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Extrajudicial Killings in Bangladesh: Exploring the Phenomenon of Human Rights Violations As a Means of Maintaing Power

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EXTRAJUDICIAL KILLINGS IN BANGLADESH: EXPLORING THE PHENOMENON OF HUMAN RIGHTS VIOLATIONS AS A MEANS OF MAINTAINING POWER

*M. Ehteshamul Bari**

ABSTRACT

When the South Asian nation of Bangladesh emerged as an independent nation on December 16, 1971, the founding fathers sought to establish a liberal democracy that would uphold the rule of law and the fundamental human rights of individuals. To this end, they incorporated extensive guarantees, including safeguarding the enforcement of an impressive eighteen fundamental rights, in the Constitution of Bangladesh of 1972. However, this Article will demonstrate that after almost fifty years of independence, the promise of a liberal democracy has remained elusive in Bangladesh due to the frequent violation of human rights through extrajudicial killings as a convenient means of maintaining power. Although successive governments have resorted to extrajudicial killings, the current government of the Bangladesh Awami League, which has ruled the nation uninterruptedly for the past twelve and a half years, has gone further than all previous governments in resorting to such killings to suppress any threat to its aspiration of perpetuating power. The regime's contempt for the human rights of individuals is further evident from the fact that even during the COVID-19 pandemic, it has not shied away from resorting to extrajudicial killings to put down its adversaries. This Article will put forward recommendations for ensuring the realization of the elusive promise of a liberal democracy on which the nation was founded.

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TABLE OF CONTENTS

INTRODUCTION	35
I. THE EVOLUTION OF THE USE OF EXTRAJUDICIAL KILLINGS IN THE INDO-PAK-BANGLADESH SUBCONTINENT	40
A. <i>Extrajudicial Killing in Postcolonial India</i>	41
B. <i>Extrajudicial Killing in Postcolonial Pakistan</i>	43
II. THE CONSTITUTION OF BANGLADESH AND THE GUARANTEES OF A LIBERAL DEMOCRACY	45
III. EXTRAJUDICIAL KILLINGS DURING THE REGIME OF MUJIB	47
A. <i>The Reign of Mujib</i>	47
B. <i>The Fall of Mujib and the Aftermath</i>	51
IV. EXTRAJUDICIAL KILLINGS DURING ERSHAD’S RULE	51
A. <i>The Reign of Ershad</i>	51
B. <i>The General Election of 1991 and the Restoration of Parliamentary Democracy in Bangladesh</i>	53
V. THE RETURN OF EXTRAJUDICIAL KILLINGS DURING THE BNP-LED GOVERNMENT OF 2001–2006	54
VI. EXTRAJUDICIAL KILLING DURING THE EMERGENCY OF 2007	56
VII. POST-2009 EXTRAJUDICIAL KILLING BY THE BAL REGIME TO ESTABLISH TYRANNY	59
A. <i>Extrajudicial Killings During the BAL’s Rule from January 2009 to December 2013</i>	59
B. <i>Extrajudicial Killings During the BAL’s Rule from January 2014 to December 2018</i>	62
1. <i>The Killing of Opposition Activists and the Seven-Murder in Narayanganj</i>	63
2. <i>The Killing of Nurul Islam Nuru—A Grassroot Leader of the BNP</i>	63
3. <i>The Extrajudicial Killing of 285 Individuals Under the Guise of the “War on Drugs” in 2018</i>	64
C. <i>Extrajudicial Killings Following the General Election of 2018</i>	65
VIII. ACCOUNTABILITY FOR THE BAL GOVERNMENT’S VIOLATION OF HUMAN RIGHTS	66
A. <i>Parliamentary Scrutiny (or Lack Thereof) of the BAL Government’s Actions</i>	67
B. <i>The Judicial Response to the BAL Regime’s Extrajudicial Killings</i>	68

IX. BANGLADESH’S OBLIGATIONS TO UPHOLD CORE HUMAN RIGHTS UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966	75
CONCLUSION	76

INTRODUCTION

Extrajudicial killings refer to

killings by government officials without due process of law. They include murders by private groups if instigated by the government. These killings may result from the deliberate, illegal, and excessive use of lethal force by the police, security forces, or other agents of the state whether against criminal suspects, detainees, prisoners, or others.”¹

Therefore, it is evident that extrajudicial killings are perpetrated outside the purview of law. In this context, the observations of the Supreme Court of Pakistan in the case of *Benazir Bhutto v. the President of Pakistan*² are noteworthy: “[extrajudicial killings]. . . ha[ve] no sanction or permission under the law or . . . cannot be covered or defended under any provision of law.”³

It is further apparent that extrajudicial killing, paradoxically, involves arbitrary and unlawful deprivation of the right to life—the most fundamental human right of individuals.⁴ Indeed, the protection of other rights will be rendered meaningless if effective measures are not put in place for safeguarding the right to life.⁵ Accordingly, international human rights norms, which find expression in a variety of regional and international human rights instruments, such as the European Convention on Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights, and the African Charter on Human and Peoples’ Rights, all identify the right to life as being non-derogable.⁶ In light of the fundamental values protected

¹ Udi Sommer & Victor Asal, *Examining extrajudicial killings: discriminant analyses of human rights violations*, 12 DYNAMICS OF ASYMMETRIC CONFLICT, 185, 185-86 (2019).

² *Bhutto v. President of Pakistan*, (1998) PLD (SC) 388, 392 (Pak.).

³ *Id.*

⁴ MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: ICCPR COMMENTARY 121 (2d ed. 2005); Yoram Dinstein, *The Right to Life, Physical Integrity, and Liberty*, in THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS 114–15 (1981).

⁵ *Id.*

⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms art. 2, *opened for signature* Nov. 4, 1950, 213 U.N.T.S. 222 (entered into force Sept. 3, 1953); International Covenant on Civil and Political Rights (ICCPR) art. 6, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); American Convention on Human Rights art. 4, *opened for signature* 22 November 1969, 1144

by the right to life, it has attained the status of *jus cogens*.⁷ Such recognition of the right in turn places an obligation on states parties to ensure its continuous operation even in the event of a grave emergency.⁸ The jurisprudence emerging from the international monitoring bodies' interpretation of the right to life suggests that its guarantee in the domestic context has the salutary effect of imposing both negative and positive duties on the state apparatus.⁹ The negative duty involves refraining from the "intentional and unlawful taking of life" while the positive duty entails implementing appropriate measures to "safeguard the lives" of citizens.¹⁰ Thus, it follows that when state actors carry out extrajudicial killings, they violate both domestic and international standards guaranteeing the right of individuals to be free from arbitrary deprivation of life.

However, notwithstanding the adverse impact of extrajudicial killings on the most fundamental human right of individuals—namely, the right to life—such killings have become a convenient tool for oppressive governments around the globe to eliminate real or perceived enemies, thereby perpetuating their grip on power.¹¹ The origin of the use of extrajudicial killing can be traced back to Adolf Hitler's tyrannical rule in Germany.¹² Hitler resorted to it as the most effective means of eliminating anyone perceived to be a threat to his desire to establish an absolute dictatorship.¹³ After ascending to the office of the Chancellor in January 1933,¹⁴ Hitler ordered the SS guards, who were his "political soldiers,"¹⁵ to execute hundreds of his political opponents—including the top leadership of Sturmabteilung, a paramilitary organization which played a pivotal role in his rise to power and which, according to him, "had [now] become too powerful."¹⁶ Hitler's resort to extrajudicial killings as the most convenient means of

U.N.T.S. 123 (entered into force July 18, 1978).

⁷ JAIME ORAÁ, HUMAN RIGHTS IN STATES OF EMERGENCY IN INTERNATIONAL LAW 96 (1992).

⁸ CHRISTOPHER C. JOYNER, INTERNATIONAL LAW IN THE 21ST CENTURY: RULES FOR GLOBAL GOVERNANCE 135 (2005).

⁹ *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Act No. 43/2006) § 9 (Austl.).

¹⁰ *Id.*

¹¹ Edy Kaufman & Patricia Weiss Fagen, *Extrajudicial Executions: An Insight into the Global Dimension of a Human Rights Violation*, 3 HUMAN RIGHTS Q. 81, 81 (1981).

¹² Jackson Nyamuya Maogoto, *Now You See, Now You Don't - The State's Duty to Punish Disappearances and Extra-Judicial Executions*, 2002 AUSTRALIAN INT'L L.J. 176, 181 (2002).

¹³ *Id.* at 179–80.

¹⁴ Wilfred Knapp et al., *Adolf Hitler*, ENCYC. BRITANNICA (Apr. 26, 2021), <https://www.britannica.com/biography/Adolf-Hitler>.

¹⁵ See EDS. OF THE ENCYC. BRITANNICA, *SS*, ENCYCLOPEDIA BRITANNICA (Oct. 30, 2020), <https://www.britannica.com/topic/SS>.

¹⁶ EDS. OF THE ENCYC. BRITANNICA, *Night of the Long Knives*, ENCYC. BRITANNICA (May 16, 2020), <https://www.britannica.com/event/Night-of-the-Long-Knives>.

suppressing political adversaries in turn persuaded strongman leaders around the world to frequently resort to the tool.¹⁷

For instance, in Indonesia, extrajudicial killing was used in the 1960s to annihilate communists following the infamous coup attempt of September 1965.¹⁸ In September 1965, a group of disgruntled leftist officers of the army staged a coup in collaboration with some leaders of the Indonesian Communist Party (PKI)¹⁹—then the largest political party in the country.²⁰ However, the coup was short-lived.²¹ The army under the leadership of General Suharto crushed the coup within a few days of its inception.²² Notwithstanding this, the army continued to blame the PKI for the coup and launched a violent campaign to eliminate PKI members and sympathizers.²³ In the nine months between October 1965 and June 1966, a staggering 500,000 individuals were allegedly killed extrajudicially.²⁴ The systematic annihilation of the largest political party of the country ultimately paved the way for General Suharto to seize power in March 1966.²⁵

In the same vein, in the 1970s, the military regimes of six South American nations—namely, Argentina, Chile, Uruguay, Paraguay, Bolivia, and Brazil—hatched a secret plan to violently put down their “left-wing” political adversaries.²⁶ This clandestine operation, called “Operation Condor,” involved the intelligence agencies of these six nations not only sharing information with each other, but also coordinating with each other in kidnapping and executing the opponents of their leadership.²⁷ During Operation Condor, it is estimated that at least 60,000 individuals were killed extrajudicially.²⁸

¹⁷ Maogoto, *supra* note 12.

¹⁸ EDS. OF THE ENCYC. BRITANNICA, *September 30th Movement*, ENCYC. BRITANNICA (Nov. 18, 2016), <https://www.britannica.com/event/September-30th-Movement>.

¹⁹ EDS. OF THE ENCYC. BRITANNICA, *Suharto*, ENCYCLOPEDIA BRITANNICA (June 4, 2021), <https://www.britannica.com/biography/Suharto>.

²⁰ Donald Hindley, *President Sukarno and the Communists: The Politics of Domestication*, 56 AM. POL. SCI. REV. 915, 915 (1962).

²¹ Willard A. Hanna et al., *Sukarno*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/biography/Sukarno#ref6966>

²² *Id.*

²³ *Id.*

²⁴ Hannah Beech, *US Stood By as Indonesia Killed a Half-Million People, Paper Shows*, N.Y. TIMES (May 18, 2017), <https://www.nytimes.com/2017/10/18/world/asia/indonesia-cables-communist-massacres.html>.

²⁵ *Id.*

²⁶ Erin Creegan, *Criminalizing Extrajudicial Killings*, 41 DENV. J. INT’L. L. & POL’Y 185, 190 (2013); Larry Rohter, *Exposing the Legacy of Operation Condor*, N.Y. TIMES (Jan. 24, 2014), <https://lens.blogs.nytimes.com/2014/01/24/exposing-the-legacy-of-operation-condor>.

²⁷ *Id.*

²⁸ *Id.*

Similarly, in Nepal, during the civil war from 1996 to 2006, both the Government and Maoist insurgents resorted to extrajudicial killings.²⁹ Approximately 17,000 individuals were killed during this period.³⁰ The government forces used such killing to “break the backbone” of the rebellion while the Maoists used it to put down anyone who opposed their desire of instituting a communist state.³¹ Notwithstanding the cessation of the conflict in 2006 following the conclusion of a peace agreement, security forces in Nepal continue to extrajudicially kill dissidents with impunity.³²

In the Philippines, President Rodrigo Duterte’s administration, under the guise of the so-called “war on drugs[,]” has extrajudicially killed at least 27,000 individuals since July 2016.³³ This number not only includes alleged drug peddlers but also Duterte’s adversaries, such as political activists and human rights defenders.³⁴ Duterte’s utter disregard for human life can be further gathered from his comments made in 2016: “Hitler massacred three million Jews. Now there are three million drug addicts . . . I’d be happy to slaughter them.”³⁵

In light of the above discussion, it can be argued that extrajudicial killings are primarily prevalent in nations where a firm commitment to democratic values, such as respect for the rule of law and the fundamental human rights of individuals, are wanting among executives. In the same vein, the desire of succeeding generations of executives in the South Asian nation of Bangladesh, particularly the current government of Bangladesh Awami League (BAL), to maintain their grip on power has persuaded them to resort to various arbitrary measures, such as indiscriminate extrajudicial killing. This has in turn instilled fear in the civilian population and, consequently, forced them into silence.

²⁹ Shirish B. Pradhan, *Nepal’s Prachanda Says He Can Be Blamed for Only 5000 Deaths During Civil War*, OUTLOOK (Jan. 15, 2020, 7:57 PM), <https://www.outlookindia.com/newsscroll/nepals-prachanda-says-he-can-be-blamed-for-only-5000-deaths-during-civil-war/1709296>.

³⁰ *Id.*

³¹ *See Between a Rock and a Hard Place: Civilians Struggle to Survive in Nepal’s Civil War*, 16 HUM. RTS. WATCH 12(c) (Oct. 6, 2004), <https://www.hrw.org/sites/default/files/reports/nepal1004.pdf>.

³² *No Law, No Justice, No State for Victims: The Culture of Impunity in Post-Conflict Nepal*, HUM. RTS. WATCH (Nov. 20, 2020), <https://www.hrw.org/report/2020/11/20/no-law-no-justice-no-state-victims/culture-impunity-post-conflict-nepal>.

³³ *World Report 2020: Philippines*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2020/country-chapters/philippines> (last visited Oct. 20, 2021).

³⁴ Nick Aspinwall, *The Killings in the Philippines Grow More Brazen*, INTERPRETER (Aug. 25, 2020, 11:00 AM), <https://www.lowyinstitute.org/the-interpreter/killings-philippines-grow-more-brazen>.

³⁵ Clifford Coonan, *10 Quotes: Philippines President Rodrigo Duterte in his Own Words*, IRISH TIMES (Sept. 30, 2016, 4:55 PM), <https://www.irishtimes.com/news/world/asia-pacific/10-quotes-philippines-president-rodrigo-duterte-in-his-own-words-1.2812189>.

