The Political Abuse of the International Crimes Tribunal for the Trial of the July-August Happenings

In a dramatic turn of events on 05 August 2024, ousted former Prime Minister Sheikh Hasina and several of her close allies now face serious criminal charges under the *International Crimes Tribunal Act of 1973*. The allegations are grave: aiding and abetting a brutal and systematic assault on unarmed students[1]. These alleged accusations, if proven, signal a troubling abuse of power within echelons of government. However, the most pressing question remains — have these allegations already been substantiated? This query is crucial as the integrity of our government institutions *should* depend on transparency and accountability. Further, it is imperative that we seek the truth to ensure that whether those in positions of authority are held responsible for their actions.

Criminal Charges against the Ousted Political Party: A Political Vendetta?

Accusing ousted political governments, however, isn't an isolated incident in Bangladesh's turbulent political landscape. Prosecution of former heads of the State has, regrettably, become a recurring chapter in the nation's history. For instance, former President H.M. Ershad was convicted in the high-profile Janata Tower corruption case and initially sentenced to seven years in prison — a verdict later upheld and modified by the High Court Division[2]. Similarly, former Prime Minister Begum Khaleda Zia was convicted in both the Zia Orphanage Trust and Zia Charitable Trust cases, receiving sentences of five and seven years' imprisonment for corruption and abuse of power[3]. While these cases may seem like a step toward accountability, they also raise important questions about the consistency, timing, and motivation behind such prosecutions. Are these efforts genuine attempts to uphold the rule of law, or are they politically charged instruments used to discredit rivals and silence dissent? As Bangladesh stands at yet another crossroads, the stakes are high—not just for those facing charges against political crackdown, but for the integrity of the nation's democratic and judicial institutions. Justice must be served, but it must also be seen to be fair, impartial, and free from the shadow of political vendetta. However, are the current allegations against ousted Prime Minister Sheikh Hasina an unprecedented event or a part of our political legacy?

The Legacy of Political Crackdowns in Bangladesh: A Retrospect

As reported in contemporary media and newspaper reports on 14 February 1983, students and other ordinary people, including children, protested against a new education policy that allegedly discriminated against and commercialised students' right to education.[4] At least 10 people, mostly students, were killed in that crackdown nearly a year after the former military

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[1] Crime and Justice, *The Daily Star* (Online, 1 June 2025) <https://www.thedailystar.net/news/bangladesh/crime-justice/news/what-are-the-five-charges-against-hasina-ict-3908696> accessed 6 July 2025

[2] 'Hussain Muhammad Ershd' (*Wikipedia*, 9 July 2025); <https://en.wikipedia.org/wiki/Hussain_Muhammad_Ershad> accessed 7 July 2025

[3] Shakhawat Liton, Chaitanya Chandra Halder, 'Zia Charitable Trust Graft Case: Khaleda jailed for 7 years', The Daily Star (Online, 30 October 2018) <https://www.thedailystar.net/politics/news/zia-charitable-trust-case-supreme-court-bangladesh-directs-dhaka-court-deliver-verdict-bnp-chairperson-khaleda-zia-1653295>

[4] '1983 Anti-Majid Khan Education Policy movement', (Wikipedia, 9 July 2025); see also, 'Autocracy Resistance Day': What happened that day' (original in Bangla), (*BBC News Bangla* 14 February 2017) <https://www.bbc.com/bengali/news-38965401> accessed 8 July 2025

dictator *Ershad* seized power[5]. In another crackdown organised by the 21-party alliance on 24 November 1987, more than 1500 political leaders and workers were arrested, and at least 10 people, including two police officials, were killed in the crackdown[6]. Finally, during the mass upsurge from 10 October to 4 December 1990, around 100 protesters sacrificed their lives to mark the starting point to restore parliamentary democracy in Bangladesh.[7] However, *no officers were ever charged with Noor's murder. No officers were charged during all of Gen Ershad's time in power, despite hundreds of protesters being killed by police.*[8]

Political violence in Bangladesh did not end with the fall of military rule — it persisted during the democratic era, particularly under the Government led by the former Prime Minister Begum Khaleda Zia. Between 2002 and 2006, during the BNP-led regime, the country witnessed a sharp increase in extrajudicial killings, arbitrary arrests, and unlawful detentions. One of the most controversial initiatives during this period was Operation Clean Heart, which mobilised over 40,000 members of the military, police, and paramilitary forces to carry out so-called crime prevention operations across the country[9].

