BANGLADESH IN A PERMANENT STATE OF EXCEPTION? A CRITICAL INQUIRY THROUGH AN AGAMBENIAN LENS

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ABSTRACT

This article examines how the legal and political order of Bangladesh operates based on 'state of exception' as theorized by Giorgio Agamben. It argues that Bangladesh has transitioned from constitutional framework of emergency powers to a permanent state of exception, where extraordinary measures are normalized within ordinary governance. It situates recent events within an architecture of preventive detention, digital surveillance, and extrajudicial repression, all deployed without any formal proclamation of emergency. Through a critical adaptation of Agamben's formulations of sovereignty, bare life and the camp to the postcolonial context, the article traces the genealogy of exception to colonial technologies of governance and their reinforcement through global counter-terrorism discourses. In doing so, it demonstrates how political dissidents, refugees, and disadvantaged urban citizens are ruled in zones of legal abandonment. The paper concludes that this entrenched exceptionalism is a weakening force for democracy, fundamental rights, and the rule of law, calling for legal reform along with decolonial transformation.

Keywords: state of exception, Giorgio Agamben, postcolonial governance, emergency power, bare life.

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I. INTRODUCTION

The history of liberal statecraft reveals a persistent tension between constitutional rule in ordinary situation and the preservation of emergency power by the sovereign authority.[1] Where

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[1] See generally Clement Fatovic, 'Emergencies and the Rule of Law' in William R. Thompson (ed), *Oxford Research Encyclopedia of Politics* (Oxford University Press, Online ed, 2019) https://doi.org/10.1093/acrefore/9780190228637.013.93 ; Oren Gross, 'Chaos and Rules: Should Responses to

most of the states including Bangladesh are formally constitutional democracies which adhere to the rules of constitutional government, their constitutions generally contain emergency powers by which constitutional rights can be suspended. The legal and political history of Bangladesh, however, indicates that the demarcating line between normal governance and emergency rule has become blurred. The Constitution of Bangladesh provides provisions for emergency powers, but in practice the state has rarely had to, at least in recent times, resort to these in order to wield 'exceptional' authority.[2] Instead, mechanisms of exception have been incorporated within the normal legal and political apparatus, so that governments may act outside of constitutional legality while maintaining the illusion that they are acting within it.

The student-led uprising of July 2024 that ultimately overthrew a sixteen-year-old government, is the most recent and arguably the most important illustration for this discussion. What initiated as a protest against the controversial job quota system, turned into a national movement demanding end to the rule of an autocratic and corrupt regime.[3] The government's response from the very beginning was not outreach and political settlement with the protesters, but an overwhelming degree of brute force: the deployment of police, paramilitary units, and ruling party cadres; the imposition of a nationwide internet blackout and a shoot-on-sight curfew and the killing of hundreds of protesters, many of them students and children.[4] This massive crackdown, conducted without the formal declaration of emergency, reveals an embarrassing truth that the state does not need to suspend constitutional rights to carry out these 'hyper' exceptional measures, the legal and coercive instruments are all present in the fabric of its peacetime constitutional and legal framework.

This article critically analyses this phenomenon drawing on the theoretical contributions

Violent Crises Always Be Constitutional?' (2003) 112 *Yale Law Journal* 1011; David Dyzenhaus, 'The Compulsion of Legality' in Victor Ramraj (ed), *Emergencies and the Limits of Legality* (Cambridge University Press, 2008) 31.

[2] For a comprehensive overview of the emergency regime in Bangladesh, see M. Ehteshamul Bari, *States of Emergency and the Law: The Experience of Bangladesh* (Routledge, 1st ed, 2018).

[3] Chaumtoli Huq and Chloe Miller, *The Bangladesh Student Movement that Transformed a Nation*, 10 September 2024 <https://lpeproject.org/blog/the-bangladesh-student-movement-that-transformed-a-nation/\> accessed on 23 August 2025.

[4] Office of the United Nations High Commissioner for Human Rights, *Fact-Finding Report: Human Rights Violations and Abuses related to the Protests of July and August 2024 in Bangladesh*, 12 February 2025 <https://www.ohchr.org/sites/default/files/documents/countries/bangladesh/ohchr-fftb-hr-violations-bd.pdf> accessed on 23 August 2025.

of Italian philosopher Giorgio Agamben. The central argument of this article is that Bangladesh has transitioned into what Agamben terms as 'permanent state of exception.'[5] This hyper exception operates not under the explicit constitutional provisions for emergency rule in Part IXA of the Constitution of the People's Republic of Bangladesh 1972, which have been employed on only five occasions in the history of the country.[6] Rather, it is a permanent condition created by the normalisation of hyper exceptionalism within 'ordinary' legal order. This parallel order is composed of various special and exceptional laws that appears to operate within the scheme of 'reasonable restriction' of constitutional rights. They are not deployed on a temporary basis in extraordinary circumstances but have become part of the normal apparatus of statecraft.

Agamben's political philosophy analyses the historical trajectory of the state of exception as a temporary crisis management tool toward being the dominant modern form of rule, and provides a theoretical framework to dissect this reality.[7] His analysis sheds light on the process in which the legal apparatus itself can be weaponized to produce a space of lawlessness, a 'zone of indistinction' where citizens can be stripped of their legal protections and exposed to the unmediated violence of the sovereign.[8] However, a straightforward application of Agamben's theory would be insufficient. His approach, experientially based on the European legal history and Holocaust in particular, has been challenged for its Eurocentrism. [9] Hence, the article will critically adapt the concepts of Agamben, given the postcolonial context of Bangladesh. It will consider how the country's hyper exceptional legal architecture is not just a contemporary creation but a direct descendent of colonial technologies of rule that have been repurposed and re-legitimized by the postcolonial regimes.

By examining the constitutional framework for emergency, the landscape of exceptional

[5] The foundational text of this theorization is Giorgio Agamben, *State of Exception* (trans Kevin Attell, University of Chicago Press, 2005). The concept was further developed by him in Giorgio Agamben, *Stasis: Civil War as a Political Paradigm* (trans Nicholas Heron, Stanford University Press, 2015). Though not explicitly theorized in Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (trans Daniel Heller-Roazen, Stanford University Press, 1998), this seminal text introduces the concept of bare life.