Needless to say, the resort to such indiscriminate killings contravenes the democratic values on which Bangladesh was founded.³⁶

When Bangladesh was in a union with Pakistan as its Eastern Province from 1947 to 1971, Bangladeshis frequently witnessed the systematic subversion of the rule of law and experienced routine violations of their fundamental human rights at the hands of the Pakistani military junta.³⁷ Consequently, the desire to institute a society based on the rule of law and human rights, among other things, persuaded Bangladeshis to wage a war of independence against the Pakistani military on March 26, 1971.³⁸ Bangladesh ultimately secured its independence from Pakistan on December 16, 1971, following a brutal nine-month-long war.³⁹ Subsequently, the founding fathers of Bangladesh sought to give effect to the aspiration of the inhabitants of the newly-formed nation by stipulating a number of guarantees in the Constitution of Bangladesh, which entered into force on December 16, 1972.⁴⁰ This included the guarantee of as many as eighteen fundamental rights, including the right to life.⁴¹

Against this backdrop, this Article will first trace the evolutionary history of extrajudicial killings in the Indo-Pak-Bangladesh Subcontinent. The objective underlying this discussion is to make it evident that extrajudicial killing began to be used in the Subcontinent as an effective means of eliminating adversaries. Second, light will be shed on the guarantees enumerated in the Constitution of Bangladesh to establish a liberal democracy in which the fundamental human rights of individuals will be promoted and protected. Third, this Article will demonstrate that shortly after independence, the government of the BAL resorted to extrajudicial killings for the first time to violently put down its political adversaries, in contravention of the guarantees contained in the Constitution. Fourth, light will be shed on the extrajudicial killings which occurred between 1982 and 1990 to ensure the survival of the autocratic regime of General H.M. Ershad. Fifth, it will be shown that after a brief period of stability, there was a re-emergence of this disturbing practice between October 16, 2003 and January 9, 2004, when the Bangladesh Nationalist Party (BNP) was in office, and again during the term of the army-backed, Non-Party “Care-taker” Government from January 2007 to December 2008. Finally, light will be

³⁶ CONSTITUTION OF THE PEOPLE’S REPUBLIC OF BANGL., Nov. 4, 1972, pmb1.; M. EHTESHAMUL BARI, STATES OF EMERGENCY AND THE LAW: THE EXPERIENCE OF BANGLADESH 7 (2017).

³⁷ BARI, *supra* note 36, at 8.

³⁸ CONSTITUTION OF THE PEOPLE’S REPUBLIC OF BANGL., Nov. 4, 1972, pmb1.

³⁹ *See* BARI, *supra* note 36, at 7.

⁴⁰ CONSTITUTION OF THE PEOPLE’S REPUBLIC OF BANGL., Nov. 4, 1972, arts. 27–44.

⁴¹ *Id.*

shed on the manner in which the current ruling party, the BAL, has used extrajudicial killings for the past twelve and a half years as an effective means of obviating the possibility of any popular resistance to its perpetuation of power. Consequently, this Article will put forward concrete recommendations for promoting and protecting the democratic ideals on which Bangladesh was founded.

I. THE EVOLUTION OF THE USE OF EXTRAJUDICIAL KILLINGS IN THE INDO-PAK-BANGLADESH SUBCONTINENT

The origins of the use of extrajudicial killings in the Indian Subcontinent can be traced back to British rule. During its one hundred years of formal rule in the Subcontinent, the British frequently resorted to extrajudicial killings to quell “nationalist and revolutionary movements of Indians.”⁴² For instance, on April 13, 1919, thousands gathered at *Jallianwala Bagh*—a garden in the city of Amritsar—to protest the enactment of the draconian Anarchical and Revolutionary Crimes Act,⁴³ popularly known as the Rowlatt Act.⁴⁴ The Rowlatt Act authorized the Colonial Government to exercise the extraordinary power of preventive detention without the precondition of a state of emergency. Consequently, the Act was used to detain Indians who were suspected of being involved in “anarchical and revolutionary movements” against the colonial government.⁴⁵ Although the protesters gathered at *Jallianwala Bagh* were unarmed, the British troops under the command of Brigadier-General Reginald Dyer opened fire on them, killing at least 379 individuals.⁴⁶ However, the Indian freedom movement leaders estimated that the number of those killed was even higher. They claimed approximately 1000 were killed.⁴⁷ However, the *Jallianwala Bagh* Massacre did not yield the desired effect for the Colonial Government. Instead, the extrajudicial executions of so many unarmed protesters galvanized the Indian nationalist leaders in the struggle for freedom from British rule.⁴⁸

⁴² BARI, *supra* note 36, at 100; Shamil Shams, *The Jallianwala Massacre—When British Troops Killed Hundreds of Unarmed Indians*, DEUTSCHE WELLE (Apr. 13, 2019), <https://www.dw.com/en/the-jallianwala-massacre-when-british-troops-killed-hundreds-of-unarmed-indians/a-48313295>.

⁴³ Shams, *supra* note 42.

⁴⁴ BARI, *supra* note 36, at 100.

⁴⁵ *Id.*

⁴⁶ Shams, *supra* note 42.

⁴⁷ *Id.*

⁴⁸ *Jallianwala: How 1,650 Bullets Changed Course of India's Freedom Struggle*, TIMES INDIA (Feb. 12, 2020, 4:42 PM), <https://timesofindia.indiatimes.com/india/jallianwala-bagh-massacre-how-1650-bullets-changed-the-course-of-indias-freedom-struggle/articleshow/68752809.cms>.

The Indian Subcontinent ultimately secured its independence from colonial rule on August 15, 1947, when the Indian Independence Act, which was passed by the British Parliament on July 18, 1947, came into effect.⁴⁹ The imperial legislation partitioned the Subcontinent into two independent states—India and Pakistan. Pakistan was then composed of two geographically and culturally distant provinces of West Pakistan and East Pakistan.⁵⁰ Twenty-four years later, the eastern wing of Pakistan emerged as an independent nation in December 1971.⁵¹

A. *Extrajudicial Killing in Postcolonial India*

Although Indians termed the British use of extrajudicial killings during the colonial rule as “morally indefensible,”⁵² it is indeed ironic that following decolonization, successive governments in India have resorted to this heinous tool to crush, among other things, separatist movements. For instance, the Indian Security Forces extrajudicially killed 8257 individuals in the state of Punjab between 1984 and 1995 to suppress the demand for a separate homeland for Sikhs.⁵³ Furthermore, in Jammu and Kashmir (J&K), the security forces extrajudicially killed thousands of Kashmiris in an attempt to put down their movement for self-determination.⁵⁴ According to one estimation, at least 70,000 individuals have lost their lives since 1989, when rebels began resisting the Indian occupation of Kashmir.⁵⁵ Paradoxically, this number not only includes suspected militants, but also innocent civilians. For instance, in 2020, the security forces extrajudicially killed “at least 65 civilians.”⁵⁶ However, these killings have frequently been justified by succeeding generations of executives as “encounter killings,” thereby implying that these individuals were killed during armed clashes with the security forces.⁵⁷

⁴⁹ Indian Independence Act 1947 (India) § 1(1) (UK).

⁵⁰ *Id.*; BARI, *supra* note 36, at 32.

⁵¹ BARI, *supra* note 36, at 32.

⁵² Shams, *supra* note 42.

⁵³ Rashme Sehgal, *Uncovering Extra-Judicial Killings in Punjab, and the Police Impunity that Followed*, WIRE (Dec. 16, 2017), <https://thewire.in/politics/uncovering-widespread-extra-judicial-killings-punjab-police-impunity-came>.

⁵⁴ *Kashmir: 5 Security Forces and 2 Rebels Killed in a Gun Battle*, AL JAZEERA (May 3, 2020), <https://www.aljazeera.com/news/2020/5/3/kashmir-5-security-forces-and-2-rebels-killed-in-a-gun-battle>.

⁵⁵ *Id.*

⁵⁶ *Kashmir: 225 Militants, 60 Security Men Killed in 2020*, ANADOLU AGENCY (Dec. 31, 2020), <https://www.aa.com.tr/en/asia-pacific/kashmir-225-militants-60-security-men-killed-in-2020/2095249>.

⁵⁷ *India: New Reports of Extrajudicial Killings in Kashmir*, HUM. RTS. WATCH (Aug. 14, 2020, 9:00 AM), <https://www.hr.org/news/2020/08/14/india-new-reports-extrajudicial-killings-kashmir>.

These issues are further exacerbated by the fact that the security forces have carried out such executions in Punjab and J&K with impunity. The Indian Code of Criminal Procedure precludes courts from recognizing any offenses officials may commit while carrying out their duties without the prior approval of the central or state government.⁵⁸ This has been supplemented with the enactment of region-specific legislation. For instance, the Armed Forces (Punjab and Chandigarh) Special Powers Act and the Armed Forces (Jammu and Kashmir) Special Powers Act not only confer extensive powers on the armed forces to deal with secessionists, but also seek to protect security forces from prosecution.⁵⁹ Since the enactment of these laws, successive governments have refused to prosecute members of the security forces, notwithstanding credible evidence of their involvement in extrajudicial executions.⁶⁰ This is notwithstanding the observations of the Supreme Court of India in two landmark cases since 2013. In the 2013 case of *Suresh Singh v. Union of India*,⁶¹ the Supreme Court forcefully denounced the government's attempt to justify extrajudicial killings when it observed:

For this Court, the life of a policeman or a member of the security forces is no less precious and valuable than any other person. The lives lost in the fight against terrorism and insurgency are indeed the most grievous loss. But to the State it is not open to cite the numbers of policemen and security forces killed to justify custodial death, fake encounter or what this Court called "Administrative liquidation". It is simply not permitted by the Constitution. And in a situation where the Court finds a person's rights, especially the right to life under assault by the State or agencies of the State, it must step in and stand with the individual and prohibit the State or its agencies from violating the rights guaranteed under the Constitution. That is the role of this Court and it would perform it under all circumstances.⁶²

In the same vein, three years later the Supreme Court opined in *Extra Judicial Execution Victim Families Association v. Union of India* that:

It does not matter whether the victim was a common person or a militant or a terrorist, nor does it matter whether the aggressor was a

⁵⁸ Code Crim. Pro. India, 1973, § 197 (India).

⁵⁹ Both the acts state, "No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act." Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983, § 7; Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, § 7 (India).

⁶⁰ *India: New Reports of Extrajudicial Killings in Kashmir*, *supra* note 57.

⁶¹ *Extra Judicial Execution Victim Families Association v. Union of India*, Unreported Judgments Writ Petition (Criminal)/No. 129 of 2012, decided on January 4, 2013 (SC).

⁶² *Id.* ¶ 6.

common person or the state. The law is the same for both and is equally applicable to both . . . This is the requirement of a democracy and the requirement of preservation of the rule of law and the preservation of individual liberties.⁶³

B. *Extrajudicial Killing in Postcolonial Pakistan*

The union between the West and East Provinces of Pakistan, which were “separated by more than 1,000 miles of Indian territory[.]”⁶⁴ was short-lived. Since the very inception of the union, the real power and influence in the newly established nation was wielded by the Punjab-dominated federal government in the western wing. The tendency of the western wing to centralize power led an East Pakistani lawmaker to note that:

After the achievement of freedom there had been . . . centralisation of power . . . in the central government of Pakistan. I consider it to be the most unsound and short-sighted policy. The province[] [of East Pakistan] must be allowed to enjoy the full autonomous position, must be as free from central government as it is thought practical.⁶⁵

Such centralization, in turn, resulted in the inhabitants of the western wing asserting supremacy over their eastern counterpart “in every sphere of governmental and public activity.”⁶⁶ In this context, the observations of Paul Dreyfuss are noteworthy: “Over the years, West Pakistan behaved like a poorly raised, egotistical guest, devouring the best dishes and leaving nothing but scraps and leftovers for East Pakistan.”⁶⁷ Consequently, in an effort to prevent the eastern wing’s reduction to a “mere colony of West Pakistan,”⁶⁸ the Awami League, under the leadership of Sheikh Mujibur Rahman (Mujib), proposed the implementation of a Six-Point Program (Program) in March 1966, which was termed the “charter of survival” for East Pakistanis.⁶⁹

⁶³ Extra Judicial Execution Victim Families Association v. Union of India, (2016) 2 SCC 493, ¶¶ 125, 135 (India).

⁶⁴ Lorraine Boissoneault, *The Genocide the U.S. Can't Remember, but Bangladesh Can't Forget*, SMITHSONIAN MAG. (Dec. 16, 2016), <https://www.smithsonianmag.com/history/genocide-us-cant-remember-bangladesh-cant-forget-180961490>.

⁶⁵ Aswini K. Ray, *From Autonomy to Self-Determination: The Politics of East Pakistan and Kashmir*, 36 ECON. POL. WKLY., 4538, 4540 (2001).

⁶⁶ See BARI, *supra* note 36, at 7.

⁶⁷ Boissoneault, *supra* note 64.

⁶⁸ See BARI, *supra* note 36, at 7.

⁶⁹ M. Waheeduzzaman Manik, *The Historic Six-Point Movement and Its Impact on the Struggle of Independence*, DAILY STAR (June 7, 2008, 12:00 AM), <https://www.thedailystar.net/news-detail-40021>.

The idea underlying the Program was to secure meaningful provincial autonomy for East Pakistan and to “foster [a] durable relationship between the two provinces.”⁷⁰ When Ayub Khan, who assumed the office of President of Pakistan on October 27, 1958, following a Proclamation of Martial Law,⁷¹ did not pay any heed to the Program, the idea of securing greater provincial autonomy for East Pakistan and safeguarding the interests of East Pakistanis became the cornerstone of the Awami League’s election platform in 1970.⁷² In the first general election in Pakistan’s history, held on December 7, 1970, the Awami League emerged as the majority party, winning 167 of 313 parliamentary seats.⁷³ However, instead of inviting Mujib to form a national government, the military junta “postponed the convening of the National Assembly, *sine die*” on March 1, 1971.⁷⁴ This indiscriminate move incensed the East Pakistanis and galvanized a “massive movement of civil disobedience” in the province.⁷⁵ However, the military junta labeled the popular movement as an “armed rebellion” and launched the genocidal “Operation Searchlight” to crush the movement.⁷⁶ This led East Pakistan to proclaim its independence as the sovereign nation of Bangladesh on March 26, 1971.⁷⁷

The Pakistani military crackdown in Bangladesh involved the abduction and extrajudicial execution of several thousand political opponents and distinguished intellectuals.⁷⁸ The manner in which these killings were carried out bore the hallmarks of the manner in which Hitler had systematically annihilated any opposition to his rule.⁷⁹ Bengali dissidents and intellectuals were also abducted and subsequently tortured to death by paramilitary forces—namely, *Al-Badr* (the moon) and *Al-Shams* (the sun)—established by the Pakistani military junta.⁸⁰ It is widely believed that these killings were carried out to not only terrorize the Bengali population into obedience, but also to

⁷⁰ *Id.*

⁷¹ BARI, *supra* note 36, at 43.

⁷² H. RIZVI, MILITARY, STATE AND SOCIETY IN PAKISTAN 126 (2000).

⁷³ ROBERT JACKSON, SOUTH ASIAN CRISIS: INDIA-PAKISTAN-BANGLADESH 24 (2014).

⁷⁴ Susmita Dash & M. Babu, *Genocide in the Liberation War of Bangladesh and Its Characteristics: A Case Study on Gopalpur Genocide*, 3 INT’L J. EDUC. RSCH. 1, 1 (2019).

⁷⁵ See BARI, *supra* note 36, at 7.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Deepak Jain, *Bangladesh 1971: A Study in Genocide*, SYNERGY (June 9, 2018), <https://utsynergyjournal.org/2018/06/09/bangladesh-1971-a-study-in-genocide>.

