

CRIME *punishment*

House of lords reveal the latent discrimination on grounds of nationality in UK.

REDWAN HOSSAIN

THE British government opted out of part of the European Convention on Human Rights concerning the right to a fair trial in order to bring in anti-terrorism legislation, Terrorism Act 2000 in response to the 11 September attacks in the US. Any foreign national suspected of links with terrorism can be detained or can opt to be deported. But those detained cannot be deported if this would mean persecution in their homeland.

In a blow to the government's anti-terror measures, the House of Lords ruled by an eight to one majority in favour of appeals by nine detainees ruling that the measure breaks human rights law. The detainees took their case to the House of Lords after the Court of Appeal backed the Home Office's powers to hold them without limit or charge.

The law lords said that the rules were incompatible with the European Convention on Human Rights as they allowed detentions "in a way that discriminates on the ground of nationality or immigration status" by justifying detention without trial for foreign suspects, but not Britons. "Indefinite imprisonment without charge or trial is anathema in any country which observes the rule of law. It deprives the detained person of the protection a criminal trial is intended to afford."

The case was heard by a panel of nine law lords rather than the usual five because of the constitutional importance of the case.

The special Immigration appeals commission SIAC ruled on 30 July, 2002 that the anti-terror act unjustifiably discriminated against foreign nationals as British people could not be held in the same way. But that ruling was later overturned by the Court of Appeal who said there was a state of emergency threatening the life of the nation.

Who are the terror detainees?

There is not a lot of information available about the men at the centre of the UK government's anti-terror detentions - but they do share some key characteristics.

All of them were foreign nationals, none of them were being held under criminal charge pending trial - and none of them could be deported because lawyers believed they would face persecution in their home countries. Of 544 people arrested under anti-terror legislation between September 2001 and

January 2004, only 98 were charged and six convicted, committee chairman Jean Corston MP said.

However here are brief profiles of two of the six suspects involved in the legal battle against the detentions.

A is an Algerian man who came to the UK in July 1989. The Home Office deported him as an overstayer to Sweden. He returned, claimed asylum, but was rejected. He was detained under special powers in December 2001. The Home Secretary said this man actively supported GSPC, an Algerian group said to have terrorist intentions. Suspect A "broadly supported" the aims of Osama Bin Laden and al-Qaeda. He allegedly used credit card fraud to raise funds for the organisation he supported. The government also claims A was associated with a terrorism suspect who was later apprehended at Heathrow.

E is Tunisian and claimed asylum after coming to the UK. He waited six years for a decision, was rejected but then told he could stay until 2005. The home secretary detained E in December 2001, saying: "You are an active supporter of the Tunisian Fighting Group, a terrorist organisation with close links to al-Qaeda. You have provided direct assistance to a number of active terrorists." At his original case hearings, the authorities were challenged as to whether the group indeed existed. E also alleged that evidence against him was unreliable because it was obtained by torture of others abroad. The court however ruled in favour of the home secretary, although its full reasons remain secret.

At the moment, two out of the 6 appellants are held at Broadmoor secure hospital because they have become mentally ill due to the torture.

Fate of the detainees

The pressing question then is what happens to the detainees in Belmarsh?

One of the detainees has already been released and is subject to a form of house arrest. It is possible that a similar procedure could be followed with those considered too dangerous to free unconditionally.

But that, too, is bound to provoke a legal challenge. There may be renewed efforts to find countries, which might take those suspects who refuse to return to their homelands for fear of torture or death.

But that may be a forlorn hope. For the UK government, it is a major headache, which must be addressed urgently.

Ministers have been braced for this defeat since hearings were held before the lords in October. Even, Attorney General Lord Goldsmith, who presented the government's case, was privately gloomy about the prospects of success, knowing that a law that discriminates against foreign-born detainees strikes at the heart of ancient legal safeguards against arbitrary arrest.

So, what now? In the United States, a ruling of similar magnitude by the Supreme Court meant automatically that Guantanamo captives could challenge their detention in the courts.