[6] Bari, above note 2.

[7] Roberto Esposito, *Bíos: Biopolitics and Philosophy* (trans Timothy Campbell, University of Minnesota Press, 2008).

[8] Agamben, *State of Exception,* above note 5.

[9] For the postcolonial critique of Agamben's formulation of state of exception, see Simone Bignall, 'Postcolonial Redemption: Agamben's Thought as Transformative Chrēsis' (2014) 40(2) *Concentric: Literary and Cultural Studies* 29; Achille Mbembe, 'Necropolitics' (2003) 15 *Public Culture* 11; Scott Lauria Morgensen, 'The Biopolitics of Settler Colonialism: Right Here, Right Now' (2011) 1 *Settler Colonial Studies* 52.

peacetime laws, and their specific use in crisis times and in governing the marginalized, this article argues that the state of exception is not an anomaly in Bangladesh, it is the rule. And this is having grave implications for democracy, civil liberties, the rule of law, indeed the very relationship between citizen and state. The ultimate aim of this article is to provide a theoretically rigorous and empirically grounded account of how a nation can exist in a perpetual state of emergency, even when no emergency is officially declared.

II. THEORETICAL FRAMEWORK

Before analysing the politico-legal framework of Bangladesh through the lens of Giorgio Agamben, it is essential to unpack the nuanced theoretical framework of his understanding of modern state power. Giorgio Agamben's work on the state of exception is not entirely *sui generis* but a critical and radical development from the political theology of the German jurist Carl Schmitt.[10] It is in the 'intellectual' dialogue between these two thinkers that the analytical instruments for diagnosing the normalization of emergency powers were elaborated. This framework extends beyond the mere jurisprudential analysis of the state of emergency (exception) and opens up an analysis into sovereignty, law and life itself as a philosophical one.

A. Schmitt's 'Sovereign Decision' to Agamben's 'Threshold of Indistinction'

The intellectual genealogy of the state of exception begins with Carl Schmitt's vigorous critique of liberal constitutionalism during the turbulent years of Weimar Republic. In his 1922 seminal book, *Political Theology*, Schmitt offered a definition of sovereignty which would become canonical in the later years: "Sovereign is he who decides on the exception."[11] As Schmitt understands it, sovereignty has nothing to do with the mundane application of legal norms but is rather effectively revealed where the order of norms breaks down. The exception is a "case of extreme peril, a danger to the existence of the state" not susceptible of lawmaking not legally codifiable or foreseeable. The decision by the sovereign to establish an exception and to suspend the law is thus a "borderline concept" (*Grenzbegriff*), which positions the sovereign "outside the normally valid legal system, he nevertheless belongs to it, for it is he who must decide whether the

[10] Dilan Ates, 'The State of Exception: An insight into its theoretical background' (2023) 7 *Global Campus Human Rights Journal* 114.
[11] Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (trans George Schwab, MIT Press, 1985) at 5.

constitution needs to be suspended in its entirety".[12]

Writing in the context of the Article 48 of the Constitution of the German Reich (Weimar Republic), which allowed for the President to exercise emergency powers, Schmitt considered this capacity a necessary though inherently risky tool to preserve the state from anarchy.[13] Where Schmitt described the exception as creating a legal void to be filled by sovereign decision, Agamben describes it as creating "paradoxical threshold of indistinction".[14] And this is a threshold space where the foundational distinctions of the legal order collapses and "it is impossible to distinguish transgression of the law from execution of the law, such that what violates a rule and what conforms to it coincide".[15] To him, the law is already in force without significance. As such it is still operative, but operative only insofar as it can withdraw its own protection, abandon a life to an unmediated violence. This is the crucial theoretical move by Agamben: the exception is not outside law; it is instead the opening up of law's most intimate and violent foundation. In this view, the primary role of the law is not to regulate anything but to capture life by producing an external space that makes it possible to abandon it.

The sovereign decision, for Schmitt, is an act of pure will that temporarily suspends legality in order to preserve the legal order itself. Giorgio Agamben uses Schmitt's formulation as a point of departure, but runs it to a much more radical conclusion. In *State of Exception*, Agamben argues that the exception has ceased to be a "provisional and exceptional measure" reserved for periods of civil war or political emergency, it has been transformed instead into a routine "technique of government".[16] Rather than an exception, the twelve-year Nazi state of emergency declared in 1933 was, for Agamben, provided the disturbing revelation that "modern totalitarianism can be defined as the establishment, by means of the state of exception, of a legal civil war that allows for the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system".[17]

[12] Ibid, at 5, 7.
[13] Ibid, at xvi–xvii.
[14] Ibid, at 18.
[15] Ibid, at 19.
[16] Agamben, *State of Exception,* above note 5 at 2.
[17] Agamben, *Homo Sacer: Sovereign Power and Bare Life,* above note 5 at 167.

B. *Homo Sacer*, Bare Life, and the Camp

To explain how this zone of indistinction operates on human subjects, Agamben develops a triad of interconnected concepts: the *homo sacer*, the bare life, and the camp. The figure of *homo sacer* hails from the archaic Roman law, which refers an individual who has been excluded from community and thus "may be killed but not sacrificed".[18] Roman sources, define *homo sacer* as a person who has been banned, after having broken some serious religious or moral law. As the killing of *homo sacer* is not murder sense of a crime, the killer acts of impunity, yet at the same time, this life is "sacred" and can therefore not be used in a religious ritual or in a sacrifice.[19] For Agamben, this figure of paradox is the master key to understanding the nature of sovereign power. *Homo sacer* is not an instance of life incompletely excluded from the juridical order; rather, it is a life that belongs to the order by being entirely outside it.[20] The law applies to this life by withdrawing from it, in abandoning it to a power of death. This relation of abandonment or the ban, is the original political relations for Agamben.[21]