⁷⁹ Pizaur Hossain, *1971: Another Chapter in World History When Intellectuals Were Targeted*, DAILY STAR (Dec. 14, 2018), <https://www.thedailystar.net/supplements/martyred-intellectuals-day-2017/news/1971-another-chapter-world-history-when-intellectuals-were-targeted-1672981>.

⁸⁰ *Id.*

deprive the Bengali nation of the benefits of the wisdom and contributions of enlightened minds.⁸¹

Despite the brutality inflicted on the Bengali population, on December 16, 1971, the Bengalis ultimately emerged victorious in their war of independence against Pakistan.⁸² However, it seems that Pakistan's ruling elite has not learned any lesson from its use of arbitrary measures, such as extrajudicial killing. Although such measures ultimately led the eastern wing of the nation to break away as a separate nation, successive governments in Pakistan have authorized the security forces to continue to use extrajudicial killings to terrorize its own population and suppress their demands. In this context, reference can be made to the extrajudicial killing of thousands of inhabitants of Balochistan—Pakistan's largest province which is rich in natural resources—to crush their movement for provincial autonomy and demand for a greater share of the natural resources of the province.⁸³ Those killed include academics, political activists, human rights activists, journalists, and students.⁸⁴

Thus, although the inhabitants of the Indian Subcontinent had strong reservations about the colonial government's use of extrajudicial killing to quell their nationalist movements, their governments, upon independence, have resorted to the same arbitrary tool to suppress their citizens' legitimate demands with impunity. In this context, the observations of Alan Gledhill are pertinent: "All previous Indian governments have been despotic, and the main Indian objection to the rule which ceased in 1947 was not that it was despotic, but that it was British."⁸⁵

II. THE CONSTITUTION OF BANGLADESH AND THE GUARANTEES OF A LIBERAL DEMOCRACY

Following the emergence of Bangladesh as an independent nation, the founding fathers made the conscious effort to give effect to the long-cherished aspiration of Bangladeshis to be part of a liberal democracy.⁸⁶ Accordingly, they endeavored to institute a society based on the three pillars of democracy, rule of

⁸¹ See, e.g., *Killing of Intellectuals*, BANGLAPEDIA, https://web.archive.org/web/20190526180022/http://en.banglapedia.org/index.php?title=Killing_of_Intellectuals.

⁸² BARI, *supra* note 36, at 7.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ ALAN GLEDHILL, *THE REPUBLIC OF INDIA: THE DEVELOPMENT OF ITS LAWS AND CONSTITUTION* 3 (1964).

⁸⁶ M. Ehteshamul Bari & Pritam Dey, *The Enactment of Digital Security Laws in Bangladesh: No Place for Dissent*, 51 GEO. WASH. INT'L. L. REV. 595, 599 (2019).

law, and fundamental liberties, to avoid the traumatic experiences of the past union with Pakistan. This is evident from the preamble of the Constitution of Bangladesh:

it shall be a fundamental aim of the State to realise through the democratic process a socialist society, free from exploitation—a society in which the rule of law, fundamental human rights and freedom, equality and justice . . . will be secured for all citizens[.]⁸⁷

Furthermore, the Constitution stipulates that respect for “fundamental human rights and freedoms and respect for the dignity and worth of the human person” shall be one of the Fundamental Principles of State Policy.⁸⁸ This shall be “fundamental to the governance of Bangladesh, . . . applied by the State in the making of laws, . . . a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the state and of its citizens.”⁸⁹ Hence, the Constitution, as the supreme law of Bangladesh, imposes an obligation on the state to ensure that its laws and policies respect the rights and dignity of individuals.

To complement the above guarantees, the Constitution safeguards the enjoyment of as many as eighteen fundamental rights.⁹⁰ Since “the enjoyment of the right to life is a necessary condition of the enjoyment of all other human rights[.]”⁹¹ it has found a prominent place in the Constitution. Article 32 of the Constitution provides: “No person shall be deprived of life . . . save in accordance with law.”⁹² Thus, the Constitution imposes an obligation on the state to protect citizens from arbitrary deprivation of life. Furthermore, Article 35(3) stipulates that anyone suspected of committing an offense “shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law[.]” thereby guaranteeing the right of the accused to have his day in the court to contest the charges brought against him and to be punished only after a guilty verdict is pronounced against him.⁹³ It can be argued that the cumulative effect of these guarantees in the Constitution is to prevent security forces from arbitrarily encroaching on the right to life of a suspect as judge, jury, and executioner in contravention of due process of law.

⁸⁷ CONSTITUTION OF THE PEOPLE’S REPUBLIC OF BANGL., Nov. 4, 1972, pmb1.

⁸⁸ *Id.* art. 11.

⁸⁹ *Id.* art. 8.

⁹⁰ *See id.* arts. 27–44.

⁹¹ LILY SRIVASTAVA, *LAW & MEDICINE* 73 (2010).

⁹² CONSTITUTION OF THE PEOPLE’S REPUBLIC OF BANGL., Nov. 4, 1972, art. 32.

⁹³ *Id.* art. 35.

In this context, the observations of the Supreme Court of India about the right to life are noteworthy. Specifically, the right to life receives constitutional protection in India under the same language as in the Constitution of Bangladesh. In the 2009 case of *Rameshbhai Chandubhai Rathod v. State of Gujarat*, the court noted: “fairness, justice and reasonableness [] constitute the essence of guarantee of life . . . epitomized in . . . the Constitution”⁹⁴

III. EXTRAJUDICIAL KILLINGS DURING THE REGIME OF MUJIB

A. *The Reign of Mujib*

Despite the extensive guarantees, as discussed in Part II, incorporated into the Constitution of Bangladesh to institute a liberal democracy, these guarantees were soon discarded to cement Mujib’s grip on power. Although Mujib enjoyed tremendous popular support when he ascended to the office of Prime Minister on January 11, 1972, his ineffectiveness in curbing “rapid inflation, food shortages, famine, smuggling[,] . . . black-marketeering[,]” and widespread corruption among his party members adversely impacted the lives of millions in the nascent nation.⁹⁵ Consequently, the nation witnessed the rise of two extreme leftist political parties, namely, *Jatiya Samajtantrik Dal* (National Socialist Party) and *Sarbohara* (Proletariat) Party. These parties resorted to violent means in an attempt to overthrow the government of Mujib.⁹⁶ In response, Mujib unleashed a reign of terror. He deployed the *Jatiya Rakkhhi Bahini* (JRB) (National Defense Force)—a paramilitary force consisting of 25,000 men drawn from the BAL who had sworn an oath of allegiance not to the state or the Constitution, but rather to Mujib—to stage a crackdown on his opponents.⁹⁷ It is estimated that during Mujib’s rule, the JRB and other security forces extrajudicially killed thousands of individuals who either opposed or were suspected of opposing Mujib.⁹⁸

However, notwithstanding the lawless manner in which the JRB was operating, the High Court Division (HCD) of the Supreme Court (the highest

⁹⁴ *Rameshbhai Rathod v. State of Gujarat*, (2009) 5 SCC 740 ¶ 89 (India).

⁹⁵ BARI, *supra* note 36, at 174.

⁹⁶ *Id.*

⁹⁷ See *Jatiya Rakkhhi Bahini (JRB) – From Law Enforcers to Sheikh Mujib’s Private Army*, LONDONI, <http://www.londoni.co/index.php/26-history-of-bangladesh/1975-assassination-of-sheikh-mujibur-rahman/266-assassination-of-sheikh-mujibur-rahman-1975-jatiyo-rakkhhi-bahini-jrb-from-law-enforcers-to-sheikh-mujib-s-private-army-history-of-bangladesh>.

⁹⁸ Taj Hashmi, *It’s Time to Impose Sanctions on Bangladesh: Stop Extrajudicial Killings, Enforced Disappearances, and Torture*, S. ASIA (Oct. 28, 2020), <http://southasiajournal.net/its-time-to-impose-sanctions-on-bangladesh-stop-extrajudicial-killings-enforced-disappearances-and-torture>.

court in Bangladesh) intervened, in proper exercise of its constitutional duty, to prevent arbitrary encroachment on the liberty of individuals. The HCD forcefully observed in early 1974, while considering a writ petition for *habeas corpus* challenging the actions taken by the JRB, that: “the Rakkhi Bahini’s methods of operation have shown a complete disrespect for the procedural reforms as are enjoined by the Constitution as well as by the general law of the country.”⁹⁹ It is striking that instead of directing the JRB to cease and desist its unconstitutional actions, Mujib proceeded to enable the JRB to act in an unconstrained manner. He persuaded the Parliament to enact the *Jatiya Rakkhi Bahini (Amendment) Act*, which granted total immunity to the members of JRB from prosecution and legal proceedings.¹⁰⁰ However, since the HCD’s power to enforce the fundamental rights of individuals stems from the Constitution itself,¹⁰¹ the HCD continued to take notice of the human rights violations perpetrated by the JRB. For instance, in August 1974, the HCD held that the measures taken by the JRB in putting down Mujib’s political rivals were “illegal, ultra vires, and prejudicial to the fundamental rights ensured in the Constitution.”¹⁰²

However, Mujib’s response to the judiciary acting independently to hold his private army accountable was akin to that of an absolute dictator. On December 28, 1974, in an attempt to remove the checks on his powers, Mujib persuaded the President (the nominal head of state) to proclaim an emergency on the imprecise ground of internal disturbance, pursuant to Article 141A(1) of the Constitution.¹⁰³ On the same day as the proclamation of emergency, a presidential order was issued, suspending the enforcement of twelve of the eighteen fundamental rights guaranteed by the Constitution. This included the right to life and the right to petition the Supreme Court for enforcement of the fundamental rights.¹⁰⁴ Arguably, this order was issued to remove the constitutional obligation of the government of Mujib to respect “fundamental human rights and freedoms and respect for the dignity and worth of the human person.”¹⁰⁵ Consequently, only four days into the suspension of the enforcement

⁹⁹ RICHARD F. NYROP ET AL., AREA HANDBOOK FOR BANGLADESH 7 (1975).

¹⁰⁰ Jatiyo Rakkhi Bahini (Amendment) Act, 1974, art. 3 (Bangl.) (quoted in *Ignoring Executions and Torture: Impunity for Bangladesh’s Security Forces*, HUM. RTS. WATCH (May 18, 2009), <https://www.hrw.org/report/2009/05/18/ignoring-executions-and-torture/impunity-bangladeshs-security-forces>).

¹⁰¹ CONSTITUTION OF THE PEOPLE’S REPUBLIC OF BANGL., Nov. 4, 1972, art. 102(1).

¹⁰² NYROP ET AL., *supra* note 99, at 7.

¹⁰³ BARI, *supra* note 36, at 174.

¹⁰⁴ *Id.* at 202.

¹⁰⁵ CONSTITUTION OF THE PEOPLE’S REPUBLIC OF BANGL., Nov. 4, 1972, art. 11.

of the fundamental rights, the JRB extrajudicially executed Siraj Sikder—the head of *Sarbohara* Party.¹⁰⁶

On January 25, 1975, twenty-three days after Sikder’s killing, Mujib used the overwhelming majority of the BAL to insert the Constitution (Fourth Amendment) Act into the Constitution to formally complete Bangladesh’s transformation from a liberal democracy to an absolute dictatorship.¹⁰⁷ This amendment substituted parliamentary democracy, which was introduced in Bangladesh within a month of the nation securing independence from Pakistan to realize the “aspiration of the people[,]”¹⁰⁸ with a presidential form of government. The amendment prescribed a “direct election” for the office of the President.¹⁰⁹ Paradoxically, the amendment did not envisage any such election for Mujib. Rather, it proclaimed that Mujib “shall become, and enter upon the office of President of Bangladesh and shall, as from such commencement, hold office as President of Bangladesh as if elected to that office under the Constitution as amended by this Act.”¹¹⁰

To enable the newly anointed President Mujib to act in an unconstrained manner, the Fourth Amendment dispensed with the traditional checks and balances which underpinned the system of government originally envisaged by the Constitution. For instance, the Amendment diminished the competence of Parliament to impeach the President on account of violating the Constitution, grave misconduct, or physical or mental incapacity.¹¹¹ Any motion to impeach or remove the President under the Constitution, as amended by the Fourth Amendment, required the support of at least three-fourths of the Members of Parliament (MPs) to be passed.¹¹² Thus, the President required a stringent procedure for impeachment or removal, whereas any provision of the Constitution can be amended with the support of a mere two-thirds of MPs.¹¹³ Furthermore, since Mujib’s party commanded the support of 293 of the 300 MPs,¹¹⁴ the opposition could never muster the necessary numbers to either impeach or remove him.

¹⁰⁶ See Tasneem Khalil, *Bangladesh: Men in Black*, in JALLAD: DEATH SQUAD AND STATE TERROR IN SOUTH ASIA 27–28 (2015).

¹⁰⁷ BARI, *supra* note 36, at 175.

¹⁰⁸ Provisional Constitution of Bangladesh Order, 1972; see BARI, *supra* note 36, at 175.

¹⁰⁹ CONSTITUTION OF THE PEOPLE’S REPUBLIC OF BANGL., Jan. 25, 1975, amend. IV, § 35(b).

¹¹⁰ *Id.*

¹¹¹ See *id.* arts. 52–53.

¹¹² *Id.* amend. IV, § 4.

¹¹³ *Id.* art. 142(1)(a).

¹¹⁴ M. Ehteshamul Bari, *The Incorporation of the System of Non-Party Caretaker Government in the Constitution of Bangladesh in 1996 as a Means of Strengthening Democracy, its Deletion in 2011 and the Lapse*

To further enable President Mujib to assert supremacy over the legislative branch, the Constitution, as amended by the Fourth Amendment, granted Mujib the power to withhold assent from any bill passed by the Parliament.¹¹⁵ Hence, the amendment essentially invested Mujib with veto power.

Furthermore, the Fourth Amendment eroded the independence of the judiciary by changing the method of appointing and removing the justices of the Supreme Court. It conferred on the President the power to appoint the justices of the Supreme Court without needing to consult the Chief Justice of Bangladesh, who is better poised than the political branches of the government to know whether a lawyer or a judicial officer merits an appointment to the bench.¹¹⁶ Furthermore, the President was granted the power to remove the justices from office on the ground of misbehavior or incapacity.¹¹⁷ Thus, Mujib was entrusted with the unfettered power to decide the fate of the justices of the highest court of law, thereby impeding its competence to hold him accountable for his actions.

Finally, the Fourth Amendment empowered Mujib to declare Bangladesh a one-party state—a power which he exercised within a month of the enactment of the amendment.¹¹⁸ This fundamentally changed the political landscape of the nation. The introduction of a single national party—the Bangladesh *Krishak Sramik Awami* League (BAKSAL) (the Bangladesh Peasants and Workers National Party)—resulted in the enforced dissolution of all other political parties in the country.¹¹⁹ The Constitution of the BAKSAL, which was issued on June 6, 1975, stipulated that no one could contest an election either to the Parliament or to the office of the President unless nominated by the BAKSAL.¹²⁰

The removal of checks and balances further emboldened security forces, including the JRB, to systematically crush Mujib’s opposition using arbitrary tools, such as extrajudicial killings. The contempt of Mujib—once “an ardent supporter of liberal democracy”¹²¹—towards the most fundamental human right of individuals was manifestly apparent in his speech made to the Parliament on the very day of the enactment of the Fourth Amendment. He remarked: “Where

of Bangladesh into Tyranny Following the Non-Participatory General Election of 2014: A Critical Appraisal, 28 *TRANSNAT’L L. & CONTEMP. PROBS.* 28, 35 (2018).