In an alarming move, the BNP-Jamaat alliance Government passed an indemnity bill shielding all security personnel involved in the operation from legal accountability for actions committed between 16 October 2002 and 9 January 2003 under the *"Operation Clean Heart"* program**.** However, in a landmark judgment on 13 September 2015, the High Court Division declared the bill unconstitutional and illegal.[10] Crucially, the Court ruled that any individual harmed by *"Operation Clean Heart"* has the right to seek compensation from the Government[11]**,** underscoring that the ultimate responsibility lies with the State, which commands and controls its security forces. Further deepening the culture of repression, the BNP-led Government established the Rapid Action Battalion (RAB) on 26 March 2004. While initially portrayed as an elite force for combating serious crime, RAB quickly gained notoriety for widespread human rights violations. Between 2004 and 2008 alone, at least 1,062 people were reportedly killed in extrajudicial encounters[12] **—** a staggering toll that sparked national and international condemnation.

Politicised Prosecution: A New Phenomenon or Historical Parallels in Bangladesh?

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[5] Tribune Online Report, 'Valentine's Day overshadows anti-autocracy martyrs', Dhaka Tribune (Online, 14 February, 2017) <https://www.dhakatribune.com/bangladesh/politics/14457/valentine%E2%80%99s-day-overshadows-anti-autocracy-martyrs> accessed 8 July 2025

[6] 'Bangladesh crackdown aimed at breaking strike' (Reuters, 25 November 1987) <https://www.csmonitor.com/1987/1125/ofill25.html?utm_source=chatgpt.com> accessed 7 July 2025; see also, Rone Tempest, 'Bangladesh Orders Crackdown to Stall Protest' (Los Angeles Times, 10 November 1987) <https://www.latimes.com/archives/la-xpm-1987-11-10-mn-19965-story.html> accessed 8 July 2025

[7] Rahman, Muhammad Habibur (2016). Bangladesher Rajnoitik Ghotonaponji বাংলাদেশের রাজনৈতিক ঘটনাপঞ্জি ১৯৭১-২০১১ (*Bangladesh Political Events Timeline, 1971-2011*) (Prothoma, 2016, 82)

[8] 'Noor Hossain and the image that helped bring down a dictator' (BBC, 6 December 2020) <https://www.bbc.com/news/world-asia-55177686> accessed 7 July 2025

[9] Bangladesh Winds Down Crine Fight, (BBC News Archieve, 9 January 2003) <http://news.bbc.co.uk/2/hi/south_asia/2643529.stm> accessed; see also, 'Operation Clean Heart' (Wikipedia, n.d.) <https://en.wikipedia.org/wiki/Operation_Clean_Heart?utm_source=chatgpt.com#cite_note-2> accessed 8 July 2025

[10] Star Online Report, 'Operation Clean Heart Indemnity Law Illegal: HC' The Daily Star (Online, 13 September 2015) <https://www.thedailystar.net/country/news/operation-clean-heart-indemnity-law-illegal-hc-142468> accessed 8 July 2025

[11] ibid

[12] 'Extrajudicial killings: 51 die in three months' *Dhaka Tribune* (Dhaka, 19 March 2017)

The discussion so far makes one thing clear that alleged political crackdowns and systematic repression of opposition parties are *not* new phenomena in Bangladesh. Such tactics have been used repeatedly over decades to suppress dissent. What is unprecedented, however, after the political unrest of July–August 2024 is the extraordinary legal manoeuvring by the student-backed interim Government led by Professor Dr. Muhammad Yunus. For the first time in the nation's history, political protest of a democratic government is being framed and prosecuted as crimes against humanity—a label traditionally reserved for atrocities during war. Although the International Crimes (Tribunals) Act (ICT Act) had already existed since 1973, previous political protests and their resulting crackdowns were handled under ordinary criminal law.

Punishing without Proof: A Violation of a Cornerstone of the Criminal Justice System

In a dramatic shift, the Yunus-led interim Government amended the ICT Act twice**,** first on 10 February 2025 and again on 10 May 2025. The second amendment introduced Section 20B, a sweeping and controversial provision that grants the ICT Tribunal unprecedented powers: the authority to ban political parties entirely through the discretionary power of the government[13]. According to Section 20B, the Tribunal may prohibit, suspend, or dismantle any organisation if it appears to the Tribunal that the organisation has committed or supported crimes under Section 3(2) of the Act. This includes confiscating property, cancelling registration, and terminating licenses[14]—actions that go far beyond punishing individual wrongdoing and strike at the very foundation of political pluralism. Pertinently 'appears to'[15] does not mean the proof of a crime *'beyond reasonable doubt'*, which remains the cornerstone of our criminal justice system. Despite amending the ICT Act to empower the Tribunal, many hoped the Yunus-led interim Government would at least ensure a fair and transparent judicial process before taking any punitive action against the Bangladesh Awami League — the oldest and one of the most influential political parties in the country.

