framed by the Mujib government made an effort to realise the democratic aspirations of the people articulated in their struggle against Pakistani rule. This was manifested in the incorporation into the Constitution of provisions for a parliamentary form of government, guaranteeing fundamental rights, and excluding any provision for preventive detention, proclamation of emergency or suspension of fundamental rights.

By January 1975, one witnesses the complete abandonment of these principles. Changes to the constitution were effected to establish one party rule with the President as the chief executive of the state. The court’s authority to enforce fundamental rights was excluded, all existing political parties were banned, and all privately owned newspapers were confiscated. Fundamental rights continued to remain suspended under the emergency provision. It may be noted that as early as 1973, within nine months of the framing of the Constitution amendments were made for the inclusion of
provisions for preventive detention, the proclamation of emergencies and the suspension of fundamental rights. Apart from these, enactments of certain other laws (e.g. the Printing Press and Publications Ordinance 1973, and Special Powers Act 1974) and the creation of a para-military organisation, the Jatiya Rakkhi Bahini (JRB) were indications of the emergence of authoritarian rule in Bangladesh.

The institutions of elections and parliament and notions of separation of power, the independence of judiciary and respect for fundamental human rights, also started losing their sanctity with the increased interference from the executive branch. In order to quell mass discontent and workers’ protest, existing organs of repression inherited from the Pakistani government were revitalised. While new regulations suspending fundamental human rights were enforced, the quasi-legal coercive apparatus of the state neutralised potential political dissenters, trade unionists and student organisers. Draconian laws were passed denying freedom of expression and organisation.

The post-1975 regimes of Generals Zia and Ershad continued these repressive practices. For the military rulers the ground work for repression was already laid by their civilian predecessors as various anti-people ordinances, acts and decrees were in force even before they assumed state power. These regimes further articulated their repressive rule with the enactment of the Political Parties Regulation Act, 1975 and the Industrial Relations Ordinance of 1976. Various measures (in the form of Martial Law Regulations and Orders) were taken to stifle dissent, and organisations representing students, workers, peasants and other professional groups were targeted to bring them in line with official doctrine.

The alienation of successive regimes and the concomitant rise of authoritarianism in Bangladesh are adequately reflected in the formulation and continuation of special laws and in the creation of special law enforcing agencies. In that respect, the Special Powers Act and JRB, the Disturbed Area Bill and President Security Force Act form the empirical core of this paper. It establishes how the regimes of Mujib, Zia and Ershad, in spite of their declared objectives of democratisa-
tion, continued to remain authoritarian with little regard to the concepts of fundamental human rights and rule of law. However, before proceeding further two contending views on law are briefly presented.

The mainstream discourse on law attempt to present law as class-neutral upholding the general interest of the society. It is also claimed that laws are a necessary foundation of a democratic organisation and therefore are not determined by the forms of production and distribution. The Marxists, on the contrary, reject the claim that laws uphold common interests and the notion that legal interests are essentially objective in nature. They argue that in a social reality of class polarity, inequality, exploitation and political and ideological domination it is only natural that "law embodies the inequality of a class divided society, functioning to maintain and support the power and privileges of the dominant economic and political interest" (Chambliss, 1981: 94). This school also reject the view that laws are necessary expression of a well-balanced and integrated society. The radical critique, observes Alan Hunt,

...tends to proceed through negation or reversal of conventional wisdom. Law is presented as an agency of conflict, not integration, the function to protect and preserve, not common and shared interests, but of 'dominant' interests, variously conceptualised as class and elite interests. Law is not an agency of integration but as the creator and amplifier of social inequality and disequilibrium, being the bearer of the bias and privilege (1981:95)

For our discussion suffice it to say that greater the degree of hegemony that the ruling class commands, the more autonomous are law and legal institutions and more powerful are the institutions of civil society. This, therefore, necessarily entails that there may exist a wide variation in the role of law and legal institutions in social formations where the bourgeoisie could effectively establish its hegemonic rule and in the social formations where there is an absence of a hegemonic ruling class. Law, legal institutions and law making and enforcing bodies in the latter situations fail to attain the status where they can hardly present themselves as neutral mediating the conflicting interests of different sectors and classes of people.

The myopic view of the petty bourgeoisie works against the development and transformation of itself as a cohesive
class with a world-view able to unite its own fractions and lead other classes. This results in the blatant use of law, legal institutions, law-making and enforcing bodies by the incumbent fraction of the petty bourgeoisie, only against the opposing class forces but also against other fractions of its own class. In consequence one finds arbitrary exercise of executive power and enforcing bodies by the ruling fraction of the petty bourgeoisie.