¹¹⁵ CONSTITUTION OF THE PEOPLE’S REPUBLIC OF BANGL., Jan. 4, 1975, amend. IV § 12.

¹¹⁶ *Id.* amend. IV § 15–16.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at § 23.

¹¹⁹ BARI, *supra* note 36, at 176.

¹²⁰ *Id.*

¹²¹ *Id.* at 177

is Siraj Sikder today?”¹²² It seems this remark was aimed at sending a stern warning to those who opposed Mujib, i.e., they would suffer the same fate as Sikder if they continued their opposition. Thus, only a few years after gaining independence from Pakistan, Mujib began to use extrajudicial killings to create a climate of fear and intimidation among the population, thereby taking the nation back to the days of despotism.

B. *The Fall of Mujib and the Aftermath*

Mujib’s transformation of Bangladesh into a one-party dictatorship ultimately persuaded a group of junior army officers to take the drastic step of carrying out a *coup d’état*. On August 15, 1975, these army officers assassinated Mujib and a majority of his immediate family members.¹²³ The assassination was followed by the imposition of martial law throughout the country.¹²⁴ However, the constant jostle for power within the army ranks led to a series of coups and counter-coups in the months following the declaration of martial law.¹²⁵ Although some degree of political stability was restored after the government of Major General Ziaur Rahman (Zia) initiated the electoral process and withdrew martial law on April 6, 1979,¹²⁶ this was also short-lived. Zia, too, was assassinated by a group of army officers on May 30, 1981.¹²⁷

IV. EXTRAJUDICIAL KILLINGS DURING ERSHAD’S RULE

A. *The Reign of Ershad*

Lieutenant General H.M. Ershad, then the Chief of Army Staff, emerged as the direct beneficiary of the abortive coup that assassinated Zia.¹²⁸ Although Ershad initially ruled out the possibility of imposing martial law on the plea that it would be counterproductive to fostering democracy in the country, he had a complete change of heart within a few months.¹²⁹ On March 24, 1982, Ershad executed a bloodless coup to overthrow the democratically elected government of the BNP—the party founded by Zia—and declared martial law throughout

¹²² See *Controversial Killing of Siraj Sikdar*, LONDONI, <http://www.londoni.co/index.php/26-history-of-bangladesh/1975-assassination-of-sheikh-mujibur-rahman/270-assassination-of-sheikh-mujibur-rahman-1975-controversial-killing-of-siraj-sikder-history-of-bangladesh>.

¹²³ *Sheikh Hasina*, IOWA STATE UNIV., <https://awpc.cattcenter.iastate.edu/directory/sheikh-hasina>.

¹²⁴ BARI, *supra* note 36, at 177.

¹²⁵ Bari, *supra* note 114, at 38.

¹²⁶ See *id.* at 39; BARI, *supra* note 36, at 177.

¹²⁷ Bari, *supra* note 114, at 39.

¹²⁸ See *id.* at 40.

¹²⁹ *Id.*

the nation for the second time in its history.¹³⁰ Ironically, contrary to his earlier assertions, Ershad now claimed that a martial law regime was necessary to institute a healthy “democratic system which [would] ensure that power really rests with the people.”¹³¹ However, the actions he took after assuming power exposed that he was merely paying lip service to the idea of instituting a “healthy democratic system.”¹³²

In an effort to consolidate power, Ershad formed his own political party, the Jatiya Party (JP), by raiding the ranks of the BAL and BNP and subsequently presided over three sham elections—one presidential and two parliamentary.¹³³ Alarmed at the prospect of Bangladesh being turned into a “garrison state,”¹³⁴ Sheikh Hasina (Mujib’s daughter who became the Chief of the BAL in 1981¹³⁵) and Begum Khaleda Zia (Zia’s widow who was elected the Chairperson of the BNP in May 1984¹³⁶) announced on October 28, 1987, a comprehensive program to force Ershad out of office.¹³⁷ Consequently, during November 1987, thousands of opposition supporters took to the streets demanding Ershad’s resignation.¹³⁸ However, to preserve his grip on power, Ershad staged a massive crackdown on the opposition, issuing “shoot on sight” orders to members of law enforcement agencies to restore law and order.¹³⁹ Furthermore, in the same manner as Mujib, on November 27, 1987, Ershad also proclaimed an emergency on the nebulous ground of internal disturbance to fend off the threats posed to his rule.¹⁴⁰ The declaration of emergency was followed by a presidential order suspending the enforcement of the same twelve fundamental rights that had been suspended by Mujib.¹⁴¹ Consequently, it is estimated that by early 1988, the security forces extrajudicially killed as many as thirty-eight people to crush the movement to depose Ershad.¹⁴²

¹³⁰ *Id.*

¹³¹ *Designation as Prime Minister*, 28 ASIAN RECORDER 16,387, 16,937 (1982); *Gen. Ershad Takes Over*, 28 ASIAN RECORDER 16,387, 16,576 (1982).

¹³² *See id.*

¹³³ Bari, *supra* note 114, at 40–42.

¹³⁴ BARI, *supra* note 36, at 181.

¹³⁵ *Hasina*, *supra* note 123.

¹³⁶ A.K.M. Jamal Uddin, *The Movement for the Restoration of Democracy in Bangladesh 1982-1990* (Jan. 2006) (Ph.D. dissertation, University of Leeds) (on file at <https://core.ac.uk/download/pdf/40079573.pdf>).

¹³⁷ BARI, *supra* note 36, at 181; Bari, *supra* note 114, at 41.

¹³⁸ BARI, *supra* note 36, at 181.

¹³⁹ U.S. DEP’T OF STATE, ANNUAL HUMAN RIGHTS REPORT 1116 (1987).

¹⁴⁰ BARI, *supra* note 36, at 182.

¹⁴¹ Bari, *supra* note 36, at 206.

¹⁴² Talukder Muniruzzaman, *The Fall of the Military Dictator: 1991 Elections and the Prospect of Civilian Rule in Bangladesh*, 65 PAC. AFFS. 203, 206.

Although the adoption of these repressive measures allowed Ershad to maintain his grip on power, he managed to alienate every section of society by systematically dismantling all democratic avenues for the expression of dissent and by depriving them of the opportunity to elect a government of their choice through free, fair, and credible elections.¹⁴³ The opposing political parties ultimately capitalized on popular discontent in October 1990 when they launched yet another movement to force Ershad out of office.¹⁴⁴ Ershad's response was once again to deploy security forces to indiscriminately kill the opposing political activists. For instance, during an opposition demonstration on October 10, 1990, security forces extrajudicially killed "several people."¹⁴⁵ A month later, Ershad's gunmen killed Shamsul Alam Khan Milon, a medical practitioner and Joint Secretary of the Bangladesh Medical Association, on the campus of the University of Dhaka.¹⁴⁶ His killing sparked a massive civil disobedience movement.¹⁴⁷ Ershad thought he could crush the movement by proclaiming yet another emergency on the ground of internal disturbance.¹⁴⁸ However, Ershad misread the magnitude of the discontent against him. The proclamation of emergency and consequent restrictions did not have the desired impact of persuading people to put an end to their movement.¹⁴⁹ Ultimately, Ershad bowed down to popular demand and resigned from office on December 6, 1990.¹⁵⁰

It is, therefore, evident that in the first two decades after securing independence from Pakistan, successive generations of executives in Bangladesh merely paid lip service to the idea of upholding the fundamental human rights of individuals. They routinely resorted to arbitrary measures, such as extrajudicial killing, to put down anyone considered a threat to their desire of maintaining a stranglehold on power.

B. The General Election of 1991 and the Restoration of Parliamentary Democracy in Bangladesh

Following Ershad's resignation, an extraconstitutional, neutral caretaker government was formed with Chief Justice Shahabuddin Ahmed as its head.¹⁵¹

¹⁴³ Bari, *supra* note 114, at 42–43.

¹⁴⁴ *Id.*

¹⁴⁵ Muniruzzaman, *supra* note 142, at 207.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*; BARI, *supra* note 36, at 184.

¹⁴⁸ BARI, *supra* note 36, at 184.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *President Ershad Resigns*, 37 ASIAN RECORDER 21,519, 21,519–21 (1991).

This caretaker government, in fulfillment of its mandate, assisted the Election Commission in conducting a free and fair general election on February 27, 1991.¹⁵² In the election, the BNP won 140 out of the 300 parliamentary seats and subsequently masterminded the simple majority required to form a government with the support of the *Jamaat-e-Islami*—a party that won eighteen parliamentary seats.¹⁵³ Subsequently, the newly elected Parliament unanimously passed the Constitution (Twelfth Amendment) Act, 1991, which reintroduced parliamentary democracy in Bangladesh nearly seventeen years after it had been discarded by Mujib in favor of a presidential form of government.¹⁵⁴ The resolve shown by the political parties in Bangladesh to restore democracy gave rise to the hope that the democratic ideals on which the nation was founded would finally be realized. In fact, in the decade following the historic general election of 1991, the fundamental human rights of Bangladeshi citizens were not violated through state-sponsored extrajudicial killings. However, all this changed with the return of the BNP-led government in October 2001.

V. THE RETURN OF EXTRAJUDICIAL KILLINGS DURING THE BNP-LED GOVERNMENT OF 2001–2006

When the BNP returned to power in October 2001 after five years of BAL rule, it inherited an escalating crime rate as well as the illicit proliferation of firearms in society.¹⁵⁵ In an effort to combat the deteriorating state of law and order, the BNP government launched “Operation Clean Heart” (Operation)—an operation led by the army—within a year of entering office.¹⁵⁶ Unlike Mujib and Ershad, the BNP government did not use the Operation as a tool to preserve its grip on power.¹⁵⁷ However, the Operation did have an adverse impact on the fundamental human rights of individuals. According to one estimation, during the Operation, the army extrajudicially killed at least fifty-seven individuals.¹⁵⁸ Therefore, to crack down on crime, the government overlooked the fact that even those suspected of committing flagrant crimes were entitled to fundamental

¹⁵² Nizam Ahmed, *Bangladesh*, in ELECTIONS IN ASIA AND THE PACIFIC: A DATA HANDBOOK: VOLUME I: MIDDLE EAST, CENTRAL ASIA, AND SOUTH ASIA 525 (Dieter Nohlen et al. eds., 2001).

¹⁵³ See *Election*, BANGLAPEDIA: NATIONAL ENCYCLOPAEDIA OF BANGLADESH, <http://en.banglapedia.org/index.php?title=Election>.

¹⁵⁴ See Craig Baxter, *Bangladesh in 1991: A Parliamentary System*, 32 ASIAN SURV. 162, 165–66 (1991).

¹⁵⁵ Fred Abrahams, *Judge, Jury, and Executioner: Torture and Extrajudicial Killings by Bangladesh's Elite Security Force*, 18 HUM. RTS. WATCH 1, 15–25 (Dec. 13, 2006).

¹⁵⁶ *Id.*

¹⁵⁷ P.G. Rajamohan, *Operation Clean Heart: Bangladesh's National War Against Terror*, INST. PEACE & CONFLICT STUD. (Dec. 30, 2002), http://www.ipcs.org/comm_select.php?articleNo=931.

¹⁵⁸ *A Bad Law Scrapped*, DAILY STAR (Sept. 15, 2015), <https://www.thedailystar.net/editorial/bad-law-scrapped-143284>.

rights, such as the right to freedom from arbitrary deprivation of life and the right to have a day in court.

Amidst fierce criticism from the opposition and human rights organizations, the BNP government ultimately announced the termination of the Operation on January 9, 2003.¹⁵⁹ However, within forty-six days of termination, the BNP regime used its overwhelming majority in Parliament to pass the Joint Drive Indemnity Act, 2003, indemnifying members of the armed forces against the atrocities committed during the Operation.¹⁶⁰ Thus, the BNP government had followed in the footsteps of Mujib, who had granted immunity to members of the JRB, in entrenching impunity in the legal system for law enforcement who commit gross violations of fundamental human rights.

Notably, permitting law enforcement agencies to operate with impunity encourages the continuation of practices that severely erode fundamental human rights. This claim is bolstered by the events following the enactment of the Joint Drive Indemnity Act. Since the Operation did not yield the desired result of bringing down the crime rate, in March 2004 the BNP government established the Rapid Action Battalion (RAB), a paramilitary force comprised of men from the armed forces, the police, and other law enforcement agencies.¹⁶¹ RAB was entrusted with the task of combatting crime and thereby restoring law and order.¹⁶² However, as during the Operation, RAB members indiscriminately killed individuals suspected of committing crimes. From the commencement of its operation in March 2004 until the BNP left office in October 2006, 991 individuals were killed extrajudicially.¹⁶³ The cavalier attitude of the regime toward these fundamental rights was manifested in the remarks of the then-State Minister for Home Affairs: “Criminals cannot have any human rights.”¹⁶⁴ This attempt to normalize extrajudicial killings as an administrative necessity not only eroded the presumption of innocence of those killed, but also stood in stark contrast to the extensive guarantees contained in the Constitution of Bangladesh—the right not to be arbitrarily deprived of life and the right to contest criminal charges.

¹⁵⁹ Abrahams, *supra* note 155, at 16.

¹⁶⁰ *Operation Clean Heart Indemnity Law Illegal: HC*, DAILY STAR (Sept. 13, 2015), <https://www.thedailystar.net/country/operation-clean-heart-indemnity-law-illegal-hc-142468>.

¹⁶¹ Abrahams, *supra* note 155, at 3.

¹⁶² *Id.*

¹⁶³ *Total Extra-Judicial Killings (Allegedly by Few Members of Different Agencies) from 2001-2021*, ODHIKAR (June 2021) [hereinafter *Total Extrajudicial Killings 2001-2021*], http://odhikar.org/wp-content/uploads/2021/06/KLEA_2001-2021.pdf.

¹⁶⁴ Abrahams, *supra* note 155, at 3.

VI. EXTRAJUDICIAL KILLING DURING THE EMERGENCY OF 2007

Toward the end of the BNP government's tenure, Bangladesh plunged into a political and constitutional crisis over the appointment of the head of the Non-Party Caretaker Government (NPCG). The NPCG system was inserted into the Constitution of Bangladesh in 1996 by the Constitution (Thirteenth Amendment) Act in recognition of the fact that since independence, elections held under the supervision of political governments had invariably been rigged in favor of the incumbent.¹⁶⁵ Thus the Constitution, as amended by the Thirteenth Amendment Act, provided that the NPCG—led by the last retired Chief Justice—would be formed upon the completion of a government's five-year tenure. The NPCG's principal mandate was to assist the Election Commission in conducting a free and fair general election within ninety days of the dissolution of Parliament.¹⁶⁶ The Constitution, as amended by the Thirteenth Amendment Act, further provided that NPCG would “not make any policy decision[,]” but would rather carry out the “routine functions of such government[.]”¹⁶⁷

In October 2006, it was evident that Justice K.M. Hasan would be sworn in as the Chief Adviser of the NPCG, formed to supervise the general election of January 2007.¹⁶⁸ Consequently, the BAL launched a violent campaign to prevent him from assuming office.¹⁶⁹ The BAL alleged that Justice Hasan's past association with the BNP would impede his competence to carry out the functions of the NPCG's head in an objective and impartial manner.¹⁷⁰

The magnitude of violence perpetrated by the BAL ultimately persuaded the army to intervene. On January 11, 2007, the President, under military pressure, declared a state of emergency for the fifth time in the nation's history, once again on the vague ground of internal disturbance.¹⁷¹ The declaration of emergency was followed by a presidential order suspending the enforcement of all eighteen fundamental rights guaranteed by the Constitution, an unprecedented event given the previous emergency regimes had only suspended the enforcement of twelve fundamental rights.¹⁷² The army also installed its preferred candidate,

¹⁶⁵ Bari, *supra* note 114, at 35–48.