The Due Process Undone: Ban on a Political Party without Trial

Shockingly, instead of allowing the Tribunal to independently assess any alleged crimes, the Yunus-led interim Government bypassed the due process altogether. Even before any formal trial had concluded before the ICT tribunal, through an administrative order (SRO), the interim Government suspended all activities of the Awami League under Section 18(1) of the *Anti-Terrorism Act 2009* (ATA). As mentioned in the SRO, such administrative sanction under ATA 2009 will continue until the trials against the leaders and workers of the Bangladesh Awami League, its allied wings, and its sister organisation are not completed before the *International Crimes Tribunal 1973*[16]. This pre-emptive ban sets a deeply troubling precedent. It effectively punishes an entire political organisation without a verdict, denying the fundamental legal principle of *"innocent until proven guilty."* To make matters worse, the Election Commission

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[13] 'ICT ordinance gets clause, section to try, punish political parties', *Dhaka Tribune* (Online, 11 May 2025) < https://www.dhakatribune.com/bangladesh/government-affairs/380939/ict-ordinance-gets-clause-section-to-try-punish> accessed 8 July 2025

[14] ibid

[15] If you say that something appears to be the way you describe it, you are reporting what you believe or what you have been told, though you cannot be sure it is true. See, 'Definition of 'appear'', *Collins* Online Dictionary <https://www.collinsdictionary.com/dictionary/english/appear> accessed 20 July 2025

[16] Public Security Department, Political Wing-2, 'SRO no. 137-Law/2025' (Ministry of Home Affairs, Peoples Republic of Bangladesh, 12 May 2025) <www.dpp.gov.bd/upload_file/gazettes/57493_68017.pdf> accessed 11 July 2025

followed suit, suspending the Awami League's registration on the very same day[17]**,** further stripping the party of its political legitimacy before a fair hearing could take place. To inform the readers, Section 20(1) of the ATA 2009 authorises the government to seal offices, freeze bank accounts, and confiscate the property of any banned political party[18]. Yet, applying such extreme measures to a political entity still under investigation—not conviction-is not only disproportionate but also in clear violation of Section 6(1) of the *Political Parties Ordinance 1978* (PPO). This ordinance explicitly safeguards the operational rights of political parties, ensuring they cannot be arbitrarily dismantled by executive action.

Superseding the *Political Parties Ordinance 1978*: A Violation of Legislative Precedence?

Under the *Political Parties Ordinance 1978* (PPO)**,** if the government believes that a political party is engaged in activities threatening the sovereignty, integrity, or security of Bangladesh—such as maintaining secret wings or armed cadres—the law explicitly mandates that the matter must be referred to the High Court Division for a decision.[19] This is not optional; the use of the word "shall" in the statute confirms the compulsory nature of judicial oversight in such matters. This clear procedural safeguard directly contradicts Section 18(1) of the *Anti-Terrorism Act 2009* (ATA), which allows the government to unilaterally ban an organisation based on allegations of terrorist activities, without any prior judicial review. While deciding on such legal conflicts, courts usually apply principles of statutory interpretation to determine which law prevails. One such principle, *lex specialis derogat legi generali*—meaning the specific law overrides the general one[20]**—** is particularly relevant here. Although the ATA 2009 was enacted after the PPO 1978, the PPO is a special law crafted exclusively to regulate political parties, whereas the ATA is a broader anti-terror law. Therefore, in matters relating to political party regulation, the PPO 1978 must take precedence.

As such, any attempt to ban the Bangladesh Awami League through an administrative order under the ATA 2009, bypassing the High Court Division**,** constitutes a blatant violation of due process and legal safeguards enshrined in both the PPO 1978 and the Constitution of Bangladesh. Article 31 of the Constitution provides that every citizen has the inalienable right to the protection of the law and must be treated strictly in accordance with the law**.**[21] It further prohibits any action that harms a person's life, liberty, property, or reputation unless it is carried out in full compliance with legal procedures.[22] Thus, even if the Yunus-led interim Government framed its allegations under the ATA 2009, the interim Government's failure to seek judicial determination as required under the PPO 1978 renders its actions unconstitutional and legally untenable**.** Upholding the rule of law means respecting not only the outcome of legal processes but also the process itself**,** especially when fundamental rights and democratic institutions are at stake.