This brings us to the concept of bare life. Agamben begins with the ancient Greek account of two forms of life: *zoe*, the bare, natural fact of living that is shared by all animals, and bios, the politically qualified life of a citizen participating in the *polis*.[22] He argues that the political of the West was founded on the separation between these two, that is, to define the political life (*bios*) by means of the exclusion of natural life (*zoe*).[23] Yet in modernity, this exclusion takes the form of an "inclusive exclusion" and the bare life is no longer outside or simply excluded from politics, but increasingly captured in the calculations and mechanisms of power itself.[24] He notes that the "production of a biopolitical body," a body the biological life of which is a political stake, becomes the original activity of sovereignty.[25] Bare life is the left-over-after effect of a human-being after

[18] Ibid, at 8.
[19] Sextus Pompeius Festus, *De verborum significatu* (Wallace M. Lindsay ed, Teubner, 1913). Festus defines the term as follows: *At homo sacer is est, quem populus iudicavit ob maleficium; neque fas est eum immolari, sed qui occidit, parricidii non damnatur.* English Translation: "The sacred man is one whom the people have judged on account of a crime. It is not permitted to sacrifice him, yet he who kills him is not condemned for parricide".
[20] Agamben, above note 17 at 28-29.
[21] Ibid.
[22] Ibid, at 1.
[23] Ibid, at 8.
[24] Ibid, at 28-29.
[25] Ibid, at 6.

they have been stripped of political status (*bios*) and reduced to biological existence alone (*zoe*), which is subject to the sovereign decision on life and death.

Ultimately, the camp embodies the state of exception; it is the space where the exception becomes the rule. The Nazi concentration camp is Agamben's paradigm, but he insists that the camp is not only "a historical fact and an anomaly belonging to the past (even if still verifiable) but in some way as the hidden matrix and nomos of the political space in which we are still living".[26] The camp is a site in which a group of people (for example, the Jews of Nazi Germany, deprived of citizenship) are reduced to bare life. It is a space where the regular juridical order is suspended, where anything is possible. In the camp, the distinction between law and fact, of the juridical and the political, disappears.

While Agamben's model is significant in its critique of modern sovereignty, it is not without limitations, particularly when applied outside the European core of modernity. Quite understandably, postcolonial theorists have criticised Agamben's work for its Eurocentrism.[27] Bignall notes that his historical narrative traces its genealogy from ancient Rome up to Auschwitz, where the Holocaust is finally disclosed as the biopolitical potential of the Western State. This emphasis entirely bypasses the long and brutal history of European colonialism.[28]

The central postcolonial argument is that the state of exception was not a crisis that emerged within twentieth-century European modernity; it was the foundational and permanent mode of governance of the colonial territories from the very beginning.[29] Colonial rule, by its very definition, meant the suspension of the metropolitan rule or law and colonial subject was never acknowledged entirely as a political subject (*bios*) but was always managed as one element within a population of bare lives (*zoe*) vulnerable to casual violence, economic exploitation and racialized exclusion.[30] From this perspective, the camp was not an invention of the Europeans but already prefigured in the plantations, reservations, and colonial frontiers, where whole populations were

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[26] Ibid, at 175.
[27] Above note 9.
[28] Simone Bignall and Marcelo Svirsky, 'Introduction: Agamben and Colonialism' in Simone Bignall and Marcelo Svirsky (eds), *Agamben and Colonialism* (Edinburgh University Press, 2012) 1, at 1-3.
[29] Ibid.
[30] Ibid.

put under a lawless law.

Hence, Agamben's theory has to be adjusted critically when applied to a postcolonial state like Bangladesh. This is not merely a matter of having recently been transformed into a state of exception; we must acknowledge the continuous state of exception starting from the colonial time. These apparatus of control in the legal and administrative arena did not begin afresh in the post-independence period, but were derived from the British colonisers and then from postcolonial Pakistan.[31] This inheritance of exception, is the ready-made platform, on which the post-colonial Bangladesh establishes its own mechanisms of repression. But the challenging thing to do is to take Agamben's ideas and apply on this specific historical trajectory of Bangladesh recognizing that for the colonized territories the exception has always been the norm.

III. EMERGENCY POWERS IN THE CONSTITUTION OF BANGLADESH

The *Constitution of Bangladesh*, being the supreme law of the land, has delineated procedural and substantive provisions for the proclamation of emergency. This formal structure, enshrined in Part IXA of the Constitution, represents the classical, *de jure* version of the state of exception. Understanding historical context and the reactions of the judiciary to their interpretation is essential for two reasons. First, it draws the official juridical line that demarcates the normal from the exceptional within the Bangladeshi constitutional order. Second, and more significantly, it highlights the profound gap between this formal architecture and the de facto reality of governance. It paves the way for the argument that the constitutional emergency has been functionally recast into a more invidious and permanent architecture of control.

The original Constitution of Bangladesh, enacted in 1972 following the liberation war from Pakistan, a country that had used emergency laws time and again, contained no provisions for the proclamation of an emergency. The framers intentionally made this omission to prevent the overreach of executive power.[32] But it did not continue at principle for very long. In 1973, the

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[31] See generally Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (University of Michigan Press, 2003); Hussain M. Fazlul Bari, 'Evolution of the criminal justice system in Bangladesh' (2019) 45(1) *Commonwealth Law Bulletin* 25.