¹⁶⁶ CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGL., Nov. 4, 1972, art. 58, 58C(3), 58C(7), *repealed* by CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGL., May 17, 2004, amend. XIV.

¹⁶⁷ *Id.* art. 58D(1).

¹⁶⁸ Bari, *supra* note 114, at 59.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ BARI, *supra* note 36, at 186–87.

¹⁷² *Id.* at 201–07.

Fakhruddin Ahmed, as the head of the NPCG.¹⁷³ Importantly, Ahmed was appointed without exhausting the provisions inserted in the Constitution by the Thirteenth Amendment for the appointment of the head of the NPCG.¹⁷⁴

Strikingly, the army-backed NPCG, in contravention of the NPCG's constitutional mandate to assist the Election Commission in conducting a free and fair general election, suspended polls for an indefinite period and instead made a number of policy decisions.¹⁷⁵ The policy decisions included, among other things, reconstitution of the Anti-Corruption Commission and establishment of the National Coordination Committee on Corruption and Serious Crime to implement its political agenda of incarcerating the top leadership of the two major political parties—BAL and BNP—on charges of corruption.¹⁷⁶ The persecution of the leading politicians of the country, including Hasina and Zia, gave rise to the fear that the army was on the verge of formally taking the reins of the government.¹⁷⁷ Such suspicion gained further momentum in April 2007 when the Chief of Army, General Moeen U. Ahmed, remarked:

The roadmap to democracy lies, I presume, with objectives as envisioned by the government . . . within [an] affordable time frame that will steer the country away from escapism and build [a] strong foundation of validity on democracy . . . We do not want to go back to an “elective democracy” where corruption in society becomes all pervasive, governance suffers in terms of insecurity and violation of rights, and where political “criminalisation” threatens the very survival and integrity of the state.¹⁷⁸

Paradoxically, to obviate the possibility of any opposition to its rule, the army-backed regime went to extraordinary lengths in establishing a reign of terror. For instance, law enforcement agencies took undue advantage of the suspension of enforcement of fundamental human rights, such as the right to life, to extrajudicially execute as many as 333 individuals during the state of emergency.¹⁷⁹ However, the official cover-up of these indiscriminate killings

¹⁷³ Bari, *supra* note 114, at 61.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ U.S. DEP'T OF STATE, CUSTOM REPORT EXCERPTS: BANGLADESH (2008), <https://2009-2017.state.gov/j/drl/rls/hrrpt/2007/100612.htm>; *see also* U.S. DEP'T OF STATE, CUSTOM REPORT EXCERPTS: BANGLADESH (2009), <https://2009-2017.state.gov/j/drl/rls/hrrpt/2008/sca/119132.htm>; Haroon Habib, *Politics Behind Bars*, FRONTLINE (Oct. 5, 2007), <https://frontline.thehindu.com/world-affairs/article30193020.ece>.

¹⁷⁷ BARI, *supra* note 36, at 189.

¹⁷⁸ *Bangladesh to Have Own Brand of Democracy*, DAILY STAR (Apr. 3, 2007), <http://archive.thedailystar.net/2007/04/03/d7040301022.htm>.

¹⁷⁹ *Total Extrajudicial Killings 2001-2021*, *supra* note 163.

was that they were “crossfire killings,” “gunfights,” or “encounter killings.”¹⁸⁰ Thus, the emergency regime sought to imply that these individuals were killed during exchanges of gunfire with members of security forces. Furthermore, to absolve the law enforcement agencies of responsibility for these killings, the Emergency Powers Ordinance, 2007, provided that “no action, done by a person in *good faith*, according to this ordinance or any rule under this ordinance or any provision under such rule, may be challenged in civil or criminal court.”¹⁸¹

To realize the army’s aspiration of formally seizing power, the NPCG, which had the mere constitutional mandate of assisting the Election Commission in holding a credible general election, violated the most fundamental human right—the right to life. However, the army could not fulfill its aspiration as foreign dignitaries, who initially played a major role in instigating the army to intervene in the political deadlock over the appointment of the NPCG head, did not support Bangladesh turning into a garrison state to preserve their nations’ developmental interests.¹⁸²

Subsequently, the NPCG finally announced one year and eight months after taking office that it would assist the Election Commission in conducting a general election in December 2008.¹⁸³ This announcement was followed by the revocation of the state of emergency and the restoration of fundamental rights on December 17, 2008.¹⁸⁴ Hence, the people of the country were deprived of all their rights for nearly two years due to the army’s adventurism.

In the subsequent general election, the BAL-led grand alliance secured a landslide victory over the BNP-led alliance, winning 262 of the 300 parliamentary seats.¹⁸⁵ The BAL’s victory gave rise to the hope that it would ensure respect for the dignity and worth of individuals. Prior to the election, the BAL pledged in its election manifesto—termed the “Charter for Change”—that if elected to power it would put an end to extrajudicial killings, establish the rule of law, and “strictly” enforce the fundamental liberties of individuals.¹⁸⁶

¹⁸⁰ U.S. DEP’T OF STATE, CUSTOM REPORT EXCERPTS: BANGLADESH (2017), <https://www.state.gov/report/custom/491ed2108f>.

¹⁸¹ Emergency Powers Ordinance, 2007, § 6(1) (emphasis added) (Bangl).

¹⁸² BARI, *supra* note 36, at 191.

¹⁸³ Bari, *supra* note 114, at 64.

¹⁸⁴ *Id.*

¹⁸⁵ *Bangladesh Jatiya Sangsad (Parliament)*, INTER-PARLIAMENTARY UNION, http://archive.ipu.org/parline-e/reports/arc/2023_08.htm; *AL, Allies Take 262 Seats*, DAILY STAR (Dec. 31, 2008), <https://www.thedailystar.net/news-detail-69402>.

¹⁸⁶ *Hasina Unveils 23-Point ‘Charter for Change’*, BDNEWS24.COM (Dec. 12, 2008), <https://bdnews24.com/politics/2008/12/12/hasina-unveils-23-point-charter-for-change>.

VII. POST-2009 EXTRAJUDICIAL KILLING BY THE BAL REGIME TO ESTABLISH TYRANNY

Notwithstanding the commitments made by the BAL, it soon became apparent that the party was merely paying lip service to the idea of safeguarding the rule of law and enjoyment of human rights. The idea of perpetuating power at all costs began to constantly guide Prime Minister Hasina's demeanor. To this end, her government resorted to various arbitrary tools, such as extrajudicial killings, to instill fear and terror in the population to deter anyone from voicing opposition to her rule. In the twelve and a half years since the BAL assumed power, at least 2581 individuals have been killed extrajudicially.¹⁸⁷ Thus, the BAL regime has gone further than all previous governments by presiding over the extrajudicial execution of an enormous number of individuals. These killings can be divided into three phases: 2009–2013, 2014–2018, and 2018 to the present.

A. Extrajudicial Killings During the BAL's Rule from January 2009 to December 2013

The commitments made by the BAL before the general election of 2008 were reaffirmed by Prime Minister Hasina before Parliament within a month of her assuming office in February 2009.¹⁸⁸ She remarked that there would be no extrajudicial killings under any circumstances.¹⁸⁹ She further pledged that “legal action would be taken against those guilty of such killing[s].”¹⁹⁰ However, in contravention of these commitments, the regime continued to use the tool, following in the footsteps of its predecessors. Initially, extrajudicial killing was primarily used against those suspected of crimes. Occasionally, however, the regime used the tool to eliminate opposition activists.¹⁹¹ Furthermore, in the same manner as its predecessors, the regime termed these killings as “crossfire killings” or “encounter killings” in an attempt to shroud its actions.¹⁹²

¹⁸⁷ *Total Extrajudicial Killings 2001-2021*, *supra* note 163; ODHIKAR, THREE-MONTH HUMAN RIGHTS MONITORING REPORT ON BANGLADESH (JANUARY – MARCH 2021) (Apr. 2021) [hereinafter THREE-MONTH HUMAN RIGHTS REPORT], http://odhikar.org/wp-content/uploads/2021/04/HR-Report_Jan-Mar_2021_Eng.pdf.

¹⁸⁸ ODHIKAR, HUMAN RIGHTS REPORT 2013: ODHIKAR REPORT ON BANGLADESH 89 (2013) [hereinafter HUMAN RIGHTS REPORT 2013], <http://odhikar.org/wp-content/uploads/2014/08/Annual-Human-Rights-Report-2013-eng.pdf>.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ THREE-MONTH HUMAN RIGHTS REPORT, *supra* note 187, at 21.

¹⁹² *Id.* at 27.

However, there was a dramatic shift in the BAL government's attitude by 2011. By this time, Hasina had begun to take steps calculated to perpetuate her survival in power. To this end, she identified the NPCG system as an impediment to implementing her parochial agenda, as the NPCG had enabled voters to exercise their democratic rights in free and fair general elections to elect governments truly reflective of their will.¹⁹³ Consequently, citizens were empowered by the NPCG to never reelect the incumbent party.¹⁹⁴ Accordingly, the BAL used its brute majority in Parliament to repeal the NPCG system on July 3, 2011, through the enactment of the Constitution (Fifteenth Amendment) Act, 2011.¹⁹⁵ The deletion of the NPCG from the Constitution paved the way for the BAL to rig the general election scheduled for January 2014. This disturbing scheme, which had the dreadful impact of robbing Bangladeshis' votes of meaning, persuaded the BNP and other opposing political parties to take to the streets to demand the restoration of the NPCG.¹⁹⁶ They staged strikes and blockades throughout 2013, which often turned violent.¹⁹⁷

However, Hasina, in the same manner as her father, Mujib, sought to put down opposition through extrajudicial killings. In 2013 alone, security forces extrajudicially killed 329 individuals—127 of whom were political activists opposing the BAL.¹⁹⁸ These killings were carried out to systematically remove impediments to Hasina's design of securing unfettered power through the supervision of a questionable general election in January 2014.¹⁹⁹ It should, however, be stressed that extrajudicial killings were not solely confined to the victimization of opposition leaders. Rather the tool was also used to launch a brutal crackdown on anyone who protested the policies of the regime. In this context, reference can be made to the extrajudicial killing of supporters of *Hefazat-e-Islam*—a coalition of various Islamic Organizations—on May 5, 2013.²⁰⁰ In 2013, *Hefazat* had mobilized a credible movement demanding two

¹⁹³ See *supra* Part VI.

¹⁹⁴ Bari, *supra* note 114, at 72.

¹⁹⁵ See CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGL., June 30, 2011, amend. XV § 21 ("In the Constitution, 'CHAPTER IIA- NON-PARTY CARETAKER GOVERNMENT' shall be omitted").

¹⁹⁶ Shafiqul Alam, *Bangladesh Opposition Boycotts 5 January Polls*, MINT (Dec. 2, 2013), <https://www.livemint.com/Politics/hTonP0eYbA7emfbPtSHVRI/Bangladesh-opposition-boycotts-5-January-polls.html>; *Bangladesh Prime Minister Sheikh Hasina Rules Out Cancelling Election*, ABC NEWS (Jan. 3, 2014), <https://www.abc.net.au/news/2014-01-03/an-bangladesh-election/5182948>.

¹⁹⁷ Alam, *supra* note 196.

¹⁹⁸ HUMAN RIGHTS REPORT 2013, *supra* note 188, at 85.

¹⁹⁹ See *infra* Section VII.B.

²⁰⁰ Sabir Mustafa, *Hefazat-e-Islam: Islamist Coalition*, BBC NEWS (May 6, 2013), <https://www.bbc.com/news/world-asia-22424708>; ODHIKAR, ASSEMBLY OF HEFAZATE ISLAM BANGLADESH AND HUMAN RIGHTS VIOLATIONS 6 (2013), http://odhikar.org/wp-content/uploads/2013/06/Fact-finding_Hefazate-Islam_English.pdf.

things: punishment for atheist bloggers who had published defamatory statements about the religion of Islam, Allah, and Prophet Muhammad; and the enactment of a stricter law on blasphemy.²⁰¹ *Hefazat* considered the government's inaction on these two issues as tacit support for the bloggers.²⁰² Things ultimately came to a head on May 5, 2013, when *Hefazat* called for a program to “siege” Dhaka—the capital of Bangladesh.²⁰³ Although *Hefazat* activists were allowed to gather at *Shapla* Square, which is at the heart of the commercial hub of Dhaka, shortly after midnight, 10,000 joint security force personnel launched an unprecedented crackdown on the unarmed *Hefazat* activists.²⁰⁴ It is estimated that the security forces killed at least sixty-one activists during its notorious “Operation *Shapla*”.²⁰⁵ The brutality of the regime is further exemplified by the fact that those killed during the operation included children who were studying at various Madrassas and had come to express their solidarity with the *Hefazat* movement.²⁰⁶

It is also striking that in an effort to shroud its brutality under a veil of secrecy, the regime turned the electricity off at *Shapla* Square and the surrounding area prior to the commencement of the operation.²⁰⁷ It also stopped the transmission of two television channels' live broadcast of the crackdown.²⁰⁸ Odhikar, one of the leading human rights organizations in Bangladesh, published a report on June 10, 2013, detailing the violence inflicted on the *Hefazat* activists.²⁰⁹ However, within two months of publication, the BAL regime arrested Adilur Rahman Khan—the Secretary of Odhikar.²¹⁰ Khan's arrest was followed by the arrest of his colleague, ASM Nasiruddin Elan—the Director of Odhikar—on November 6, 2013.²¹¹ Both were charged under the draconian Section 57 of the Information and Communication Technology Act, 2006, which became a convenient tool for the BAL regime to stifle free

²⁰¹ ODHIKAR, *supra* note 200, at 2.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ See *Odhikar Secretary, Director Indicted*, DAILY STAR (Jan. 9, 2014), <https://www.thedailystar.net/odhikar-secretary-director-indicted-6046>; Saad Hammadi, *Bangladesh Police Arrest Activist Over 'Fabricating Information' on Atrocities*, GUARDIAN (Aug. 11, 2013), <https://www.theguardian.com/world/2013/aug/11/bangladesh-arrest-activist-fabricating-information-atrocities>.

²¹¹ *Bangladesh: Arrest of Odhikar Director, A New Step in Persecution of Prominent Human Rights Organisation*, INT'L FED'N HUM. RTS. (Nov. 6, 2013), <https://www.fidh.org/en/region/asia/bangladesh/14207-bangladesh-arrest-of-odhikar-director-a-new-step-in-persecution-of>.

speech.²¹² Khan and Elan were charged with “publishing false images and information” concerning the operation at *Shapla* Square and for “disrupting the law and order situation of the country.”²¹³ Thus, it is obvious that the regime did not merely stop at violating the most fundamental human right—namely, the right to life—but also sought to persecute human rights defenders for bringing to the fore the perpetration of these gross violations through the publication of an objective report in exercise of the constitutionally guaranteed right to freedom of expression.²¹⁴

By December 2013, 764 individuals had been killed extrajudicially.²¹⁵ It is therefore clear that toward the end of the BAL regime’s tenure, it had, through the use of draconian tools such as extrajudicial killings, manifested its distinct advance towards instituting tyranny in Bangladesh.