But the House of Lords does not have primacy over the executive and the government must now decide if it wishes to take its case to parliament for a second time. The alternative is to frame new legislation, which would put foreign-born suspects on exactly the same footing as British citizens and allow them to be tried on terror charges.

How to fight terrorism in a democracy under the rule of law?

The UK had to grapple with that problem during 40 years of IRA terrorism and is now having to confront it again in the face of the threat from Islamic fundamentalists.

The Anti-Terrorism, Crime and Security Act give the home secretary the power to detain foreign nationals who are thought to be a potential danger to the UK, but who cannot be deported because they face persecution in their own countries and no other country will take them.

They are held because the intelligence services, MI5 and MI6, have information about them, which gives rise to suspicion that they are linked to international terrorism.

But in the case of the 12 individuals still being detained under this Act, there is either not enough evidence to charge them or the information about them comes from sources, which the government does want to be exposed in court.

So what to do with them?

The answer from the Home Office has been an extraordinary legal forum called the Special Immigration Appeals

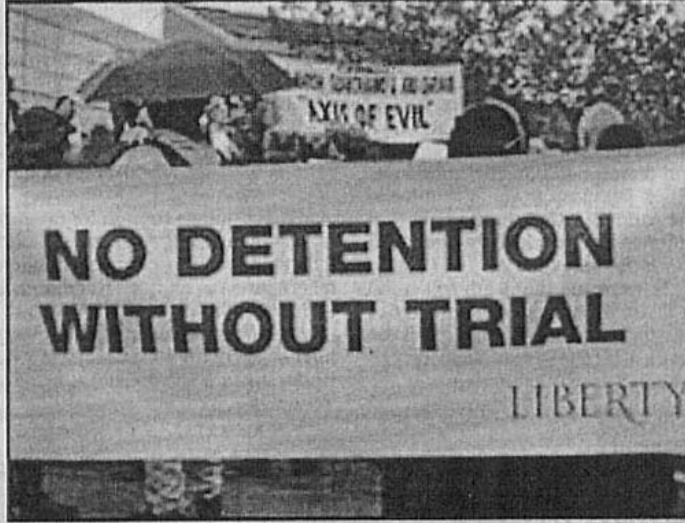


PHOTO: BBC

Commission.

Three High Court judges decided that the home secretary is right to order the detention of these individuals. It is extraordinary because the men do not know what information is held about them. Nor are their lawyers allowed to know.

The information is given to a trusted special advocate who represents each man. Most of the hearings are in private with the decision taken by the three judges.

They could, of course, walk out of prison tomorrow but would have to agree to be deported to a country prepared to take them.

Instead, they have decided to fight the whole process and the decision to free one of the suspects has been a significant setback for the Home Office.

The key point was the indefinite nature of the detention and is similar to the criticism of the regime imposed by the Americans on detainees in Guantanamo Bay.

Ex-Home Secretary David Blunkett planned to amend the law so that he can appeal to a higher court against SIAC decisions over bail but he has been fiercely attacked by lawyers and human rights groups for abandoning the very legal safeguards which distinguish democracy from totalitarian intolerance.

Concluding Remarks

The emergency powers were introduced in 2001 after the 11 September attacks.

Thirteen foreign terror suspects are currently being held without trial at London's Belmarsh jail. The government had to "derogate" (opt-out) of the European Convention on Human Rights in order to pass the emergency detention measures. But to continue to do so in the long-term risks "corroding the culture of respect for human rights," the committee warns.

It proposes tougher rules covering both foreign and domestic terror suspects, as an alternative to indefinite detention. These include:

- The use of phone taps as evidence in court
- Intensive surveillance of terror suspects after release
- The introduction of security-cleared prosecutors who would be able to view material from intelligence sources
- New "civil restriction orders" - such as curfews or tagging - to limit the activities of people thought to be linked to terrorism, but not themselves considered serious suspects.

Lib Dem peer Lord Lester, who is a member of the committee, said: "We are saying that indefinite detention without trial is, in Winston Churchill's famous phrase, in the 'utmost degree odious' and that alternative means need to be found." The report also warns of the "disproportionate impact of the use of the Terrorism Act powers on the Muslim community". And it warns against the use of evidence in trials obtained by torture in other countries.