[32] M. Ehteshamul Bari, 'Emergency Powers and Martial Law under the Constitution of Bangladesh' in M. Rafiqul Islam and Muhammad Ekramul Haque (eds), *The Constitutional Law of Bangladesh: Progression and Transformation at its 50th Anniversary* (Springer Nature Singapore, 2023) 367.

government, in view of deterioration in the political and social conditions of the country, inserted Part IXA through the Second Amendment of the Constitution.[33]

For a proclamation to be made, the President has to be "satisfied that a grave emergency exists in which the security or economic life of Bangladesh, or any part thereof, is threatened by war or external aggression or internal disturbance".[34] The provision also provides for a pre-emptive proclamation if the President is satisfied that there appears to be an "imminent danger" of grave emergency. Although the Constitution enumerates a number of procedural protections in promulgating an emergency, their effectiveness has been questioned. Critics point out that because the executive branch generally holds a majority in Bangladesh's parliamentary system, the approval is often little more than a formality and leaves the emergency in an "omnipotent" place.[35]

The legal consequences of proclamation are stringent which are provided in Article 141B and 141C. The Article 141B states that, during an emergency the power of making any law or taking any executive action is not restricted by the derogable fundamental rights listed in the Article. Even more consequentially, Article 141C permits the President, in accordance with the written advice of the Prime Minister, to make an order suspending "the right to move any court for the enforcement" of any of the fundamental rights guaranteed under Part III of the Constitution. This provision can effectively end judicial scrutiny and redress for rights violations and render members of the public with relatively little, if not no, recourse against arbitrary state action.

A. A History of Proclamations

Over the past five decades since the institution of Part IXA, formal state of emergency has been proclaimed in Bangladesh on five occasions: in December 1974, May 1981, November 1987, November 1990 and, most recently, in January 2007.[36] A closer analysis demonstrates that not one of these proclamations was prompted by existential threats such as war or foreign aggression; rather, the emergency powers were invoked solely on the basis of vague and politically malleable

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[33] Ibid.

[34] *Constitution of Bangladesh*, Article 141A.

[35] Ridwanul Hoque, 'The Recent Emergency and the Politics of the Judiciary in Bangladesh' (2009) 2 *NUJS Law Review* 183.

[36] Md Jahid Mustofa and Md Shahin Kabir, 'A Comparative Overview of the Emergency Provision in Bangladesh' (2020) 3 *Southeast University Journal of Law* 33, at 8.

grounds as "internal disturbance".[37]

The 1974 emergency, for instance, was proclaimed in the backdrop of growing political instability and resulted in the creation of a one-party state under the BAKSAL system in 1975 while the 1980s and 1990s emergencies followed much the same pattern by military and autocratic governments to suppress political disagreement and prolong their rule.[38] The latest one was declared from 2007 to 2008 by a military-backed caretaker government, which deferred elections for two years and initiated a controversial anti-corruption campaign.[39] In every instance, emergency was not used in protection of the nation, but as an instrument to strengthen the power of the ruling executive, at times through the weakening of democratic institutions and procedures. This background has reinforced the perception that the constitutional power to proclaim a state of emergency is mainly a political, rather than a security instrument.

B. Judicial Responses and the Limits of Review

The role of the judiciary in a state of emergency is constitutionally constrained. Although Article 141C allows the suspension of the enforcement of fundamental rights, the Supreme Court exercised some control over executive action during emergencies. The power of judicial review, mainly based on Article 102(2) of the Constitution (1972), empowers the High Court Division to examine the legality of activities of the public bodies even in times of declared emergencies. Notwithstanding these actual and possible interventions, the basic framework of Part IXA still inclines heavily towards executive supremacy.[40] The power to suspend judicial remedies for fundamental rights violations under Article 102(1) effectively creates a legal order in which judicial intervention to protect constitutional rights is crippled. Consequently, the formal emergency framework continues to be an effective, though rarely employed, means through which executive superiority is imposed.

The very existence of this detailed constitutional process for proclaiming an emergency

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[37] M. Ehteshamul Bari, 'The emergency powers in Bangladesh: means for subversion of the rule of law?' (2015) 20(2) *Deakin Law Review* 1.
[38] Hoque, above note 35.
[39] Ibid.
[40] See Hoque (n 37) for general analysis. For illustrative cases demonstrating deference, see *Ataur Rahman v Muhibur Rahman* (2009) 14 BLC (AD) 62, 63; *Pirzada Syed Shariatullah v Bangladesh* (2009) 61 DLR (HCD) 647.

performs a crucial, and in a sense 'deceptive', ideological function. It makes it seem as if there are clear, defined legal boundaries between the normal state of affairs, in which the rule of law and fundamental rights are respected, and the exceptional state, in which both are temporarily set aside to address an existential crisis. It is this legal distinction that allows the state into 'pretending' to stay in constitutional normalcy in the times when there is no declared emergency. However, as the following discussion will show, the scheme of powers associated with a declared state of emergency, such as imprisonment without trial and the stifling of freedom of speech, have become common powers utilised under other pieces of legislation that operate in normal times. Hence, it can be argued that the constitutional emergency clause is not solely a deterrent against public insecurity but also a 'constitutional decoy' and it distracts from the fact that the line between ordinary and extraordinary has been erasing all along. The state can, therefore, represent itself as functioning under the normal rule of law, maintaining constitutional order by never formally declaring an emergency, while in practice deploying its various special or exceptional laws to produce a permanent state of exception. This renders the actual content of the political order more difficult to recognize, criticize, and oppose.

IV. EXCEPTIONAL LAWS IN 'NON-EMERGENCY PERIOD'

While the actual constitutional provisions for declaring a state of emergency in Bangladesh have been invoked only on a few occasions, a more enduring and pervasive architecture of exception has governed legal landscape in normal periods. It is not built on a single statute but a series of laws which, though formally grounded in criteria permissible in Part III of the Constitution, like public order, national security, or public safety, give executive powers that are overarching even in normalcy. In reality, these laws contain most of the effects of an emergency: infringement of due process, arbitrary detention, and stifling of free expression, without the need of a formal constitutional declaration. As such, they demonstrate how the state of exception has taken a normalised and enduring form of governance in Bangladesh. This section explores the major laws that underpin this structure, its genealogy within colonial assemblages and its maintenance through contemporary global security discourses.

A. Special Powers Act: The Colonial Inheritance

Situated at the center of the normal state of exception in Bangladesh the provision of

preventive detention: the power of the executive to imprison individuals not for crimes they have committed but on the suspicion that they might commit a "prejudicial act" in the future. The primary legal instrument behind this enormous power is the *Special Powers Act (SPA) 1974*. Again, Part III of the original Constitution did not permit preventive detention; the permission was inserted by the Second Amendment to the Constitution.[41] The SPA (1974) permits the state to arrest any individual for an initial period of six months, extendable indefinitely through the recommendation of an Advisory Board without formal charges or a trial.