B. Extrajudicial Killings During the BAL’s Rule from January 2014 to December 2018

Due to the repressive measures pointed out above in Part VIII.A, the BAL managed to fend off the threats posed by the opposition movement for the restoration of the NPCG.²¹⁶ Subsequently, it supervised a “one-sided and voter-less” general election in January 2014 to maintain its stranglehold on power.²¹⁷ All major opposition political parties, including the BNP, boycotted the election over the prospect of it being rigged by the BAL in the absence of the NPCG.²¹⁸ Due to such boycott, the BAL-led alliance won 154 of the 300 parliamentary seats unopposed, thereby masterminding the majority required to form a government before people were even afforded the opportunity to exercise their democratic right to vote.²¹⁹ When elections for the remaining 146 seats were held on January 5, 2014, only twenty percent of the electorate casted their vote.²²⁰ It should be stressed that although the BAL managed to secure its survival in power, it lacked any democratic accountability. Consequently, the BAL regime became even more despotic. In particular, the regime began to

²¹² Bari & Dey, *supra* note 86, at 602–13.

²¹³ *Bangladesh: Stop Judicial Harassment of Adilur Rahman Khan and A.S.M Nasiruddin Elan of Odhikar*, FORUM ASIA (Jan. 18, 2017), <https://www.forum-asia.org/uploads/wp/2017/01/Bangladesh-Odhikar-18Jan2017.pdf>.

²¹⁴ CONSTITUTION OF THE PEOPLE’S REPUBLIC OF BANGL., Nov. 4, 1972, art. 39.

²¹⁵ *Total Extrajudicial Killings 2001-2021*, *supra* note 164, at 113.

²¹⁶ Bari, *supra* note 116, at 76.

²¹⁷ *Id.* at 75.

²¹⁸ *Id.* at 75–76.

²¹⁹ *Id.* at 76.

²²⁰ *Id.*; ALI RIAZ, AN INTRODUCTION TO SOUTH ASIAN POLITICS 68 (Neil DeVotta ed., 1st ed. 2015).

indiscriminately use the heinous tool of extrajudicial killings. An attempt will now be made to shed light on some of the most notable instances of killings during the period between January 2014 and December 2018.

1. *The Killing of Opposition Activists and the Seven-Murder in Narayanganj*

In 2014 alone, the regime extrajudicially killed 172 individuals.²²¹ Strikingly, thirty-five of those killed were grassroots leaders of either the BNP or the *Jamaat*.²²² The gruesome manner in which some of these individuals were killed came to the fore after details concerning the “seven-murder” in Narayanganj emerged.²²³ On April 27, 2014, RAB officers abducted Nazrul Islam, a panel mayor of the Narayanganj City Corporation, on the orders of BAL leader and political adversary, Nur Hossain.²²⁴ Islam’s close associates were not spared either. Islam was abducted along with six others—three of his associates; the driver of his vehicle; his lawyer, Chander Kumar Sarkar; and Sarkar’s driver.²²⁵ The mutilated bodies of these individuals were found floating in the *Shitalakhya* river in Narayanganj three days after their abduction.²²⁶ Their post-mortem report revealed that they had been “strangled to death after being knocked unconscious by a blow to the head.”²²⁷ It can be argued that these brutal killings were carried out within a few months of the controversial polls in January 2014 to impede the opposition’s ability to organize a popular movement and to instill fear in the larger population.

2. *The Killing of Nurul Islam Nuru—A Grassroot Leader of the BNP*

As part of the BAL’s systematic campaign of suppressing its political adversaries and the general population, on March 29, 2017, security forces

²²¹ ODHIKAR, HUMAN RIGHTS REPORT 2014 (ON BANGLADESH) 64, http://odhikar.org/wp-content/uploads/2015/12/Annual_Human_Rights_Report_2014_Eng.pdf.

²²² *Id.*

²²³ Press Release, Amnesty Int’l, Bangladesh: Enforced Disappearances, Torture and Restrictions on Freedom of Expressions 5 (Sept. 2, 2014) [hereinafter Amnesty Press Release], <https://www.amnesty.org/en/wp-content/uploads/2021/07/asa130062014en.pdf>; INT’L FED’N HUM. RTS., VANISHED WITHOUT A TRACE: THE ENFORCED DISAPPEARANCE OF OPPOSITION AND DISSENT IN BANGLADESH 58–59 (Apr. 2019) [hereinafter VANISHED WITHOUT A TRACE], https://www.fidh.org/IMG/pdf/bangladesh735a_web.pdf.

²²⁴ *Nur Hossain Suspended*, BANGLANEWS24 (May 10, 2015, 6:00 PM), <https://www.banglanews24.com/english/national/news/bd/40009.details>; *Conflict between Nazrul, Nur Hossain led to seven murders: RAB*, BDNEWS24.COM (Dec 11, 2014, 3:51 AM), <https://bdnews24.com/politics/2014/12/11/conflict-between-nazrul-nur-hossain-led-to-seven-murders-rab>

²²⁵ VANISHED WITHOUT A TRACE, *supra* note 224, at 59–60.

²²⁶ Amnesty Press Release, *supra* note 224, at 9; VANISHED WITHOUT A TRACE, *supra* note 224, at 60.

²²⁷ Amnesty Press Release, *supra* note 224.

picked up Nurul Islam Nuru—a BNP leader—from his residence in Chittagong.²²⁸ Within a few hours of being picked up, his dead body was found floating in the *Karnaphuli* river.²²⁹ He was not only shot twice in the head but his body bore the marks of several injuries.²³⁰ Thus, the merciless killing of Nuru resembled the brutality that had been inflicted on Islam and his six associates.

3. *The Extrajudicial Killing of 285 Individuals under the Guise of the “War on Drugs” in 2018*

As the BAL’s second consecutive term in office was drawing to a close in 2018, it began to take concrete measures to supervise yet another controversial general election to maintain its iron-grip on power. In anticipation of resistance from the opposition and the larger population, in May 2018, the BAL government launched the so-called “war on drugs.”²³¹ Although the stated objective of the operation was to combat the proliferation of the use of illicit drugs in the country, it soon became evident that the operation was a cover for terrorizing the population into political submission. From May to December of 2018, law enforcement agencies extrajudicially killed as many as 285 individuals in drug raids.²³² Although the regime claimed that those killed were drug peddlers who engaged in gunfights with law enforcement agencies, there were no reports of any member of law enforcement being injured or killed in these exchanges of gunfire.²³³ Furthermore, bigwigs and drug lords remained outside the purview of the campaign and of law. Most notably, a ruling party MP, whose name had time and again appeared in intelligence reports as the leading drug lord, was not brought to justice.²³⁴

The operation was also used to target opposing grassroots leaders. For instance, a number of BNP activists were killed extrajudicially by law enforcement agencies during the operation.²³⁵ In an attempt to show that the

²²⁸ Arafatul Islam, *Bangladeshi Activists Falling Foul of ‘Crossfires’*, DW (Apr. 4, 2017), <https://www.dw.com/en/bangladeshi-activists-falling-foul-of-crossfires/a-38288985>; *Picked Up, then Found Murdered*, DAILY STAR (Mar. 31, 2017), <https://www.thedailystar.net/frontpage/picked-then-found-murdered-1384138>.

²²⁹ Islam, *supra* note 229; *Picked Up, then Found Murdered*, *supra* note 229.

²³⁰ Islam, *supra* note 229; *Picked Up, then Found Murdered*, *supra* note 229.

²³¹ *Bangladesh: Alleged Extrajudicial Killings in the Guise of a ‘War on Drugs’*, AMNESTY INT’L (Nov. 4, 2019), <https://www.amnesty.org/en/latest/news/2019/11/bangladesh-killed-in-crossfire>.

²³² ODHIKAR, HUMAN RIGHTS REPORT 2018 (ON BANGLADESH) 6 (2018) [hereinafter HUMAN RIGHTS REPORT 2018], http://odhikar.org/wp-content/uploads/2019/08/Annual-HR-Report-2018_Engl.pdf.

²³³ *Id.* at 23.

²³⁴ Muntakim Saad & FM Mizanur Rahaman, *Yaba ‘Godfathers’: Out of Teknaf into Safety*, DAILY STAR (June 3, 2018), <https://www.thedailystar.net/frontpage/yaba-godfathers-out-teknaf-safety-1585462>.

²³⁵ AMNESTY INT’L, *KILLED IN “CROSSFIRE”: ALLEGATIONS OF EXTRAJUDICIAL EXECUTIONS IN BANGLADESH IN THE GUISE OF A WAR ON DRUGS 18* (2019) [hereinafter *KILLED IN “CROSSFIRE”*], <https://www>.

BNP men killed in the operation were drug dealers, drugs were conveniently placed beside their dead bodies.²³⁶

During the course of 2018, another 181 individuals were killed extrajudicially in addition to those killed during the “war on drugs.”²³⁷ Thus, law enforcement agencies executed a total of 466 individuals in 2018—the highest number of killings in a single year.²³⁸

In the five years following the sham election of January 2014, the regime extrajudicially killed 1157 individuals.²³⁹ Therefore, in contrast to the period between December 2009 and January 2013, it is evident that there was a sharp increase in the number of extrajudicial executions since the BAL usurped power through the voter-less general election of January 2014.

C. *Extrajudicial Killings Following the General Election of 2018*

Although the BNP and its allies remained resolute in their demand for the restoration of the NPCG to supervise a free and fair general election in December 2018, their ability to organize a credible popular movement for compelling the BAL to accept this demand was severely impeded. This was due to the regime’s systematic oppression of the population through, among other things, extrajudicial killings.²⁴⁰ Consequently, the BAL regime succeeded in supervising another sham general election on December 30, 2018, allowing Hasina yet again to rule unchallenged.²⁴¹ The credibility of the election was marred by widespread electoral malpractices perpetrated by BAL activists with the aid of the government machineries.²⁴² These malpractices included stamping and stuffing ballot papers on the day and night before the election, preventing people from entering polling stations to vote, and forcing voters to cast their votes in favor of the BAL.²⁴³ By virtue of these unprecedented levels of fraud,

amnesty.org/en/documents/asa13/1265/2019/en; Vidhi Doshi, *138 People Killed in 2 Months in Bangladesh People Crackdown on Drug Dealers*, WASH. POST (July 13, 2018), https://www.washingtonpost.com/world/asia_pacific/138-people-killed-in-2-months-in-bangladesh-police-crackdown-on-drug-dealers/2018/07/11/c78806ba-6f1d-11e8-b4d8-eaf78d4c544c_story.html.

²³⁶ KILLED IN “CROSSFIRE”, *supra* note 236, at 17.

²³⁷ HUMAN RIGHTS REPORT 2018 (ON BANGLADESH), *supra* note 234, at 22.

²³⁸ KILLED IN “CROSSFIRE”, *supra* note 236, at 18; *Total Extrajudicial Killings 2001-2021*, *supra* note 164.

²³⁹ *Total Extrajudicial Killings 2001-2021*, *supra* note 164.

²⁴⁰ Media Release, Bangladesh Elections Cement One-Party Dictatorship: Deakin Expert, Deakin Univ. (Jan. 14, 2019), <https://www.deakin.edu.au/about-deakin/media-releases/articles/bangladeshi-elections-cement-one-party-dictatorship-deakin-expert>.

²⁴¹ Bari & Dey, *supra* note 86, at 621–22.

²⁴² *Id.* at 622.

²⁴³ *Id.*

the BAL secured a crushing victory over its opponents, winning 288 of the 300 parliamentary seats.²⁴⁴ Hence, Bangladeshis were stripped of their democratic right to vote in a free and fair general election for the second time in five years.

Securing a third consecutive term in office, however, has not persuaded the BAL government to cease its unconstitutional actions. Since January 2019, the law enforcement agencies have extrajudicially killed another 723 individuals—391 in 2019, 225 in 2020, and 107 in 2021.²⁴⁵ Those killed include school students, auto-rickshaw drivers, farmers, hawkers, garment workers, and shopkeepers.²⁴⁶ Furthermore, any attempt to oppose the regime's policies has been violently put down through targeted killings. In this context, reference can be made to the demonstrations organized in March 2021 by leftist political parties and *Hefazat*, protesting the impending arrival of the Prime Minister of India, Narendra Modi, who had been invited by Hasina to attend celebrations marking the golden jubilee of Bangladesh's independence from Pakistan and the birth centenary of Mujib—Hasina's father.²⁴⁷ The protests infuriated the regime to the extent that in an attempt to crush them, law enforcement agencies killed at least ten *Hefazat* activists.²⁴⁸

Thus, it is manifestly apparent that notwithstanding the commitments made by the BAL and its leader prior to taking office in January 2009, state-sponsored extrajudicial killings have become the norm in Bangladesh. By subjecting an astounding number of individuals to extrajudicial killings in the past twelve and a half years, the BAL has instilled the fear in the larger population that they will suffer the same fate if they express discontent or opposition to the BAL's actions.

VIII. ACCOUNTABILITY FOR THE BAL GOVERNMENT'S VIOLATION OF HUMAN RIGHTS

As discussed in Part II, the Constitution of Bangladesh not only guarantees an impressive array of human rights, including the right to life, but also stipulates that respect for human rights and the dignity of the human person shall form the basis of all state actions. However, in contravention of these guarantees, there

²⁴⁴ *Id.*

²⁴⁵ ODHIKAR, HUMAN RIGHTS REPORT 2021: BANGLADESH 11 (2022), http://odhikar.org/wp-content/uploads/2022/01/Annual-HR-Report-2021_English.pdf; *Total Extrajudicial Killings 2001-2021*, *supra* note 163; THREE-MONTH HUMAN RIGHTS REPORT, *supra* note 187.

²⁴⁶ HUMAN RIGHTS REPORT 2018 (ON BANGLADESH), *supra* note 232, at 123.

²⁴⁷ Julfikar A. Manik & Emily Schmall, *At Least 10 Killed in Protests Against Modi's Visit to Bangladesh*, N.Y. TIMES (Mar. 27, 2021), <https://www.nytimes.com/2021/03/27/world/asia/bangladesh-protests-modi.html>.

²⁴⁸ *Id.*

has been state-sponsored killing of nearly 3000 individuals in the past twelve years, as detailed above in VII. These killings have put people in fear for their lives and enabled the BAL to rule unopposed. Arguably, such killings have had a grave psychological impact on the family members of the victims.²⁴⁹

In a constitutional democracy, each of the three branches of the government—namely, the executive, legislature and judiciary—has a distinct role to play in safeguarding the rule of law and the fundamental liberties of individuals. Thus, this section will explore whether the other two branches of the government—namely, the Parliament and Judiciary—have been able to hold the BAL Executive responsible for extrajudicial killings.

A. Parliamentary Scrutiny (or Lack Thereof) of the BAL Government's Actions

A fundamental feature of parliamentary democracies is for the parliament to hold the executive accountable by “scrutinizing, criticizing and, if necessary, advocating changes” to their policies.²⁵⁰ In this context, the observations of John Stuart Mill are noteworthy:

The proper office of a representative assembly is to watch and control the government: to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which anyone considers questionable; to censure them if found condemnable, and, if the men who compose the government abuse their trust, or fulfil it in a manner which conflicts with the deliberate sense of the nation, to expel them²⁵¹

However, the Parliament produced by the general elections of both 2014 and 2018 in Bangladesh have been devoid of any actual opposition which would sustain the struggle for upholding the rule of law by stimulating responsible and reasoned debate about the BAL regime's actions. The BNP and its allies boycotted the polls in 2014 amid fears of widespread fraud following the deletion of the NPCG from the Constitution in 2011.²⁵² In the subsequent

²⁴⁹ Priyanka Boghani, *What Happens to the Families Left Behind in Duterte's Deadly Campaign Against Drugs*, FRONTLINE (Oct. 8, 2019), <https://www.pbs.org/wgbh/frontline/article/what-happens-to-the-families-left-behind-in-dutertes-deadly-campaign-against-drugs>.