In the Bangladesh political process resort to coercion by the ruling party has become the rule rather than exception. With the increase in the regimes’ alienation from the ruled, incidences and ferocity of the use of force against dissenting individuals, groups and parties also rise. This may be effected by taking recourse to legal instruments as well as to extra-legal means ranging from threats and intimidation to physical liquidation. The Bangladesh constitution itself provides for an almost unqualified power to the executive under the preventive detention and emergency clauses. In addition, special laws such as the Jatiya Rakkhi Bahini Act and the Special Powers Act give extremely wide latitude to the executive for the indiscriminate use of power to suppress political opponents.

Drawing its precedence from the colonial times, savings clauses of the Constitution (under article 47) provide extensive provision for arrest without warrant and denial of the right to bail. The Second Amendment to the Constitution provided for stringent rules for preventive detention and had given the executive the power to declare an emergency which would entail the suspension of important fundamental rights. Needless to say, all these provisions were extensively used by successive governments in dealing with the political opposition. However, the law that has most often been used to intern opponents of the regime has been the Special Powers’ Act of 1974.

**The Special Powers Act**

The SPA was enacted with the stated purpose of providing for special measures for the prevention of certain prejudicial activities, for more speedy trials and the effective punishment of certain grave offences. Twenty eight punishable offences were listed under the Act, ranging from
hoarding, dealing in the blackmarket, breaking curfew and robbery, sabotage, prejudicial acts, publication of prohibited materials, forming subversive associations, sedition, waging war and abetting mutiny. The Act provides for (a) preventive detention and review of the cases of detention by an advisory board and (b) trial of offenders by special tribunals. The arbitrary nature of the Act becomes obvious as (a) the special tribunal, to be set up under the act, was empowered to take into cognizance an offence triable under the Act on a report by low ranking Sub-Inspection of police, and (b) the trial was meant to be a summary trial as it could commence without the accused being committed to it for trial or in absentia. As per the Act, prejudicial acts were meant to include among others (a) the prejudice of the security and defence of Bangladesh, (b) the prejudice of the maintenance of friendly relations with foreign states, (c) the prejudice of endangering of public safety or maintenance of public order, (d) the creation of excitation of feelings of enmity or hatred between different communities, classes and sections of people, and (e) interference with or encouragement of interference with the administration of maintenance of law, (f) the prejudice of the maintenance of supplies and services essential to the country, and (g) causing fear or alarm to the public or to any section of the public. 1

Although the Act provides for the accused to be communicated the grounds for his detention on which the order has been made to enable him to make representation against the order (Section 8/2), a rider clause empowers the authority not to disclose facts to the accused of that is considered to be against the public interest. In other words, provision in the Act is made to deny the accused access to information which could be cited for his defence.

Section 19 of the Act is particularly directed at the political opposition on the grounds of controlling what the government may term “subversive association”. This authorises the government to suspend the activities of an organisation for a period not exceeding six months if it is satisfied that there is a danger of the organisation acting in a manner or being used for purposes prejudicial to maintenance of public order. It also empowers the government to enter,
search and seize documents and freeze its assets including accounts as long as the order remains in force. While extensive powers were arrogated by the government in dealing with associations which it may consider detrimental to its own interest without judicial recourse, the persons involved in the association/organisation concerned are barred from promoting their version of events, nor are they allowed to hold meetings, publish any notice or advertisement relating to such meetings or invite persons to support such associations (para 6 of Section19).

There have been some stringent measures in respect of the proceedings of the Special Tribunal under the SPA (Section 27). Although appeal was allowed on the judgement of the Special Tribunal to the High Court, it was explicitly barred that no order, judgement or sentence of a Special Tribunal shall be called into question in any manner or before any other court. The Tribunal was also authorised to reject demands for recall or rehear of any witness whose evidence had already been recorded, or reopen proceedings already held. Under the provisions of the Act all offences punishable under it and several other offences were rendered unbailable (Section 32). It also denies the accused access to legal representation. The Review Board set up under the Act had no judicial status. Its opinion could be communicated to the government and its proceedings were to be confidential. No person could challenge the opinion of the Board nor was there any provision for appeal.