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[17] Election Commission Secretariat, 'Order no. 17.00.0000.025.50.023.12-124', (Bangladesh Election Commission) <www.dpp.gov.bd/upload_file/gazettes/57494_98364.pdf> accessed 10 July 2025

[18] Anti-Terrorism Act 2009, s 20(1) < https://www.satp.org/satporgtp/countries/bangladesh/document/papers/AntiTerrorism_Act2009.pdf> (translation in English) accessed 8 July 2025

[19] The Political Parties Ordinance 1978

[20] Silvia Borelli, 'The (Mis)-Use of General Principles of Law: Lex Specialis and the Relationship Between International Human Rights Law and the Laws of Armed Conflict' in Laura Pineschi (ed.) *Principles of Law-The Role of the Judiciary* (Springer, 2015) 265, 266;

[21] Constitution of the Peoples' Republic of Bangladesh, art 31

[22] Ibid, art 32

Blanket Bans on Constitutional Rights: Is it Criminalising Support and Silencing Our Voices?

The relevant provisions of ATA 2009, therefore, are applied to ban political parties without trial, which suffers from Constitutional validity. Enshrined in Part III of the Constitution of Bangladesh, this right forms the bedrock of a democratic society. At the very outset of this part, Section 26(2) declares unequivocally: *"The State shall not make any law inconsistent with any provisions of this Part, and any law so made shall, to the extent of such inconsistency, be void."*[23] This clause ensures that no legislation can unduly override or erode the fundamental rights of citizens granted in the Constitution. Yet, the Yunus-led interim Government, by amending the Anti-Terrorism Act (ATA) 2009 and applying it to ban political parties, has not only ignored this constitutional safeguard—it has escalated the violation of core democratic freedoms. A couple of provisions in the amended ATA 2009 may now infringe upon freedom of thought, conscience, and expression, rights guaranteed to every citizen, regardless of their political affiliation.

When we read Sections 20(1) and 20(1)(e) of the original ATA 2009 together, the consequences become starkly clear. These provisions articulate that if a person or organisation is banned under Section 18, the government may go further to prohibit the publication, printing, or circulation of press statements, public speeches, or even press conferences made by or in support of the banned entity[24]. In effect, this creates a blanket censorship regime**,** one that criminalises speech, opinion, and public discourse, even among individuals who have no direct or indirect ties to any political group. Such a sweeping restriction undermines the right to free speech and imposes an authoritarian model of information control that is incompatible with the Constitution of Bangladesh.

Silencing a Nation: How the ATA Undermines Our Constitutional Freedoms

Alarmingly, the 2025 amendment to the *Anti-Terrorism Act 2009* (ATA) significantly expanded the scope of State power, imposing broad and unprecedented restrictions on two of the most essential democratic freedoms: freedom of expression and freedom of assembly**.**[25] These rights are not privileges granted by the government—they are fundamental guarantees under the Constitution of Bangladesh and form the cornerstone of any functioning democracy. As amended, Section 20(1) read with Section 20(1)(e) of ATA 2009 authorises the government to go far beyond banning a political entity. It empowers the State to prohibit the publication or printing of any press statement made by, on behalf of, or even in support of a proscribed organisation. The ban extends to all forms of media—print, digital, social media—as well as public demonstrations, press conferences, processions, and speeches[26]**.**

As previously noted, Statutory Regulatory Order (SRO) No. 137-Law/2025, issued by the Yunus-led interim Government on 12 May 2025, declares that the ban on Bangladesh Awami League—along with its affiliated and sister organisations—will remain in effect until the trial of Bangladesh Awami League—along with its affiliated and sister organisations are completed

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[23] Ibid, art 26(2)

[24] Anti-Terrorism Act 2009, above n. 17, sec 20

[25] Shakib Ahmed, 'Govt Issues Ordinance Amending Anti-Terrorism Act ', Daily Observer (Online, 11 May 2025) <https://www.observerbd.com/news/525125> accessed 8 July 2025

[26] Legislative and Parliamentary Affairs Division, 'Anti-Terrorism Act 2009 (Amendment) Ordinance' (as amended till 11 May 2025) (original gazette in Bengali), Ministry of Law, Justice and Parliamentary Affairs, Peoples' Republic of Bangladesh < https://www.dpp.gov.bd/upload_file/gazettes/57492_60241.pdf> accessed 8 July 2025

before the International Crimes Tribunal.[27] This open-ended restriction, grounded in mere accusations rather than convictions, sends a chilling message not only to political actors but to ordinary citizens across the country. In such a climate, even expressing an opinion online—on platforms like Facebook or Instagram—could be seen as dissent**,** leaving citizens fearful of surveillance, harassment, or even legal repercussions.

