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Bangladesh: The *Special Powers Act*; police authority to use the *Special Powers Act* and circumstances under which it is used; police procedures followed, including warrants and/or notifications issued

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

The Special Powers Act (SPA) and Circumstances under which it is used

Bangladesh's *Special Powers Act (SPA)*, enacted in 1974 (AI May 2003, 2; AHRC 3 Mar. 2004; Banglapedia n.d.), provides the government with the power to "preventively detain" persons believed to be involved in "prejudicial acts" (UN Sept. 2002, 16; AI May 2003, 2). Section 2 of the *SPA* defines "prejudicial acts" as

any act which is intended or likely -

- i. to prejudice the sovereignty or defence of Bangladesh;
- ii. to prejudice the maintenance of friendly relations of Bangladesh with foreign states;
- iii. to prejudice the security of Bangladesh or to endanger public safety or maintenance of public order;
- iv. to create or excite feelings of enmity or hatred between different communities, classes or sections of people;
- v. to interfere with or encourage or incite interference with the administration of law or the maintenance of law and order;
- vi. to prejudice the maintenance of supplies and services essential to the community;
- vii. to cause fear or alarm to the public or to any section of the public;
- viii. to prejudice the economic or financial interests of the State (Bangladesh 9 Feb. 1974, Sec. 2.f).

According to a United Nations Development Programme (UNDP) report on human security in Bangladesh, however, "[this definition] ... is vague and open to interpretation by the Government and its Executive ... and may be interpreted rather widely" (UN Sept. 2002, 17). Several sources indicated that the *Act* has been used to "suppress" political opponents (AHRC 3 Mar. 2004; UN Sept. 2002, 17; see also AI May 2003, 3 and SAHRDC 11 Oct 1999) as well as alleged criminals (UN Sept. 2002, 17). The *Act* has

also been used to arrest union members participating in "illegal work actions, such as transportation blockades" (*Country Reports 2005* 8 Mar. 2006, Sec. 6.a).

In 2005 and 2006, sources reported that arrests had been made under the *SPA* for various offences (*UNB* 30 Apr. 2006; *ibid.* 1 Oct. 2005; *ibid.* 28 May 2005; *Country Reports 2005* 8 Mar. 2006, Sec. 1.d). For example, a businessman was arrested under the *SPA* in May 2005 for having "banned [fishing] nets" at his wholesale store in Bagerhat (*UNB* 28 May 2005). In October 2005, the *SPA* was used to arrest 11 suspects in connection with August 2005 bombings (*ibid.* 1 Oct. 2005). In April 2006, five workers were arrested under the *Act* for disconnecting a junction cable, which reportedly interrupted telephone service to the prime minister's office (*ibid.* 30 Apr. 2006).

Police Procedures, including Warrants/Notifications Issued

According to a May 2003 Amnesty International (AI) report, a *SPA* detention order, issued by the Government and the District Magistrate (or an Additional District Magistrate), "has the status of a warrant of arrest and is applicable in all parts of the country" (AI May 2003, 3). The report further stated that, under Section 3.3 of the *SPA*,

[a] *SPA* detention order made by the government can remain in force indefinitely subject to confirmation by an Advisory Board ... but an order made by the District Magistrate or an Additional District Magistrate remains in force for 30 days 'unless in the meantime it has been approved by the Government' (AI May 2003, 3).

In 17 May 2006 correspondence, an official at the High Commission of Canada in Dhaka indicated that the High Commission had been informed by several lawyers and police stations in Bangladesh that the *SPA* is only used to arrest or detain people without a warrant under special circumstances, like during a riot or a demonstration when the act is being committed.

The official also stated that

[l]etters signed by lawyers and members of political parties stating that a person is wanted under the *Special Powers Act*, without providing a Court/Police case number and warrant number, lack credibility ... These are easily obtained from [a] compliant signatory without having any judicial evidence of the circumstances of the individual concerned. We have been told several times by signatories that they issue such statements to facilitate the acceptance of the client in Canada, knowing the information is not true. In Bangladesh, there is always a criminal case number and an arrest warrant if an individual is wanted by justice under the *Special Powers Act* or any other laws (Canada 17 May 2006).

Section 8 of the *SPA* notes that persons arrested under the *Act* must be informed of the grounds on which they are being detained within 15 days of their arrest so that the detainee is able to "make a representation in writing against the order" (Bangladesh 9 Feb. 1974, Sec. 8). However, according to a May 2003 AI report, "there is no requirement to supply all the information on which the order is based to the detainee so that he/she knows the basis for the detention" (May 2003, 3).

The *SPA* allows the government to detain people without charging them (*Country Reports 2005* 8 Mar. 2006, Sec. 1.d; AI May 2003, 2) for up to four months (*ibid.*) or, in some cases, indefinitely (*ibid.*; UN Sept. 2002, 16). A 2002 UNDP report noted that, under the *SPA*, "detention ... precludes the possibility of bail" (*ibid.*, 17).

Citing the results of a Bangladesh parliamentary study conducted on the use of SPA between 1974 and 1998, an AI report indicated that 98.8 per cent of 69,010 SPA cases brought before the High Court in Bangladesh were deemed "unlawful" (AI May 2003, 4; see also UN Sept. 2002, 19-20). As of September 2002, however, most SPA cases had not been brought before the courts as a result of detainees being unable to pay for legal costs, unable to contact their relatives or friends, or due to their "fear of facing the High Court" (ibid., 21).

No estimates of the total number of persons arrested under the SPA in 2005 or 2006 could be found among the sources consulted by the Research Directorate.

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 additional sources consulted in researching this Information Request.

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Oral sources: Bangladesh Human Rights Networks did not provide information within

the time constraints of this Response.

Internet sites, including: Bangladesh Human Rights Networks; European Country of Origin Information (ECOI) Network; Jurist Legal Intelligence for an Educated Society; The World Law Guide (Lexadin); People's Republic of Bangladesh - Ministry of Law, Justice and Parliamentary Affairs; People's Republic of Bangladesh - Prime Minister's Office; South Asian Human Rights Documentation Centre (SAHRDC); Transparency International (TI); United Kingdom (UK) Home office; United States Department of State; United States Library of Congress.

Attachment

Bangladesh. 9 February 1974. *The Special Powers Act, 1974. Act No. XIV of 1974. (9 pages)*

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