The justification for such detention rests on the Act's expansive and ambiguous description of a "prejudicial act".[42] This includes any act which is likely to prejudice the sovereignty, security or defence of Bangladesh; friendly relations with foreign states; and the maintenance of public order and disrupt supply of any services essential to the community. The vague terms such as "public order" provides the executive with broad discretion to detain individuals, which may seek to silence, including political opponents, activists, and turn legitimate political activity into a crime. In addition, 'curfews' are typically imposed under this Act which allows the District Magistrate or Police Commissioner to order that no one can be outdoors during specific hours.[43]

A portion of the Second Amendment (not relating to the provision dealing with preventive detention) was once challenged in court, but the challenge was ultimately unsuccessful.[44] Much of this was due to the protective design of the amendment and the Supreme Court's cautious approach. By the insertion of Article 26(3), the amendment kept the Court out of reviewing whether the constitutional amendments are in conflict with the fundamental rights. Later, in the landmark Eighth Amendment case in 1989, the Supreme Court introduced the "basic structure" doctrine, ruling that Parliament can amend, but not destroy the core principles of the Constitution, such as democracy, judicial independence, and the rule of law.[45] Although this doctrine was later used to strike down several amendments, the Second Amendment remained untouched. As the

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[41] M. Ehteshamul Bari, 'Preventive detention laws in Bangladesh and their increased use during emergencies: a proposal for reform' (2017) 17(1) *Oxford University Commonwealth Law Journal* 45.
[42] *The Special Powers Act*, 1974, Section 2(f).
[43] Ibid, Section 24.
[44] See Hoque, above note 35. For specific case reference, For specific case reference, *M Asafuddowla and Others v Bangladesh* (W.P. of 24 November 2008) (unreported).
[45] Kawser Ahmed, 'Revisiting Judicial Review of Constitutional Amendments in Bangladesh: Article 7B, the Asaduzzaman Case, and the Fall of the Basic Structure Doctrine' (2023) 56(2) *Israel Law Review* 263.

constitutionality of SPA is tied to the Second Amendment, the Supreme Court is obliged to show restraint in reviewing its *vires*, and instead takes a rather passive role in reviewing certain executive actions under SPA.[46]

The SPA is not a post-independence innovation, but a direct continuation of a long colonial legacy of oppressive governance. Its provisions have their antecedents in the history of laws enacted by the British and Pakistani governments to stifle anti-colonial and pro-democracy campaigns. That includes the colonial statutes such as the *Bengal State Prisoners' Regulation of 1818*, the *Defence of India Act of 1915*, and the *East Pakistan Public Safety Ordinance of 1958*.[47] These colonial-era laws were formulated on the basis of governing the colonial subject and the logic of executive supremacy and suspension of due process[48], which were simply carried over in their totality by the newly independent Bangladesh.

B. Surveillance and Censorship

With the rise of digital technologies, the state of exception has proliferated both physical and digital domains. The legislative genealogy of digital censorship starts from the widely criticised Section 57 of the *Information and Communication Technology (ICT) Act, 2006*. This prototype was later replaced by the framework established by the *Digital Security Act (DSA), 2018* brought an online state of exception into being which has been designed as a 'digital panopticon' to exceptionally limit freedom of expression. The law has received widespread criticism for its broad and ambiguous language criminalizing wide array of online speech. For example, under section 21, any "propaganda or campaign against the liberation war, the father of the nation, the national anthem, or the national flag" could be punishable, a clause so open-textured that it could have been applied to "stifle important debate on matters of public interest".[49] Other sections also

[46] See generally H. M. Younus Sirazi and Md. Sadekur Rahman, 'Incompatibility of the Special Powers Act with Constitutional Jurisprudence and Human Rights Norms: A Comprehensive Analysis' (2018) 17(1) *BiLD Law Journal* 7. For cases dealing with statutory review of preventive detention, see *Aruna Sen v Government of Bangladesh* (1975) 27 DLR (HCD) 122; *Abdul Latif Mirza v Government of Bangladesh* (1979) 31 DLR (AD) 1; *Bilkis Akhter Hossain v Government of Bangladesh* (1997) 17 BLD (HCD) 395.
[47] Md. Ferdows Hossen, 'Constitutionalizing Preventive Detention in Bangladesh: An Unconstitutional but Effective Means to Curtail Individual Liberty' (2022) 8 *Commonwealth Law Review Journal* 254.
[48] Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Oxford University Press, 1998).
[49] Office of the United Nations High Commissioner for Human Rights, *OHCHR Technical Note to the Government of Bangladesh on review of the Digital Security Act* (June 2022) 2.

criminalized publication of material that was likely to be 'offensive to religious feelings,' that may 'promote enmity, hatred or ill will between different classes,' or that may affect the 'sovereignty and integrity of the State'.[50] The Act also afforded the executive wide-ranging powers, including the right to arrest and enter premises without a warrant.[51] These resulted in the arrest and lengthy imprisonment of hundreds of "politicians, journalists, businesspeople, students, and private employees", frequently for comments made on social media sites like Facebook.[52]

Apart from this, internet shutdowns are based on the Telecommunications Act, 2001 that allows the government control communication "during war declared, or a situation of war created, by a foreign power against Bangladesh, or during internal rebellion or disorder, or in a situation where the defence or other security of Bangladesh or any other urgent state-affair needs to be ensured".[53] The provision relies on vague and undefined terms like 'urgent state-affair' and 'internal disorder,' and grants the executive unfettered discretion to impose arbitrary internet shutdowns. Though not explicitly referred in the verbal or written instructions by the Government[54], this section may have functioned as the empowering provision to shutdown internet during the 2024 student led protests.