The new law would apply to "everybody irrespective of nationality," Blunkett said.

A spokesman for civil rights group Liberty said, "The Americans have begun to realise that they cannot hold the Guantanamo detainees indefinitely. Surely the British Government can also realise that they must release the detainees they hold, or put them on trial?"

In effect the 'terror detention law' must go.

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HUMAN RIGHTS *advocacy*CAMPAIGNS TO MAKE HOMES CHILD LABOUR FREE
Shoishab- A humane approach towards child domestic workers

SHAILA SHAIKH

CHILD domestic workers- the world's invisible workers, stay alone in individual households, hidden from public scrutiny, their lives controlled by their employers. Trapped between four walls, millions of children are toiling night and day as domestic servants in the homes of wealthier families. Scrubbing, sweeping, serving and suffering, these children have long forgotten the joy that childhood usually meant to be.

A widespread practice throughout Asia, Africa, and Latin America, the use of children as domestic servants has been condemned as one of the worst forms of child labour. The ILO has described domestic work as among the lowest status, least regulated, and poorest paid of all occupations—that performed by children.

In Bangladesh, complex socio-economic conditions also force many children into the informal labour market. Rapid urbanization in the extremely poor agro-based country has continued to increase the number of homeless and slum-based children in

the cities without an adequate family and financial support system. These children are easy victims of highly exploitative forms of child labour. Child domestic workers generally have never attended school or fail to complete their schooling. Their social isolation also excludes them from community-based health services and recreational opportunities.

In Bangladesh, historically children have formed part of production process for generations that means working childhoods are often accepted as a normal part of life. Because of the extreme economic poverty and its consequences, the poverty stricken families in the rural setup forced their children to release from school and to engage them in work. The rapid growth of child labour in the country in one hand created opening for the poverty stricken children to survive somehow. But on the other hand it created a far-reaching affect both on the economy as well as on the education. Side by side the abuse and exploitation on the children gradually increased at an alarming stage.

In such a backdrop, Since 1991 Shoishab- a rights based organisation has been working with urban disadvantaged homeless children. It pioneered the activities with street children in Dhaka and expanded into areas of child domestic workers. The organisation is striving to support and stand for the children living in extreme vulnerability, helps them to change their life style through service delivery, advocacy, skill training and education. The main purpose of the child domestic workers programme is to empower and rehabilitate the domestic child labours and raise their voice against all form of abuse. By non-formal education they are trying to re-socialise them with minimum disturbance of their existing living practices or without removing them from their own environment. Education opens up the opportunities for them to explore options that have been hitherto unavailable to them. It gives them access to alternatives or choices, delimiting the boundaries within which they are trapped.

According to a survey there are approximately 6 lakh children engaged in domestic work in Dhaka city. Shoishab is continuing the program in 11 thanas of Dhaka. A total of 2540 children are regularly attending in 102 learning centers.

Under the Advocacy and Social mobilization program Shoishab is trying to raise awareness among the employers on the issues of abuse, torture on the child domestics and aware them about the process of eliminate violence. An essential concomitant of this approach is to mould the attitude of the employers who must agree to accept the improvement in the conditions of the child workers and to give them their basic rights. By this process employers are motivated to provide opportunities to the child workers to enjoy a better deal. These children suffer from many restrictions on their activities, movement and behavior. They are confined to drudgery, are victims of denial of basic human rights and basic rights of the children such as lack of access to education and are often subjected to cruelty and violence. The remarkable change of attitude is certainly a

ness of the problem. By this movement it will be pushing for legal measures, rehabilitation programs, and direct interventions to protect child domestic workers.

Domestic child labour is one of the most elusive forms of child labour to tackle. There are different international instruments that prohibit child labour. The Convention on the Rights of the Child, ratified by all countries except Somalia and the United States, guarantees children the right "to be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."