As mentioned on the SRO, this approach of the interim Government rests on a statutory presumption embedded in Section 18(1) of the ATA 2009: that if not banned, the removed party could endanger national law and order.[28] But this presumption replaces evidence-based justice with executive speculation, effectively punishing without proof[29]. Such an assumption flips the burden of proof, violating the constitutional right to a fair trial**,** as enshrined in Article 32 of the Constitution of Bangladesh: *"No person shall be deprived of life or personal liberty save in accordance with law."* Alongside this, Article 31 affirms that every citizen has the inalienable right to the protection of law and must be treated strictly *"in accordance with law, and only in accordance with law."*

To interpret the power of these constitutional provisions meaningfully, we may draw insight from *Bailey v. Alabama*, where the U.S. Supreme Court warned against the dangers of legal presumptions that undermine due process. The Court held, *"a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions*.[30]" Similarly, in Bangladesh, if the government can restrict the liberty of individuals or political groups based solely on projected threats without fair adjudication, then the rule of law itself stands at risk.

Retrospective Criminal Effect: A Dangerous Precedent for Democracy

Eventhough the Yunus-led interim Government manages to suppress public sentiment by invoking the Anti-Terrorism Act (ATA) 2009, and ultimately succeeds in banning a political party under the newly added Section 20B of the International Crimes (Tribunals) Act 1973, such an action would constitute a direct and undeniable violation of the fundamental rights guaranteed under Part III of the Constitution of Bangladesh. As discussed, the amendment to the ICT Act on 11 May 2025, and (SRO) No. 137-Law/2025 signals a clear intent to prosecute the Bangladesh Awami League—the country's oldest political party—and its members for alleged actions that occurred on or before 5 August 2024. However, this raises a serious constitutional red flag. Article 35(1) of the Constitution states unambiguously:

> *No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or*

[27] Public Security Department, n 15

[28] Anti-Terrirism Act 2009, sec 18(1)

[29] A constitutional prohibition cannot be transgressed indirectly by creating a statutory presumption any more than by direct enactment, and ... While States may, without denying due process of law, enact that proof of one fact shall be prima facie evidence of the main fact in issue, the inference must not be purely arbitrary; there must be rational relation between the two facts, and the accused must have proper opportunity to submit all the facts bearing on the issue. According to sec, a banned political party can make such appeal to the government authority issued such sanction.

[30] Bailey v. Alabama, 219 U.S. 219 (1911) (JUSTIC US Supreme Court, nd) <https://supreme.justia.com/cases/federal/us/219/219/> accessed 20 July 2025

> *different from, that which might have been inflicted under the law in force at the time of the commission of the offence.*[31]

This Article enshrines the principle against retroactive criminal legislation—a cornerstone of any fair legal system. By seeking to apply newly enacted or amended laws to past actions, the Yunus-led interim Government is attempting to criminalise conduct that was not legally punishable at the time it occurred. This is not only unconstitutional—it is a betrayal of the very foundations of justice. Retroactive application of law, particularly for political purposes, opens the door to authoritarian abuse, where laws are weaponised not to protect society, but to eliminate opposition. In such a system, no individual or group can feel secure, not because they are guilty, but because guilt becomes whatever the State retroactively defines it to be. Upholding Article 35(1) is therefore not just about protecting one party (whichever it may be)—it is about protecting the rule of law itself, and the rights of all Bangladeshis.

Is Law Defending Our Rights or Destroying Our Democratic Voices?

In any constitutional democracy, fairness in process is just as important as fairness in outcome. Replacing trials with assumptions and rights with restrictions paves a dangerous road toward repression, not justice. By circumventing due process and weaponising counterterrorism laws for political ends, the Yunus-led interim Government risks eroding public trust, undermining democratic institutions, and creating a dangerous precedent for the selective suppression of opposition voices. Such legal overreach sets a dangerous precedent, where political conflict, as took place many times earlier, is redefined as criminal atrocity, and where dissenting parties risk extinction through judicial fiat rather than democratic process. Last but not least, in a democracy, laws should serve to protect rights, not to silence opposition.

Dated: 24 July, 2025

[31] Constitution of the Peoples' Republic of Bangladesh, Art 35(1)