²⁵⁰ M. Ehteshamul Bari & Pritam Dey, *The Anti-Defection Provision Contained in the Constitution of Bangladesh, 1972, and Its Adverse Impact on Parliamentary Democracy: A Case for Reform*, 37 WIS. INT'L L.J. 469, 471 (2020).

²⁵¹ Chen Friedberg & Reuven Hazan, Note, *Legislative Oversight* 1, 3, STATE U. N.Y. CTR. INT'L DEV. (July 2012) (quoting JOHN STUART MILL, CONSIDERATIONS OF REPRESENTATIVE GOVERNMENT (1861)).

²⁵² Bari, *supra* note 114, at 72.

election held in 2018, the BNP won only six seats due to massive electoral malpractices perpetrated by the incumbent BAL administration.²⁵³ Consequently, the BAL has strategically maneuvered to persuade its principal electoral ally, the JP, to act as the “domestic puppet opposition” in the Parliament since January 2014.²⁵⁴ Furthermore, during the period between January 2014 and December 2018, the BAL even rewarded the JP lawmakers with ministerial positions, thereby further blurring the distinction between the government and the opposition.²⁵⁵ These issues have been compounded by the anti-defection provision in Article 70 of the Constitution of Bangladesh, which obligates MPs to defer to the whims of their political parties in the discharge of their responsibilities to retain their seats in the Parliament.²⁵⁶ Consequently, the BAL’s maneuverings, coupled with the requirements prescribed by Article 70, have seriously impeded the competence of MPs to scrutinize the actions of the BAL regime without fear and subsequently hold it accountable for committing gross violations of human rights. Instead, MPs in Bangladesh sing songs in the Parliament praising Hasina,²⁵⁷ thereby making a mockery of the institution. Thus, by supervising two sham general elections in past seven years, the BAL regime has managed to reduce the Parliament into a toothless body.

B. The Judicial Response to the BAL Regime’s Extrajudicial Killings

In constitutional democracies, the judiciary is considered an impenetrable bulwark against arbitrary encroachment on the constitutional liberties of individuals. In this context, the observations of the Indian Supreme Court in the 2013 case of *Suresh Singh v. Union of India*²⁵⁸ are noteworthy:

[I]n a situation where the Court finds a person’s rights, especially the right to life under assault by the State or the agencies of the State, it must step-in and stand with the individual and prohibit the State or its agencies from violating the rights guaranteed under the Constitution. That is the role of this Court and it would perform it under all circumstances.²⁵⁹

²⁵³ *Sheikh Hasina’s Party Wins Bangladesh Election; Opposition Claims Votes Rigged*, BUS. TODAY (Dec. 31, 2018, 9:10 AM), <https://www.businessstoday.in/top-story/prime-minister-sheikh-hasina-wins-bangladesh-election—opposition-claims-votes-rigged/story/305449.html>.

²⁵⁴ Bari, *supra* note 114, at 77.

²⁵⁵ *Id.*

²⁵⁶ Bari & Dey, *supra* note 250, at 474.

²⁵⁷ Kamran Reza Chowdhury, *Momtaz Sings in Parliament*, DHAKA TRIB. (June 14, 2014), <https://www.dhakatribune.com/uncategorized/2014/06/19/momtaz-sings-in-parliament>.

²⁵⁸ *Extra Judicial Execution Victim Families Association v. Union of India*, Unreported Judgments Writ Petition (Criminal)/No. 129 of 2012, decided on July 13, 2016 (SC).

²⁵⁹ *Id.* ¶ 6.

Accordingly, the Constitution of Bangladesh entrusts the HCD of the Supreme Court with the responsibility to act as the guardian and protector of the fundamental rights of the people by stipulating in Article 102(1) that the HCD:

on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights conferred by Part III of this Constitution.²⁶⁰

In an attempt to limit the possibility of the executive imposing undue restrictions on the rights of individuals, Article 102(2) of the Constitution further provides that the

High Court Division may, if satisfied that no other equally efficacious remedy is provided by law . . . on the application of any person, make an order . . . directing that a person in custody be brought before it so that it may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner.²⁶¹

The importance of the protection afforded by this provision was underscored in the case of *Abdul Latif Mirza v Government of Bangladesh*,²⁶² when Chief Justice Kemaluddin Hossain observed:

The Constitution . . . has cast a duty upon the High Court to satisfy itself, that a person in custody is being detained under an authority of law, or in a lawful manner. The purpose of the Constitution is to confer on the High Court with the power to satisfy itself that a person detained in custody, is under an order which is lawful . . . The Bangladesh Constitution, therefore, provides for a judicial review of an executive action . . . The High Court, therefore, in order to discharge its constitutional function of judicial review, may call upon the detaining authority to disclose the materials upon which it has so acted, in order to satisfy itself that the authority has not acted in an unlawful manner.²⁶³

However, the actual response of the HCD to prevent the BAL government's arbitrary deprivation of the most fundamental liberty of individuals—namely the right to life—has been less than satisfactory. In fact, it did not provide any

²⁶⁰ CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGL., Nov. 4, 1972, art. 102(1). The right to petition the HCD under Article 44(1) of the Constitution for the enforcement of fundamental rights is itself one of the 18 fundamental rights guaranteed by the Constitution. *Id.* art. 44.

²⁶¹ *Id.* art. 102(2)(b)(i).

²⁶² *Abdul Latif Mirza v. Gov't of Bangl.* [1979] 31 DLR (AD) 1 (Bangl.).

²⁶³ *Id.* at 9–10.

efficacious remedy to the victims of state-sponsored extrajudicial killings until August 2017. However, a shift in the attitude of the judiciary had occurred much earlier. On May 5, 2014, the HCD took *suo moto* notice of the brutality perpetrated by the BAL regime following the extrajudicial execution of seven individuals in Narayanganj, as discussed above in Part VII.B.1.²⁶⁴ The HCD issued a ruling directing the government to form a committee to investigate the alleged involvement of RAB officers in these political killings.²⁶⁵ However, the HCD's willingness to take notice of the extrajudicial killings was met with a hostile response by the BAL regime. On September 17, 2014—only four months and twelve days after the issuance of the *suo moto* rule—the BAL government used its absolute majority in the Parliament to pass the Constitution (Sixteenth Amendment) Act, 2014,²⁶⁶ which seriously eroded the independence of the judiciary.

As discussed in Part III, Mujib had diminished the independence of the judiciary by assuming the unilateral power to remove the justices of the Supreme Court through the enactment of the Fourth Amendment. However, to restore the public's confidence in the ability of the judiciary to decide cases independent of the wishes of the government of the day, the regime of General Zia introduced a new transparent method of removal for Supreme Court justices.²⁶⁷ This method, which was incorporated in the Constitution of Bangladesh by the Proclamations (Tenth Amendment) Order, 1977, and was later affirmed by the Constitution (Fifth Amendment) Act, 1979, prescribed that a justice of the Supreme Court could only be removed from office by the President on the recommendation of the Supreme Judicial Council (SJC)—a body composed of the Chief Justice and the next two most-senior justices of the Supreme Court.²⁶⁸ The SJC was empowered to put forward such a drastic recommendation only after it had determined, following an inquiry, that the justice-at-issue had “ceased to be capable of properly performing the functions of his office by reason of physical or mental incapacity,” or had “been guilty of gross misconduct.”²⁶⁹ Notably, to enable the SJC to conduct its inquiry in an impartial manner, the Constitution deprived the executive of the opportunity to choose the

²⁶⁴ *Ex-RAB Officials Sent to Jail After Hearing*, PROTHOM ALO (June 30, 2014, 2:22 PM), <https://en.prothomalo.com/bangladesh/Ex-RAB-officials-sent-to-jail-after-hearing>.

²⁶⁵ *Id.*

²⁶⁶ M. Ehteshamul Bari, *The Recent Changes Introduced to the Method of Removal of Judges of the Supreme Court of Bangladesh & the Consequent Triumph of an All-Powerful Executive over the Judiciary: Judicial Independence in Peril*, 4 CARDOZO INT'L & COMP. L. REV. 654, 674 (2021).

²⁶⁷ *Id.* at 667.

²⁶⁸ CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGL., Nov. 4, 1972, art. 96(3), (5), (6).

²⁶⁹ *Id.* art. 96(5).

membership of the SJC by stipulating that the latter would be composed of the senior-most justices of the Supreme Court.

This method of removing justices is in line with the international norms concerning judicial independence, which advocate that removal of judges should involve a thorough and transparent investigation carried out by a body of judicial character so as to deprive political branches the opportunity to remove judges at their pleasure.²⁷⁰ For instance, the Latimer House Guidelines for the Commonwealth, 1998, provide that “[i]n cases where a judge is at risk of removal, the judge must have the right to be fully informed of the charges, to be represented at a hearing, to make full defence and to be judged by an independent and impartial tribunal.”²⁷¹

However, notwithstanding the efficacy of the above process in guaranteeing security of tenure for the judges of the highest court of law in Bangladesh,²⁷² the BAL, through the Sixteenth Amendment, replaced it with a parliamentary method of removal of judges. The objective underlying this Amendment was obvious. Since the Parliament resultant of the 2014 general election remained, as pointed out in Part VIII.A, firmly under the thumb of the BAL executive, a parliamentary method of removal was preferred to bring the judiciary under the control of the regime. Furthermore, the existence of the anti-defection provision contained in Article 70, as discussed in Part VIII.A, impeded the ability of MPs to follow their conscience and ignore the directions of the BAL hierarchy when called upon to consider the fate of a judge accused of incapacity or misconduct.

However, the BAL’s design to curb the independence of the judiciary was thwarted by the Supreme Court when the constitutionality of the Sixteenth Amendment was challenged by nine lawyers.²⁷³ Both the HCD and Appellate Division of the Supreme Court struck down the amendment as being “colourable, void and ultra vires the Constitution . . . of Bangladesh.”²⁷⁴ The justices put forward a number of reasonings in support of their decision to invalidate the Sixteenth Amendment. First, the justices duly shed light on the adverse impact of Article 70 on the competence of the MPs to act independently of the wishes of their nominating political parties, and concluded that the

²⁷⁰ THE RULE OF LAW IN A FREE SOCIETY: A REPORT ON THE INTERNATIONAL CONGRESS OF JURISTS 157 (Norman S. Marsh ed., 1959), <https://www.icj.org/wp-content/uploads/1959/01/Rule-of-law-in-a-free-society-conference-report-1959-eng.pdf>.

²⁷¹ J. VAN ZYL SMIT, THE APPOINTMENT, TENURE AND REMOVAL OF JUDGES UNDER COMMONWEALTH PRINCIPLES: A COMPENDIUM AND ANALYSIS OF BEST PRACTICE 88 (2015).

²⁷² Bari, *supra* note 266, at 668–74.

²⁷³ Advoc. Asaduzzaman Siddiqui v. Bangladesh, (2014) Writ Petition No. 9989/2014 (HCD) 123–24.

²⁷⁴ *Id.* at 165.

Sixteenth Amendment made the justices of the Supreme Court vulnerable to the dictates of the “Cabinet of the ruling party[.]”²⁷⁵ This arrangement, therefore, undermined the Court’s ability to dispense justice impartially.²⁷⁶ Subsequently, the learned justices observed that since the principle of judicial independence is recognized as a basic structure of the Constitution,²⁷⁷ it “cannot be demolished, whittled down, curtailed or diminished” by a constitutional amendment.²⁷⁸ Article 7B of the Constitution²⁷⁹ stipulates that “the provisions . . . relating to the basic structures of the Constitution . . . shall not be amendable by way of insertion, modification, substitution, repeal or by any other means.”²⁸⁰ Thus, the Supreme Court decided that the BAL’s attempt to subvert the independence of the judiciary by means of the Sixteenth Amendment clearly violated the terms of Article 7B.²⁸¹

However, in delivering the judgment of the Appellate Division—the highest appellate court—to uphold the unconstitutionality of the Sixteenth Amendment, on August 1, 2017, Chief Justice S.K. Sinha—the first non-Muslim Justice to head the Bangladeshi Judiciary²⁸²—went further than any other judge in denouncing the BAL regime’s attempt to undermine the independence of the judiciary. He observed:

The greed for power is like a plague, once set in motion it will try to devour everything. Needless to say, this WAS NOT at all the aims and vision of our liberation struggle. Our Forefathers fought to establish a democratic State, not to produce any power-monster.

The human rights are at stake, corruption is rampant, Parliament is dysfunctional, crores of people are deprived of basic health care, mismanagement in the administration is acute, with the pace of the developed technology, the crimes dimension is changing rapidly, the life and security of the citizens are becoming utterly unsecured, the

²⁷⁵ *Id.* at 123.

²⁷⁶ *Id.*

²⁷⁷ CONSTITUTION OF THE PEOPLE’S REPUBLIC OF BANGL., Nov. 4, 1972, art. 22 (“The State shall ensure the separation of the judiciary from the executive organs of the State.”); *id.* art. 88(b) (“The following expenditure shall be charged upon the Consolidated Fund. . . the remuneration payable to . . . the Judges of the Supreme Court[.]”); *id.* art. 89(1) (“So much of the annual financial statement as relates to expenditure charged upon the Consolidated Fund may be discussed in, but shall not be submitted to the vote of, Parliament.”); *id.* art. 94(4) (“Subject to the provisions of this Constitution the Chief Justice and the other Judges shall be independent in the exercise of their judicial functions.”).

²⁷⁸ Sec’y, Ministry of Fin., v. Masdar Hossain (1999) 52 DLR (AD) 82, 106.

²⁷⁹ CONSTITUTION OF THE PEOPLE’S REPUBLIC OF BANGL., Nov. 4, 1972, art. 7(B) (recognizing judicial independence as a basic structures of the Constitution which cannot be changed by amendment).

²⁸⁰ *Id.*

²⁸¹ *Advoc. Asaduzzaman Siddiqui*, Writ Petition No. 9989/2014 (HCD) at 163–64.

²⁸² Bari, *supra* note 266, at 681.

law enforcing agencies are unable to tackle the situation and the combined result of all this is a crippled society, a society where good man does not dream of good things at all; but the bad man is all the more restless to grab a few more of bounty. In such a situation, the Executive becomes arrogant and uncontrolled . . .