The SPA epitomized all the penal and undemocratic provisions of the Security of 1952, Public Safety Ordinance of 1968 and the Scheduled offences (Special Tribunal Offences) of 1972. Consequently, as the incorporation of such provisions into SPA rendered those laws redundant all of them were repealed at the time of the passage of the SPA. Under the broad sweep of the Act any action of an individual or an organisation could be termed as prejudicial to the 'national interest' and would amount to a 'breach of law' under the legislation. Even any discussion of foreign policy or comment on the prevailing law and order situation could be interpreted as an offence under the SPA. Speaking on the need for introducing the law a treasury bench MP stated that the
government of Sheikh Mujibur Rahman was not concerned about the unpopular aspects of the Bill as it was deemed appropriate for and adequate to deal with the Bengalis. In his defence of such draconian legislation the Law Minster stated that the Pakistanis enacted repressive laws to suppress the people of Bangladesh but under a changed perspective it is the national government of the people of Bangladesh which was making the law, taking in view the 'national interest'.

Commenting on the SPA the International Commission of Jurists (ICJ) failed to comprehend the need for such legislation. It wrote that “if special powers of this kind are necessary it is regrettable that they were not passed by temporary legislation which would then be subject to periodic review by the parliament if its renewal is thought necessary” (ICJ: 1974). Expressing its surprise over the denial of legal representation, the ICJ criticised several clauses of the Act which allow normal courts to be bypassed and their jurisdiction restricted, and the restrictions imposed on the freedom of the press.

The overthrow of the AL regime was not matched by the annulment of the Act. Although successive governments of Moshtaque, Sayem, Zia, Sattar and Ershad promised to return to the rule of law and uphold fundamental rights and democratic principles, the SPA continued to provide the regimes with an armoury of legal instruments to which it could resort. Needless to say, the Act has been used liberally more to deal with political opposition and dissenting groups and individuals than to deal with robbery, smuggling and hoarding. The continuance of the law under successive regimes is indicative, on the one hand, of the continuity in vested interest throughout the successive regimes and, on the other, their distancing from the popular masses which requires them not to discard such anti-democratic penal legislation.

**Law Enforcement**

The continuity in the interest of the various regimes and their resort to coercion is explicitly illustrated in the JRB Act of Sheikh Mujibur Rahman, the Disturbed Area Bill of the Zia period and the Presidential Security Force Act of General
Ershad. All these legal instruments were drawn up at such times when the regimes concerned, after failing to implement policies reflecting the interests of the people, responded to growing discontent by taking recourse to laws which would provide them with the necessary legal cover for meting out coercion without being accountable to any authority. The concept of ‘rule of law’, a fundamental tenet of bourgeois democracy, has not been held in this respect.

The JRB Act

It was only within three months of Bangladesh’s inception that the JRB Order of 1972 was issued. According to the Order a National Guards Force (the JRB) was created with the purpose of (a) assisting the government in the maintenance of internal security, (b) assisting the armed forces when called upon by the government to do so, and (c) performing other functions as the government may deem necessary (Article 8). In October that year the Order was amended by a Presidential Ordinance (XXI) of 1973) which authorised an officer of the Force to arrest without warrant any person if he had reason to believe an offence punishable under any law has been committed (Article 8A). The amendment also provided that the members of the Force could remain immune from prosecution and other legal proceedings for anything which has been done in good faith or intended to be done (Article 16A).

It had been argued that as the Awami League leadership could not be certain of loyalty of the armed forces and the police as both were integral parts of the independence struggle, it had to create a new paramilitary force in supersession to the existing state apparat but as an adjunct of the state (Holiday, 15.5.88). Such an elevated position accorded the JRB the power to perform tasks which are outside the purview of the army or the police. Judging from its subsequent activities, excesses and the political proclivities of the JRB, it may be argued that the Force was politically motivated to uphold the interests of the ruling party. The raising of 17,000 strong force on the model of Central Reserve Police of India created strong suspicions in the minds of political opponents in Bangladesh who had been well aware of brutalities of the latter in the Indian state of
West Bengal in meeting the challenge of the left movement there.  

The creation of the Force had its obvious impact on other institutions of the state. There is evidence of tensions between the JRB and the police, army and the civil bureaucracy as the Force carried out its task without reference to local administration and law and order authorities. The dehumanizing aspects of the JRB training have been well evidenced from their activities and modus operandi. The official party terminology of ‘extremists’ and ‘anti-state elements’ and ‘miscreants’ while referring to political opposition was in common usage in the JRB vocabulary.