DSA was replaced with the *Cyber Security Act in 2023*, and in 2025, the *Cyber Security Ordinance (CSO)*, which has been passed by the Interim Government, replaced the CSA. Human rights organizations have claimed that the CSA is "same law, new name".[55] Although some offences were abolished and penalties reduced in CSO, the basic surveillance network and architecture of digital control were preserved by retaining "excessive and unfettered powers of

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[50] *The Digital Security Act*, 2018, Sections 27, 28, 31.
[51] Ibid, Section 43.
[52] Transparency International Bangladesh, *Position paper on Digital Security Act 2018 and Draft Cyber Security Act 2023*, 2023 <https://www.ti-bangladesh.org/upload/files/position-paper/2023/Position-paper-on-Digital-Security-Act-2018-and-Draft-Cyber-Security-Act-2023.pdf> accessed on 24 August 2025.
[53] *The Telecommunications Act*, 2001, Section 97.
[54] Digitally Right and Open Observatory of Network Interference, *The Longest Silence: Internet Shutdowns During Bangladesh's 2024 Uprising*, 31 July 2025 <https://ooni.org/post/2025-bangladesh-report> accessed on 24 August 2025.
[55] Amnesty International, *Bangladesh: Interim Government must restore freedom of expression in Bangladesh and repeal Cyber Security Act*, 8 August 2024 <https://www.amnesty.org/en/latest/news/2024/08/bangladesh-interim-government-must-restore-freedom-of-expression-in-bangladesh-and-repeal-cyber-security-act/> accessed on 24 August 2025.

https://doi.org/10.47126/nsulr.v1i1.02

regulatory authorities and law enforcement agencies"[56], and the cyber state of exception became, in effect, a permanent condition.

In colonial India, surveillance and censorship were key instruments of control, shaping practices that resonate in today's digital restrictions. Nationalist leaders, intellectuals, and students were all closely observed by an expanding system of intelligence, while newspapers, pamphlets, and plays that were critical imperial rule were censored.[57] The *Press Act of 1910* permitted seizure of "seditious" materials and Section 124A of the Penal Code criminalized "disaffection" with the state. During the movements against British Raj, pre-publication censorship, postal interception grew in scope and magnitude.[58] These tactics institutionalized a culture of treating expression as a security threat, which was eventually reflected in laws such as the DSA and CSA.

The international political atmosphere following September 11, 2001 attacks offered an added source of legitimacy and legal template for extending exceptional powers in Bangladesh. The discourse of 'war on terror' and international framework for counter-terrorism have pushed and incentivised states to introduce stringent national security laws.[59] In this context, the *Anti-Terrorism Act (ATA)* was enacted in Bangladesh in 2009 followed by further amendments to broaden its scope and increase penalties.[60] The ATA has a sweeping definition of "terrorist activities" under section 6 which includes any act which causes "panic among the public" or "damages state property, or compels the government to do or abstain from any act". This definition is so broad that it can be easily stretched to include political demonstrations, labour strikes, and any other form of civil disobedience, and blur the boundary between dissent and terrorism. The ATA demonstrates how a paradigm of geopolitical security can be co-opted for domestic instrumentalization, enabling the state to re-package its colonial practices of control now legitimised in postmodern global counter-terrorism.

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[56] Tech Global Institute and Bangladesh Legal Aid and Services Trust, *Joint Statement: Cyber Security Ordinance, 2025 and the Concerns That Remain* (Tech Global Institute, 11 June 2025).
[57] Ramnath Subramanian, 'Media and Internet Censorship in India: A Study of its History and Political-Economy' (2024) 33(1) *Journal of International Technology and Information Management* Article 1.
[58] Ibid.
[59] Bangladesh, *Statement by Bangladesh on agenda item 105: Measures to eliminate international terrorism*, 26 October 2015 <https://www.un.org/en/ga/sixth/70/pdfs/statements/int_terrorism/bangladesh.pdf> accessed on 24 August 2025.
[60] Ibid.

V. AGAMBEN IN THE CONTEXT OF BANGLADESH

Having laid out the theoretical perspective and comprehensive discussion of the legal framework of Bangladesh, this section attempts to integrate the two. It moves beyond analogy to entail the direct application of Agamben's concepts to the context of Bangladesh, arguing that the conditions observed are not simply *similar* to what he describes, but represent a distinct, postcolonial manifestation of his paradigm. By the use of analytical tools such as *homo sacer*, bare life and the camp, one can diagnose how various marginalised and targeted populations are produced and handled in the nation's generalised state of exception. Such an analysis also requires a critical engagement with the limitations of Agamben's model and the specific trajectories of history that have shaped the exception in a postcolonial state.

A. The Exception without Emergency

The preceding analysis raises the argument that Bangladesh operates in a permanent state of exception. The underlying legal tools of an emergency regime, arbitrary detention, suspension of fundamental rights, and the extension of the executive power, have decoupled from the constitutional requirement of a formal proclamation of emergency. The exception has been sewn into the fabric of normal, peacetime legislation such as the *Special Powers Act*, the *Digital Security Act* (and its successors), the *Anti-Terrorism Act* and the *Telecommunication Act* among others. The State has transitioned from a short-term emergency response, into a permanent form of government, a situation entirely aligning with Agamben's central thesis. The state no longer has to go outside of the law to act with impunity; such lawlessness has actually been internalized as part of the legal framework.

B. The Production of Bare Life in Bangladesh

Agamben's concept of bare life, life stripped of its political and legal qualifications and exposed to sovereign power, provides a powerful lens through which to understand the status of various groups in Bangladesh. The state of exception is not an abstract legal condition; it is a concrete political machine that produces and manages populations of bare life.

i. The Political Dissidents as Homo Sacer

The enforced disappearance and the extrajudicial killing (commonly described as deaths in

"crossfire" or "gunfight" by the security forces)[61] are perceived as among the most striking examples of the production of *homo sacer* in the country. Human rights groups have documented hundreds of such cases of victims, most of whom are political opponents or activists, taken by government agents and disappeared, never to be found or found murdered.[62] Their disappearance or killing is met with official denial and state impunity, rendering their deaths unpunishable homicides.[63] They are reduced to the level of Agamben's homo sacer: lives that can be killed without juridical consequence, abandoned by the juridical order that is supposed to include them.