The Worst Forms of Child Labour Convention, adopted by the International Labour Organization (ILO) in 1999, and ratified by 150 countries worldwide, develops the prohibition on harmful or hazardous work more fully. Under the Worst Forms of Child Labour Convention, some forms of child labor are flatly prohibited, such as slavery or practices similar to slavery. Other types of work



PHOTO: SHOISHAB

are prohibited if they constitute "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children."

Also the Convention on the Rights of the Child guarantees children's right to education, stating that primary education must be "compulsory and available free to all." Secondary education, including vocational education, must be "available and accessible to every child," with the progressive introduction of free secondary education. With regard to the interplay between child labor and education, the Convention on the Rights of the Child explicitly guarantees children the right "to be protected from performing any work that is likely... to interfere with the child's education..."

The Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) provides for the elimination of discrimination against girls in education, including access to schooling, reduction of female student drop-out rates, and programs for girls who have left school prematurely. Government laws often exclude domestic workers from basic labor rights, labor ministries rarely monitor or investigate conditions of work in private households, and few programs addressing child labor include child domestics. Shoishab submitted a memorandum to the Ministry of Women's and Children's affairs on September 30, 2002 that specifies the rights of the domestic workers that need to be addressed. But till date we are lacking of strict law on domestic violence and any law that ensures the rights of the domestic workers as well.

An absence of legal accountability contributes largely to these children's extreme vulnerability to all the negative elements of society. These children are sometimes victims of child trafficking, prostitution, sexual abuse and economic exploitation. Situation also forces them to get involved in anti-social activities such as gambling, drug trafficking and selling etc. Therefore these children should be addressed and should be protected from all forms of abuse, exploitation and discrimination.

Efforts to address child labour must take into account child domestic workers and ensure that their rights to education, healthy development and a protected childhood are safeguarded. For children to be guaranteed a protective environment, governments must be committed to their protection by enacting and enforcing laws that punish those who exploit children and communities must be aware of the risks children face. Children are the soul and spirit of every nation, but behind closed doors their dreams are facing a silent death if we don't act now. No more Cinderella story we want to hear that remains as a tragic episode of a child's life.

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LAW *news*

Tsunami victims prey to crime from Asia to Europe

Thieves, rapists, kidnappers and hoaxers are preying on tsunami survivors and families of victims in Asian refugee camps and hospitals and in the home countries of European tourists hit by the wave. Reports and warnings came in from as far apart as Britain, Sweden, Sri Lanka, Thailand and Hong Kong of criminals taking advantage of the chaos to rape survivors in Sri Lanka or plunder the homes of European tourists reported missing. In stark contrast to a worldwide outpouring of humanitarian aid in response to the Dec. 26 tsunami, whose death toll stood at nearly 145,000 people, a women's group in Sri Lanka said rapists were preying on homeless survivors. "We have received reports of incidents of rape, gang rape, molestation and physical abuse of women and girls in the course of unsupervised rescue operations and while resident in temporary shelters," the Women and Media Collective group said.

Save the Children warned that youngsters orphaned by the tsunami were vulnerable to sexual exploitation. In Thailand thieves disguised as police and rescue workers have looted luggage and hotel safes around Khao Lak beach, where the tsunami killed up to 3,000 people. Sweden sent seven police officers there to investigate the reported kidnap of a Swedish boy of 12 whose parents were carried off by the wave.

Sweden is the hardest hit country outside the tsunami region with more than 2,500 missing and 52 confirmed dead. But it kept their names secret after some homes were targeted by thieves. "It is unfortunately a reality that people who are known to be missing... have had their homes gone through and partly emptied," State Secretary Lars Danielsson told local radio. Swedish police could not give details of such break-ins but said similar incidents of looting had occurred after the 1994 sinking of the Estonia, which killed 551 Swedes. "That is the reason that we are now so careful about distributing the names this time," a police spokeswoman said. Police said a man had been arrested for sending hoax emails to people who had placed appeals for information about relatives and friends on a television website. The hoaxer claimed to have information from the "Foreign Office Bureau" in Thailand. In Hong Kong, where people are chipping in generously to the relief effort, the charity Oxfam warned of a bogus fundraising email that has been circulating in its name, asking people to send donations to a bank account in Cyprus.