During the course of the four years of its existence the JRB acted to aid and protect the AL regime. The activities of the Force ranged from harassment of individuals to physical liquidation of political opponents. Moreover, being a creation of the AL the JRB acted in close liaison with this organisation and its affiliated bodies. In February 1973 when the Pro-AL National Workers’ League let loose a reign of terror at Barbakunda Industrial Area resulting in the killings of more than 100 workers and injuring several hundred others, the JRB was accused of aiding and abetting this attack by not resisting the assailants. In Khulna district within a span of four months members of the JRB killed five people while in custody for their alleged complicity in the murder of an AL leader of the area (Holiday: 10.2.74). During the course of the JRB deployment in the area news reports charged the members of the Force of committing rape and other atrocities. In a separate incident about fifty members of the JRB stormed into a hospital and brutally assaulted a senior consultant physician. The press reports of the time suggest that the action was carried out as the physician concerned in the course of morning rounds asked a visitor, a JRB member in civilian clothes, to leave the hospital ward (Holiday: 21.2.73).

The excesses of the JRB were particularly demonstrated in the Shahjahan case where the government failed to comply with Court order to produce on Shahjahan seventeen weeks after he was arrested by JRB personnel. Subsequent follow up of the case pointed to the fact that he was a victim of physical
liquidation by the law enforcing agencies (Ahmed, 1983: 57). In the first week of January of 1974 as the workers began protesting against the wage award, the JRB in Jessore shot and killed four unarmed workers while injuring 60 more (Holiday: 6.1.74). In another incident a veteran leftist leader of sixty years of age, Aruna Sen, was arrested and brutally tortured by the JRB personnel in order to extract information about the whereabouts of her husband and son, both of whom were political activists of repute. Rina Sinha, daughter in law of Aruna Sen, was raped and tortured by the members of the JRB during the course of interrogation. The government press note (3.3.74) later reported that they were detained for illegal possession of arms but made no reference to the charges of rape and torture.

The press reports of the time are replete with instances whereby political, trade union, peasant and student activists and their family members had become victims of JRB excesses. M. Rahman, General Secretary of the North Bengal Road Transport Workers Association was picked up by JRB forces and mercilessly beaten and his whereabouts remain unknown (Holiday: 27.5.73). In a separate incident a 77-year old man was severely beaten up in Itna and as the angry villagers surrounded the JRB party its personnel opened fire injuring one person (Holiday: 24.3.74).

The JRB’s involvement in impeding the normal activities of the opposition political parties was demonstrated when it spearheaded government moves to break up peaceful protest marches, strikes and meetings. In March 1974 a demonstration in front of the Home Minister’s official residence by the opposition National Socialist Party (the JSD), was fired upon resulting in the death of 51 persons with several hundred wounded.

In spite of this arbitrary exercise of power by the executive, there had been situations where elements of civil society have rendered effective opposition. The opposition’s cause may at times be strengthened by favourable court decisions. In the forefront of protest against the executive’s excesses in using the JRB Act was the Committee for Civil Liberties and Legal Aid which was formed to combat such practices by the AL government. The committee was
particularly active in moving Writ petitions in the Supreme Court which brought about pressure on the administration in dealing with such cases. Likewise the JRB excesses drew widespread denunciation and criticisms from various quarters. The Bar Association passed a resolution against 'black laws' such as the JRB Act.

The Supreme Court judgements in a few of such cases cast aspersions on the executive for pursuing a policy of repression. In what is considered a landmark decision in the Chanchal Sen case the Court decided that the right of liberty could not be taken away at the whim of the executive authorities. In the Shahjahan case the Court found the conduct of the JRB to be most unsatisfactory. The government failed to produce the victim after arrest by Bahini and pleaded that he had escaped from custody; the Court however, rejected this argument and noted that the JRB activities "being such which affect their rights and liberties of the people at large, it discloses a serious state of affairs to allow them to function in any manner they like and as such what they do may not have the proper legal protection for the function they have been discharging". It pointed out that "their methods of operation have shown a complete disregard for the procedures as enjoined by the Constitution as well as by the general law of the country. and that the right of the individual guaranteed under the Constitution as well as the procedural laws of the country appear to have received little respect from the public servants in charge of the defence and maintenance of law and order of the country". During the course of the case it was demonstrated that the JRB was functioning without rules of procedure and a code of conduct and the officials of the Force admitted that no diary was recorded in pursuing particular cases nor were any records maintained about the arrest of a person. In its judgement the court expressed reservations regarding the legal basis of the JRB.

The Disturbed Area Bill and the President’s Security Force Act

The overthrow of the Mujib regime was marked by the disbanding of the JRB and incorporation of its members in the armed forces. Yet within a span of five Years, the Zia
government also felt the need for similar legislation which was to give unrestrained power to the executive in respect of dealing with what were claimed to be ‘miscreants’, ‘extremists’ and ‘anti-state elements’. Instead of setting up a separate agency with unlimited repressive power, the Disturbed Area Bill (hereafter the DAB) sought to provide blanket power to shoot, kill and arrest to a varied body of law enforcing agencies such as the armed forces, police, the Bangladesh Rifles, and Ansars. Under the Bill these agencies enjoyed the power to kill and destroy. Provisions were also made to bring the dissidents before the summary courts with power to shoot and hang.