Even in this endless challenge, the judiciary is the only relatively independent organ of the State which is striving to keep its nose above the water though sinking. But judiciary too, cannot survive long in this situation . . . [However] [i]nstead of strengthening the judiciary, the Executive is now trying to cripple it and if it happens, there could be disastrous consequences.²⁸³

The declaration of the Sixteenth Amendment as unconstitutional reinstated the constitutional provisions concerning the SJC.²⁸⁴ The manner in which the senior-most judges of the country stood up for the rule of law had a profoundly beneficial impact on the independence of the puisne justices of the HCD to deliver justice to the victims of extrajudicial killings. Within twenty-one days of Chief Justice Sinha's judgment in the Sixteenth Amendment case, a two-member bench of the HCD in the Seven-Murder Case sentenced fifteen individuals to death for their role in the brutal killing of seven individuals in Narayanganj.²⁸⁵ Among those sentenced were Nur Hossain—the BAL leader who had ordered the killings—and ex-RAB officers including Tareque Sayeed Mohammad—the son-in-law of the then-Minister for Relief and Disaster Management in the BAL government—who had carried out these crimes.²⁸⁶

The firmness and independence demonstrated by the judiciary gave rise to the transient hope that it would finally assume its role as the bulwark of democratic values, such as respect for the rule of law and liberties of individuals. However, the BAL regime took calculated steps to ensure this hope did not turn into a reality. Within only four days of the delivery of the HCD's judgment in the Seven-Murder Case, and twenty-five days after Chief Justice Sinha's judgment in the Sixteenth Amendment Case, the BAL launched a scathing attack on the judiciary by calling into question the character and integrity of the Chief Justice. Prime Minister Hasina and prominent members of her cabinet called for

²⁸³ *Id.* at 682.

²⁸⁴ *Id.*

²⁸⁵ *High Court Releases Full Text of Narayanganj Seven-Murder Case Verdict*, DHAKA TRIB. (Nov. 19, 2018, 11:27 PM), <https://www.dhakatribune.com/bangladesh/court/2018/11/19/hc-releases-full-text-of-seven-murder-case-verdict>.

²⁸⁶ Ashutosh Sarkar & Tuhin Shubhra Adhikary, *Death for 15, Life Term for 11*, DAILY STAR (Aug. 23, 2017, 12:55 PM), <https://www.thedailystar.net/frontpage/narayanganj-7-murder-verdict-high-court-bangladesh-death-reference-appeal-death-15-life-term-11-1452607>.

the Chief Justice to either leave the country or seek treatment in a mental health facility as, according to their estimation, the Chief Justice's observations about the regime in the Sixteenth Amendment Case made it evident that he was a person of unsound mind.²⁸⁷ The BAL's plan for the Chief Justice came to fruition when the Law Minister announced on October 2, 2017, that the Chief Justice would "go on a month's leave . . . on health grounds."²⁸⁸ However, the announcement did not provide any insight into the actual health reasons that rendered Justice Sinha "unable to perform the functions of his office."²⁸⁹

Chief Justice Sinha left the country eleven days later, on October 13, 2017.²⁹⁰ However, before leaving the country he made it a point to contradict the official story put forward by the regime as he remarked to the journalists that: "*I'm not sick. I'm not fleeing. I'll come back. I'm a little embarrassed. I'm the guardian of the judiciary. I'm leaving for a brief period in the interest of the judiciary, and so that the judiciary is not polluted.*"²⁹¹ He also handed a one-page written statement to the journalists, which further shed light on the political pressure exerted on him: "[T]he way a political quarter, lawyers, and especially some honourable ministers of the government and the honourable prime minister are criticising me recently over a verdict made me embarrassed."²⁹²

Chief Justice Sinha's resolve in bringing to the fore the manner in which he was victimized for his judgment in the Sixteenth Amendment Case further angered the BAL regime. Within a few hours of the departure of the Chief Justice, the regime instituted eleven charges against him, including "money laundering, financial irregularities, corruption, [and] moral turpitude"²⁹³ It should be stressed that the persecution of a sitting Chief Justice for his courageous judgment in the Sixteenth Amendment Case, thwarting the BAL regime's attempt to diminish the independence of the judiciary, marked a watershed moment in the history of the nation.²⁹⁴ Owing to such persecution,

²⁸⁷ *Leave Bangladesh or Get Treated for Mental Health: Minister Matia to Chief Justice*, BDNEWS24.COM (Aug. 27, 2017, 11:32 PM), <https://bdnews24.com/politics/2017/08/27/leave-bangladesh-or-get-treated-for-mental-problem-minister-matia-to-chief-justice>.

²⁸⁸ *Chief Justice Goes on a Month's Leave*, DAILY STAR (Oct. 3, 2017, 12:00 AM), <https://www.thedailystar.net/frontpage/cj-goes-months-leave-1470712>.

²⁸⁹ CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGL., Nov. 4, 1972, art. 97.

²⁹⁰ Ashutosh Sarkar, *Chief Justice Steps Down*, DAILY STAR (Sept. 1, 2021, 12:00 AM), <https://www.thedailystar.net/frontpage/cj-goes-months-leave-1470712>.

²⁹¹ *Id.* (emphasis added).

²⁹² *Id.*

²⁹³ *11 'Charges' Against CJ*, DAILY STAR (Oct. 15, 2017, 12:00 AM), <http://www.thedailystar.net/frontpage/11-charges-against-cj-1476448>.

²⁹⁴ Bari, *supra* note 266, at 684.

Chief Justice Sinha ultimately resigned on November 11, 2017²⁹⁵—eighty-two days before the expiration of his tenure.

The unceremonious manner in which the head of the judiciary was forced out of office has affected the independence of judges to decide cases in a fearless and impartial manner where the BAL regime is a party.²⁹⁶ This argument is bolstered by the fact that since the ouster of Chief Justice Sinha, the judiciary has shied away from dispensing justice to the scores of victims of state-sponsored extrajudicial killing, in dereliction of its constitutional duty. This has subsequently enabled security forces to operate in a climate of impunity.

Thus, to govern in an unconstrained manner, the BAL regime has taken drastic measures to systematically impede the competence of both the Parliament and judiciary to act as checks on its powers, thereby becoming “the unlimited master of the State.”²⁹⁷

IX. BANGLADESH’S OBLIGATIONS TO UPHOLD CORE HUMAN RIGHTS UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

The Constitution of Bangladesh, as discussed in the Introduction and Part II, guarantees a wide array of fundamental rights, including the right to life. Furthermore, Bangladesh acceded to the ICCPR, considered “the most important universal instrument on human rights,”²⁹⁸ on September 6, 2000.²⁹⁹ Although the ICCPR, as pointed out in the Introduction, recognizes the right to life as non-derogable, the Constitution of Bangladesh has not been amended to afford the same level of protection to the right to life so as to deter the government from arbitrarily and unlawfully depriving people of their lives through extrajudicial killings.³⁰⁰

Additionally, Article 40 of the ICCPR imposes an obligation on states parties to submit initial reports detailing how they have given effect to their obligations under the ICCPR “[w]ithin one year of the entry into force of the . . . Covenant for the States Parties concerned.”³⁰¹ However, Bangladesh submitted its initial report to the Human Rights Committee (HRC), a body entrusted with the

²⁹⁵ *Chief Justice Resigns*, DAILY STAR (Nov. 11, 2017, 1:17 PM), <https://www.thedailystar.net/politics/chief-justice-cj-surendra-kumar-sinha-resigns-1489639>.

²⁹⁶ Bari, *supra* note 266, at 688.

²⁹⁷ HAROLD J. LASKI, A GRAMMAR OF POLITICS 542 (2015).

²⁹⁸ BARI, *supra* note 36, at 67.

²⁹⁹ *Id.* at 201.

³⁰⁰ *Id.*

³⁰¹ ICCPR, *supra* note 6, art. 40.

responsibility to ensure compliance of states parties with the human rights standards envisaged by the ICCPR, on June 19, 2015—almost fourteen years after the due date.³⁰² The HRC, in its concluding observations on Bangladesh’s initial report, expressed its concern at the “high rate of extrajudicial killings by police officers, soldiers and Rapid Action Battalion [RAB] force members” and at the “lack of investigations and accountability of perpetrators”³⁰³ Consequently, the Committee recommended that the Bangladesh government should “[t]ake immediate measures to protect the right to life of all persons,” “[i]nvestigate all cases of arbitrary killings . . . [and] prosecute and punish convicted perpetrators with appropriate sanctions. . . .”³⁰⁴

However, the BAL regime refuted the HRC’s assertions in its official response by claiming that it had taken “meaningful actions to bring incidents of human rights violations to a very low level.”³⁰⁵ The regime made such a claim notwithstanding the fact that the number of extrajudicial killings, as discussed earlier in VII, has risen to record levels during its time in office.

Since the ICCPR does not prescribe an effective adversarial mechanism for securing compliance of states parties with HRC’s conclusions,³⁰⁶ the BAL regime has taken advantage of such a weakness by disregarding the above recommendations altogether. Subsequently, the regime has continued to resort to the heinous tool of extrajudicial killings in contravention of its obligations under both domestic and international law to prevent the arbitrary and unlawful deprivation of life.³⁰⁷

CONCLUSION

The foregoing discussion reveals that when Bangladesh emerged as an independent nation on December 16, 1971, the founding fathers sought to establish a liberal democracy that would ensure the observance of the rule of law and safeguard the enforcement of the fundamental human rights of individuals.³⁰⁸ To this end, they incorporated extensive guarantees into the

³⁰² Hum. Rts. Comm., Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Initial Reports of States Parties Due in 2001: Bangladesh, U.N. Doc. CCPR/C/BGD/1 (2015).

³⁰³ Hum. Rts. Comm., Concluding Observations on the Initial Report of Bangladesh, U.N. Doc. CCPR/C/BGD/CO/1, at 5 (2017).

³⁰⁴ *Id.*

³⁰⁵ David Bergman, *UN Blasts Bangladesh over Extrajudicial Killings*, AL JAZEERA (Mar. 29, 2017), <https://www.aljazeera.com/news/2017/3/29/un-blasts-bangladesh-over-extrajudicial-killings>.

³⁰⁶ BARI, *supra* note 36, at 73–74.

³⁰⁷ See *supra* text accompanying notes Section VII.B.3.

³⁰⁸ See *supra* text accompanying notes 1–41, 85–93.

Constitution of Bangladesh, including an impressive eighteen fundamental rights and the stipulation that respect for human rights shall form the basis of all state actions.³⁰⁹ However, as is evident from the discussion in this Article, the promise of a liberal democracy has remained elusive in Bangladesh. In fact, these democratic values began to be discarded within a year of the nation securing its independence. As pointed out in Part III, the BAL government resorted to extrajudicial killings for the first time to realize Mujib's aspiration of retaining power permanently. The BAL regime utilized such killings to violently put down Mujib's political opponents.³¹⁰ Furthermore, Mujib used the overwhelming majority of his party in the Parliament to get the Fourth Amendment passed on January 25, 1975, which systematically dismantled the checks on his powers by bringing both the Parliament and judiciary under his absolute control.³¹¹ This set a dangerous precedent for succeeding generations of executives in Bangladesh—namely, that the desire to perpetuate survival in power takes precedence over democratic values, such as respect for the fundamental human rights.

Although subsequent governments sporadically resorted to extrajudicial killing, the number of such killings has reached unprecedented levels since Hasina, Mujib's daughter, returned to power for the second time in January 2009. These killings have been carried out to fulfill Hasina's political ambition of clinging to power permanently. Since January 2009, security forces have extrajudicially killed almost 3000 individuals.³¹² Although the regime has maintained that those killed were criminals who engaged in exchanges of gunfire with security forces, this is a far cry from reality. Those killed not only include Hasina's political adversaries, but also innocent members of the general public.³¹³ Even the unprecedented challenges posed by the COVID-19 pandemic have not deterred the regime from indiscriminately killing individuals.³¹⁴

In taking a page from her father's playbook, Hasina has proceeded in a calculated manner to remove the checks on her power to ensure that neither she nor her government can be held accountable for the gross violation of the most fundamental human right of Bangladeshis through the use of extrajudicial

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² *Total Extrajudicial Killings 2001-2021*, *supra* note 163; THREE-MONTH HUMAN RIGHTS REPORT, *supra* note 187.

³¹³ *See Total Extrajudicial Killings 2001-2021*, *supra* note 163; THREE-MONTH HUMAN RIGHTS REPORT, *supra* note 188; HUMAN RIGHTS REPORT 2013, *supra* note 187.

³¹⁴ *Id.*

killings. First, she used her party's majority in the Parliament to dispense with the NPCG-system, which had been instrumental in safeguarding people's right to vote in free and fair general elections. She then organized two sham general elections in January 2014 and December 2018, and consequently produced a toothless Parliament devoid of any actual opposition.³¹⁵ Second, she got the subservient Parliament to pass the Sixteenth Amendment to bring the judiciary under her control. Finally, when the Supreme Court thwarted her design to rob the judiciary of its independence, her regime forced the head of the judiciary out of office as a retaliatory measure to ensure that the judiciary adopts a highly deferential attitude when called on to examine the regime's actions. It is therefore evident that the BAL regime, which has ruled the nation uninterruptedly for the past twelve and a half years, has become a "source of terror to all its citizens and . . . [has] create[d] a country where everyone lives in fear."³¹⁶ Accordingly, it is necessary to undertake the following reforms in Bangladesh.

Although the Constitution of Bangladesh guarantees the right to life, the protection afforded to this right is not absolute, notwithstanding the nation's accession to the ICCPR in September 2000. Consequently, successive governments have merely paid lip service to the idea of safeguarding this most fundamental human right. It is therefore imperative that an amendment be introduced into the Constitution to make the right to life non-derogable. The incorporation of such a non-derogable guarantee will have the salutary effect of obligating the Parliament to insert detailed provisions in the criminal law framework of the nation requiring authorities to investigate allegations of extrajudicial killing and specifying appropriate punishment for anyone found guilty of resorting to such a draconian tool. Thus, making the right to life non-derogable under all circumstances will impede the ability of members of security forces to justify extrajudicially killing anyone accused of committing heinous crimes and, as such, will have the beneficial impact of reducing such killings in the country.

However, the insertion of the above guarantee would be an exercise in futility unless the conventional constitutional checks on the powers of the executive are reinstated. Therefore, the insertion of a non-derogable right to life should be complemented through the introduction of the following reforms:

³¹⁵ *Id.*

³¹⁶ Mark Thomson, *That's Not the Only Way, Harry*, TIME (May 13, 2011), <http://nation.time.com/2011/05/13/thats-not-the-only-way-harry> (quoting Harry S. Truman).

a) Since the BAL's stratagem of deleting the NPCG-system from the Constitution has ensured the subservience of Parliament, the constitutional provisions concerning the NPCG should be reinstated. The reintroduction of the NPCG will have a twofold effect. First, such reintroduction will facilitate the revival of participatory democracy in Bangladesh, thereby enabling the citizens to elect governments truly representative of their choice through periodic free and fair elections. Second, it will enable the Parliament to duly exercise its oversight function and thereby "act as a brake upon the power of the executive branch."³¹⁷

b) Since an independent judiciary is considered an indispensable feature of any society based on democratic values, it is imperative that the BAL regime refrains from exerting undue pressure on judges so as to deter them from administering the law impartially in performance of their constitutional duties. In this context, the observations of Henry Sidgwick are noteworthy:

[I]n determining a nation's rank in political civilization, no test is more decisive than the degree in which justice as defined by the law is actually realized in its judicial administration; both as between one private citizen and another, and as between citizens and members of the Government.³¹⁸

The implementation of the above reforms would go a long way toward putting an end to indiscriminate extrajudicial killing in Bangladesh as a convenient means for ensuring survival in power. Consequently, it would contribute to the realization of the democratic virtues which inspired "people to dedicate themselves to, and . . . to sacrifice their lives in, the national liberation struggle"³¹⁹ against Pakistan.

³¹⁷ ALAN BARTH, *GOVERNMENT BY INVESTIGATION* 13 (1955).

³¹⁸ HENRY SIDGWICK, *THE ELEMENTS OF POLITICS* 481 (1897).

³¹⁹ CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGL., Nov. 4, 1972, pmb1.