Under the Awami League government, the ATA was invoked against opposition politicians, journalists and civil society activists, demonstrating the ease with which the sovereign can reclassify political adversaries as security threats.[64] Following the fall of the Hasina government on 5 August 2024, the same statute was turned against its former wielders: the Bangladesh Chhatra League (BCL), the Awami League's student wing, was designated a terrorist organization under ATA section 18(1) on 23 October 2024, and the Awami League itself was banned on 12 May 2025 under an ordinance amending the Act.[65] This symmetry, not of political program but of legal form, is the Agambenian point. The ATA functions not as a law that belongs to any particular political actor but as a sovereign technology characterized by structural indifference to who deploys it and against whom. It produces bare life, the legally stripped, politically abandoned subject, as a function of its own architecture, regardless of the political complexion of the government in power.

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[61] Human Rights Watch, *World Report 2024: Bangladesh*, 2024 <https://www.hrw.org/world-report/2024/country-chapters/bangladesh> accessed on 24 August 2025.

[62] Ibid.

[63] US Department of State, *2018 Country Reports on Human Rights Practices: Bangladesh*, 2019 <https://www.state.gov/wp-content/uploads/2020/02/BANGLADESH-2019-HUMAN-RIGHTS-REPORT-1.pdf> accessed on 03 April 2026.

[64] Shudipta Sharma, 'Instrument to Rule? Examining the Impact of Bangladesh's Counter-terrorism Laws on Freedom of Expression' in Téwodros Workneh and Paul Haridakis (eds), *Counter-Terrorism Laws and Freedom of Expression: Global Perspectives* (Lexington Books, 2021) 351.

[65] See generally, Human Rights Watch, *Bangladesh: New Crackdown Under Anti-Terrorism Law*, 8 October 2025 <https://www.hrw.org/news/2025/10/08/bangladesh-new-crackdown-under-anti-terrorism-law> accessed on 03 April 2026. For specific provisions, Extraordinary Gazette Notification, Government of Bangladesh, SRO No 369-Law/2024, 23 October 2024 (designating Bangladesh Chhatra League a banned organisation under *The Anti-Terrorism Act*, 2009, Section 18(1)); *Anti-Terrorism (Amendment) Ordinance*, 2025, published 10 May 2025; Gazette Notification (Bangladesh), 12 May 2025 (banning all activities of the Bangladesh Awami League).

ii. The Rohingya in the Camp

The refugee camps in Cox's Bazar, which host close to a million Rohingya people, who left Myanmar to escape persecution, provide perhaps one of the potent manifestations of Agamben's concept of "the camp". Stateless for being stripped off citizenship in Myanmar and not accorded refugee status by the government of Bangladesh, they are referred to as "Forcibly Displaced Myanmar Nationals".[66] They lack access to fundamental rights, such as the freedom of movement, the right to work, and formal education.[67] Their existence is governed as a biopolitical problem, a population of bare lives to be administered, housed, fed and contained, but rendered utterly devoid of any political existence (*bios*).[68] The camp is a material site that suspends the rule of law and reduces life to its biological minimum: it is subject to the administrative decisions of the state and humanitarian agencies. The Rohingya (along with other stateless minorities) are confined within a double bind, as individuals occupying a "space of exception", where they are subject to violence and exploitation without recourse to legal protection.

iii. The Slum Dweller on the Threshold

Another less obvious form of bare life is embodied in the legal and physical precarity of millions of the impoverished inhabitants of the urban slums. They occupy a threshold space, both economically connected to the city as cheap labour supplying the likes of garment manufacture, but also legally and physically excluded from the formal city.[69] The Bangladesh Supreme Court has found that the right to life as guaranteed by the Constitution includes the right to livelihood, and, thus, the right to shelter or housing.[70] Nonetheless, slum dwellers remain under the imminent threat of displacement by state authorities with little or no prior notice or rehabilitation plans.[71]

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[66] Mohammad Sajedur Rahman and Nurul Huda Sakib, 'Statelessness, Forced Migration and the Security Dilemma along Borders: An Investigation of the Foreign Policy Stance of Bangladesh on the Rohingya Influx' (2021) 1 *SN Social Sciences* 160.

[67] Ibid.

[68] Md. Lab Hossain, Md. Ishtiaq Ahmed Talukder, Mohammed Jahirul Islam, and Mohammadullah Faruk Mia, 'Navigating 'bare life': a study of the Rohingya in the spaces of exception' (2025) 27(1) *Asian Ethnicity* 166.

[69] Mahmuda Binte Latif, Anjuman Irin, and Jannatul Ferdaus, 'Socio-economic and health status of slum dwellers of the Kalyanpur slum in Dhaka city' (2016) 29(1) *Bangladesh Journal of Scientific Research* 73.

[70] Arafat Hasanat, 'Judicial Protection of Housing Right for the Landless People in Bangladesh' in *Matir Chona* (Dhaka, 2015) 39. *Ain o Salish Kendra (ASK) v Government of Bangladesh & Ors* (1999) 19 BLD (HCD) 488; *Kalam and Others v Bangladesh and Others* (2001) 21 BLD (HCD) 446; *BLAST and Another v Bangladesh and Others* (Writ Petition No 567 of 2003) (unreported).

[71] M. Rezaul Islam and Ndungi wa Mungai, 'Forced eviction in Bangladesh: a human rights issue' (2015) 59(4)

rendering the judgments merely symbolic. They are subjects of inclusive exclusion: included into the economy of the nation but eternally excludable from the spatial and legal order of the nation, leading to lives reduced to a state of bare life that can be displaced at any point of time.