It is interesting to note that the government failed to provide any adequate explanation about the need for such draconian legislation at a time when the country was not threatened with any civil war nor was there any threat to the security from any external source. The purported aim of the Bill was to curb ‘unlawful activities’ which were deemed to be prejudicial to the sovereignty, territorial integrity and security of Bangladesh. The Bill listed as many as 23 offences which would be interpreted as “unlawful activities”.

Such a broad coverage of the Bill negated the justification provided by some members of the ruling party - that the main aim was to curb the insurgency of the tribal groups in the Chittagong Hill Tracts, the south-eastern region of the country. The fact that the Bill empowered the government to declare not only the Chittagong Hill Tracts but any part of Bangladesh as a disturbed area (Sub clause 3 of Section 2) of itself provides grounds for the apprehension that it was designed to be used against any quarter on flimsy charges of prejudicial activities. In effect the Bill had drawn most of its substance from the Emergency Provision of Constitution, the SPA of 1973 and the Disturbed Area (Special Powers) Ordinance of 1962.

An issue of great concern of the Bill was that it was left to the minor functionaries of the law enforcement agencies, with the prerogative to exercise power as authorised by the Bill. Political analysts argue that the only excuse that was needed to kill was to state that the victim was carrying something which could be used as a weapon, a waling stick, a
match box or that more than five persons were seen together (Holiday, 17.12.80). The condemnation of the Bill was centered around the fact that it violated the fundamental rights enshrined in the Constitution. The invocation of the Bill would infringe Article 27 which provides for equality before law and entitlement to the protection of law, and also violated Article 32 which explicitly states that “none shall be deprived of life and personal liberty save in accordance with law” as the Bill sanctified the killing of individuals on charges difficult to ascertain. The empowerment of the security forces to enter premises and destroy property without warrant are in violation of other fundamental rights bestowed by the Constitution which provides for right to property and the enjoyment of privacy (Articles 42 and 43).

The DAB was the subject of protest from across the political spectrum. Described as ‘savage’, ‘undemocratic’ and ‘unconstitutional’, it was claimed it would be used to crush political opposition. Appeals were made to UN Secretary General, International Human Rights Commission and the Amnesty International to restrain the Zia government from ratifying the Bill in the Parliament on the grounds that it was in violation of the Universal Declaration of Human Rights as embodied in the Constitution of the country.

The timing of the framing of the Bill led some political pundits to link it with the demise of the Carter administration. It was believed that the Carter administration had exerted some pressure on the Zia regime to take reformist measures and with its exit from office in 1980 and Reagan’s assumption of the US presidency relieved this pressure and provided the General an opportunity to draw up such arbitrary and coercive legal instrument. Popular protest forced the administration to shelve the Bill and it was not put before the Parliament.

The killing of Ziaur Rahman in a military coup and the subsequent overthrow of the BNP regime by General Ershad in May 1981 prevented the DAB being passed into law; however, within a few years the new military strongman felt the need for such powers in order to deal with the political opposition. Accordingly, a similar legal instrument known, President Security Force Act was drawn up which combined
the most repressive provisions of the JRB Act and DAB of Mujib and Zia eras respectively.

Conclusion

At the theoretical plane it has been the contention of this paper that because of the non-existence of appropriate material conditions bourgeois-democracy cannot flourish in its entirely in Bangladesh. At times, the institutional aspects of the system might be in existence in a rudimentary form, but these would certainly be lacking in substance and content. At the empirical level the abuses of authoritarianism was demonstrated in which the state acts in an arbitrary and sometimes violent way to repress opposition. It has been argued that the petty bourgeoisie's failure to emerge as a class with a class-mission, and its inability to rally other classes behind it, by making necessary compromises forces it to take recourse to coercion, to remain the dominant class.
Notes
1. For the full text of the Act see Act XIV of 1974; The Bangladesh Gazette, Extraordinary, Feb 9, 1974.
2. Ahmed argues that the idea of creating an armed force like the JRB was planned by the Government in Exile in Calcutta and subsequently the Indian planners had a substantive input when the Force was actually formed (1983:34).
5. The non-commissioned officers of army, the havildars of the BDR and the sub-inspectors of police.

References
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