Source: Reuters

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LAW *week*

Govt, ACC at loggerheads

The government ordered employees of the now-defunct Bureau of Anti-Corruption (Bac) not to work for the Anti-Corruption Commission (ACC) until rules and regulations of the newly formed body are formulated.

The Cabinet Division in a circular formally announced 1,107 Bac staff as government's reserve employees in the wake of boiling conflicts between the government and the ACC. The Bac officials have been temporarily working at the antigraft commission since November 21.

The latest development is going to stall the ACC investigations into the status of 1,028 vehicles purchased for different development projects and allegations of tax dodging by a business house.

The ACC chairman, its two commissioners and their personal staff, meanwhile, are shifting their offices today from the Segunbagicha Bac office to the Bureau of Statistics building at Agargaon. They were attending their duties at the former Bac office since the ACC started functioning on November 21. - The Daily Star, January 4

HC stay controversial RU recruits

The controversially appointed 546 employees at Rajshahi University (RU), aggrieved at reports of the High Court's stay order on their recruitment staged angry demonstrations on the campus.

They confined RU vice chancellor (VC) at his office for four and a half hours, cut off power and water connections to the VC's house, locked offices of the pro-VC and proctor and stopped movement of RU vehicles.

They brought out processions chanting slogans against the administration and demanded confirmation of their jobs by calling an urgent syndicate meeting within 24 hours.

Lawyer Abu Aslam filed a suit with Rajshahi Sadar senior assistant judge's court on April 25 following RU authorities' appointment of 546 employees which was made without proper advertisements and despite having not as many vacant posts.

The court issued an injunction on the recruitment on June 23. Later Rajshahi district and sessions judge vacated the lower court order following a petition of RU authorities.

After a writ petition of Abu Aslam, the High Court stayed for six months the vacating order on the injunction. - Prothom Alo, January 4.

Ahmadiyya Books

HC asks govt why ban should not be illegal

The High Court issued rule on the government for its ban on the Ahmadiyya publications and stayed the ban for another three weeks. The court asked the government to reply why the government order banning Ahmadiyya publications, sale, distribution and preservation would not be declared illegal for being violative to the constitution and fundamental rights of the community.

The respondents - the home secretary, senior assistant secretary of the home ministry, inspector general of police and deputy controller of Bangladesh Press (BG Press) - will have to reply to the court in two weeks.

A High Court Division bench comprising Justice MA Matin and Justice AFM Abdur Rahman passed the order after hearing. - The Daily Ittefaq, January 3.

HC halts election to JS reserved seats for women

The High Court (HC) directed the government and the Election Commission (EC) not to hold polls to 45 seats reserved for women in the Jatiya Sangsad, until hearing of a writ petition challenging the election process.

The HC bench of Justice MA Matin and Justice AFM Abdur Rahman passed the order following a petition filed by 13 women leaders seeking an injunction on the polls process. The court fixed February 23 for hearing the petition.

On December 14 last year, the HC had issued a rule on the government asking it to explain in two weeks' time why the law providing for election to the reserved seats for woman should not be declared unconstitutional. The court, however, had not then ruled on whether there should be a stay of operation of the law itself.

Two more writ petitions relating to the 14th amendment to the constitution, which provided for the 45 reserved seats for women in parliament, were filed earlier and the HC had issued separate rule following the petitions.

The EC, on December 21, asked the political parties and alliance concerned to send lists of their candidates by December 28 for election to the reserved seats. - The Daily Star, January 5.



PHOTO: AFP

huge step forward in making employers sensitive to the needs of their domestic workers. It also shows that age old perceptions can be changed and that making employers more humane, just and caring is not such an impossible work.

Another innovative effort is to build up the Halfway House that has been designed with a view to provide support to the children in need. In this program temporary residential facilities for the children along with the medical support are ensured. The overall aim is to dramatically increase awareness about the extent and serious-