The production of these diverse but related forms of bare life is not a set of unconnected policy failures, but discloses an overarching technique of sovereign power. These excluded groups serve to define the boundaries of the "normal" political community. The Rohingya are the *external other*, their statelessness reinforcing the definition of the Bangladeshi national political community. The slum-dweller is the *internal economic other* upon whose precariousness the project of the urban is founded as well as that of the flexible labour force. The dissident is the *internal political other*, whose elimination marks the absolute limit of acceptable dissent and reinforces the sovereign's ultimate power over life and death. They are, however, also mutually reinforcing. The instruments of spatial confinement and surveillance exercised in the Rohingya camps can be reimagined and applied in practice against the protesting citizens within the cities. The legal abandonment of the slum dwellers normalizes the idea that the rights of some citizens can be rendered as contingent and revocable. The impunity for the killing of dissidents creates the climate of fear that sustains the entire system. This demonstrates the state of exception, not as a set of random measures, but as an integrated set of strategies of population management and political government.

C. Parallels and Deviations from Agamben's European Model

The state of exception in Bangladesh is not, as Agamben's narrative would suggest, a post-1948 or 1971 disruption of the liberal-democratic order, but a seamless progression of colonised governance. The legal tools of preventive detention, the administrative mindset for controlling "dangerous" populations, and the very logic of exception were not invented after 1971; rather they were inherited from the British Raj and the Pakistani state.[72] The 'othering' of populations, which, for Agamben, is concentrated in the crisis of the European nation-state, was the a priori of colonialism, upon which the differentiation between coloniser (with rights) and colonised (as bare

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[72] See Yael Berda, 'Managing 'dangerous populations': How colonial emergency laws shape citizenship' (2020) 51(6) *Security Dialogue* 557; Above note 33.

life) was predicated.

Agamben's concepts help us to understand how different groups are rendered excluded or vulnerable in Bangladesh, but fail to grasp the variety of situations in the field. The Rohingya camps come closest to his concept of "the camp", but political dissidents or slum dwellers do not fit as perfectly. Dissidents are crushed by violence and impunity, but they are not simply eliminated from political community. Those living in slums have at least some legal rights, even if weakly enforced, so they are not in a state of outright abandonment but of perpetual vulnerability. This is evidence that the postcolonial state of exception does not function as a homogeneous, unified paradigm but as a spectrum of distinct exclusions.

This colonial inheritance has been combined with a contemporary force: the global 'war on terror'. This global security paradigm has created a new, global language and legal justifications for modernising and intensifying the older forms of exception.[73] Laws like the ATA were drafted in accordance with international resolutions and garner support from international community, giving older authoritarian techniques a modern veneer of legitimacy.[74] In this sense, the Bangladeshi state of exception is a hybrid construct at once embedded in a long colonial past and the present securitized, globalized world, a fact that Agamben's Eurocentric description fails to capture completely.

VI. CONCLUSION

This article has demonstrated that the state of exception is an ongoing and lived phenomenon in Bangladesh, and not a distant theoretical abstraction. From the perspective of Giorgio Agamben's works, we have traced how the legal and political order of the country is framed in terms of a permanent suspension of rights and freedoms. The truth is very evident: while constitutional provisions to proclaim emergency are in place, they remain rarely used and the governance relies on interlocking series of 'peacetime' legislations like the *Special Powers Act,*

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[73] Mark Condos, 'Emergency, Exception, and the Colonial Rule of Law: The Case of British India' (2023) 14(1) *First World War Studies* 29.

[74] Cian C Murphy, 'Transnational Counter-Terrorism Law: Law, Power and Legitimacy in the 'Wars on Terror'' (2015) 6(1) *Transnational Legal Theory* 31; Above note 59.

1974, the *Anti-Terrorism Act, 2009*, and the *Digital Security Act 2018* (along with its successors), that naturalize the exception as a routine technique of governing. Such mechanism has established a system in which preventive detention, surveillance, censorship, and extrajudicial violence no longer represent deviations from, but rather 'legal' forms of powers by the state.

The consequences are far-reaching. The violent repression of political and student movements, in the absence of any formal proclamation of emergency, has demonstrated that the state can use its repressive powers at any moment to silence dissent. Such is the nature of sovereign power that the line of distinction between lawful authority and lawlessness blurs in such situations. Political dissidents and marginalised groups, are put in a position of precariousness: they can be arrested, detained, disappeared or displaced without proper legal protection. Refugees are confined in camps; slum dwellers exist in perpetual juridical limbo; political opponents are subject to arbitrary violence. This kind of exclusion is not an accident; rather, it is central to the functioning of power and to the determination of who will be accepted as a member of the political community, and who will be classified as falling outside it.

Agamben's concepts offer us a useful framework to think through these dynamics. His theorization of the exception as the dominant paradigm of modern governance allows us to see connections between seemingly unconnected phenomena: the regulation of digital expression, the treatment of refugees, and the use of lethal force by security agencies. At the same time, applying Agamben demonstrates that his framework has some limitations when cast into postcolonial contexts. His analysis is grounded in European history, particularly the Holocaust, and argues that the state of exception is a novel phenomenon in the twentieth century. In postcolonial territories like Bangladesh, however, spaces of exception are not a historical rupture. Rather, they can be traced back to colonial forms of control and have been adapted under global security discourses, including the "war on terror." In order to account for this history, Agamben's account should be supplemented with postcolonial perspectives that emphasize the colonial genealogy of states of exception and their continued political developments.

The central implication of this analysis is that a permanent state of exception poses a serious risk to democratic prospects of Bangladesh. It erodes institutional legitimacy, enables impunity and produces a culture of fear which is supposed to be incompatible with constitutional

democracy. Rather, the uprising of 2024 demonstrated that the people, particularly the youth, are no longer willing to trade their freedom for the state's security guarantees. Democracy restoration is not just about change of government, which requires both the dismantling of the legal and political structure that permits exceptional rule and revision of repressive laws and ensuring the judicial independence. It is also, most importantly, about completing the unfinished business of decolonisation by building a political order in which the constitution, fundamental rights, and justice, not the will of the sovereign, will be central to governing. And then Bangladesh can reoccupy its democratic space, and ensure that no life remains abandoned at the margins of law.

DECLARATION

All authors declare that they have no conflicts of interest.