



Star **LAW** analysis

Self-Assessment in income-tax system: an observation

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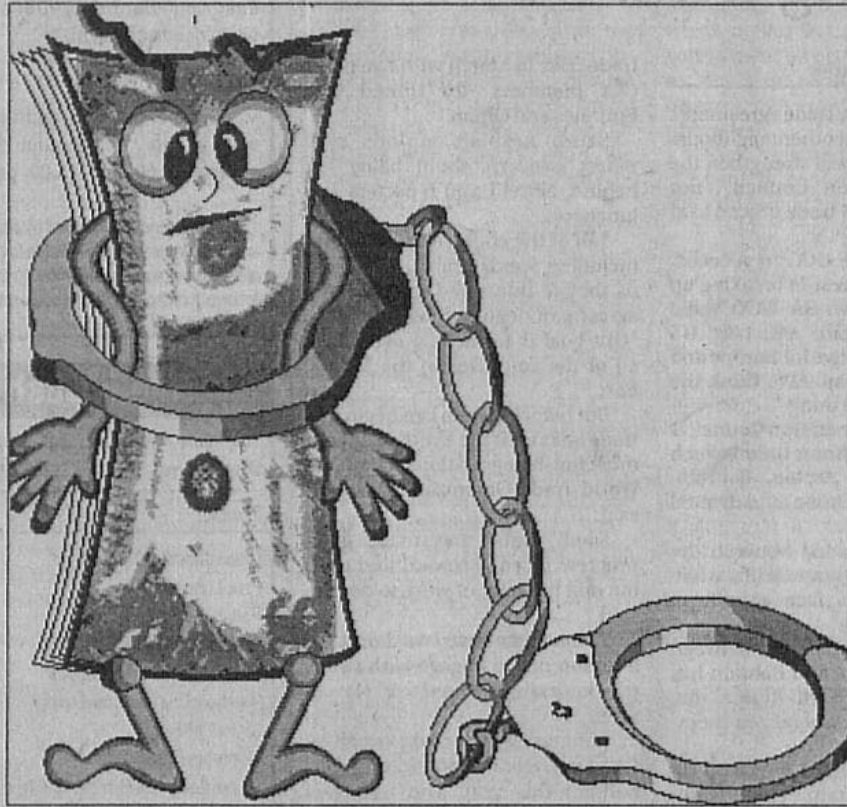
THE regular income-tax system involves filing of a return of income with the income-tax Department along with the statement of accounts maintained, if any, production and examination of books of accounts, determination of total income, issue of a demand notice for payment of tax and finally its payment. As this regular procedure is a lengthy and cumbersome one especially for assesseees of low-income groups, the National Board of Revenue (NBR) in 1964-65 introduces an alternative method, which is known as self-assessment procedure in our income tax system. This procedure, however, proves unsuccessful and ceases to run. After the evolution of Bangladesh it is reintroduced in 1981. The sections 83A, 83AA and rule 38 of the Income Tax Ordinance, 1984 provide all about self-assessment procedure.

In a self-assessment system a person is required to file his/her return along with the evidence of payment of tax payable by him/her, assessed by himself/herself. If the assessee does the assessment and files required documents carefully following the guidelines laid down in sections 83A, 83AA of Income Tax Ordinance, 1984 and rule 38 made there-under, the Deputy Commissioner of Taxes (DCT) or any other official authorised by him/her shall receive the return and will issue a receipt of the return with his/her signature and official seal affixed thereon and the said receipt shall constitute an order of assessment which means the income of and the tax payable by the assessee have been duly assessed.

Who can carry out self-assessment?

Every assessee, whose income is chargeable to tax under any head, may avail of the benefit of the self-assessment procedure. The returns should be filed on or before:

- By an individual assessee by the 30th of September next following the income year.
- By a company by the 15th of July next following the income year or, where 15th July



falls before the expiry of 6 months from the end of the income year, before the expiry of such 6 months. [Section 75(2) C].

Process of paying tax under the self-assessment scheme

Where the assessee is not a Private Limited Company

The assessee has to-

- Super-scribe 'Self-assessment' on the top of the return form.
- File it by the 30th of September next following the income year.
- Pay on or before the date the tax amount calculated at the rates applicable to the total income shown in the return.

- Where income is derived from any head other than business or profession, the return shall accompany a statement showing particulars of income.
- The return is to be duly verified by the assessee and found to be correct and complete in all respects.

But the self-assessment return will not be accepted if it shows-

- Loss or less income than last assessed income or income below the taxable limit.
- Making or accepting gifts or any tax-free income.

Accordingly, the receipt of any return submitted in accordance with these provisions shall be deemed to be an order of assessment. However, nothing in this rule shall apply to a new assessee deriving income from business or profession whose return shows an income less than 15% of the capital invested in business or profession.

Self-assessment for Private Limited Companies

A private limited company also may file return under the self-assessment scheme. The self-assessed return will be accepted if the following conditions are satisfied:-

- The returns should be filed on or before 15th July next following the income year or, where 15th July falls before the expiry of 6 months from the end of the income year, before the expiry of such 6 months. [Section 75(2) C].
 - Income shown in the return is higher by not less than 10% of the last assessed income and has also increased by at least a further 10% for each preceding assessment year in respect of which the assessment is pending.
 - Tax is paid on the basis of the declared income or on fifty thousand taka, whichever is the higher, on or before the date on which return is filed.
 - The return shall accompany a copy of the accounts of the company audited by a Chartered Accountant.
- Hence, the DCT shall assess total income of the assessee on the basis of the return and

communicate the assessment order to the assessee within 30 days next following.

Realising a taxpayer-friendly procedure

Self-Assessment procedure proves a simple and easy one in the sense that the assessee was assessed on the basis of his return submitted. There is no provision for further audit or enquiry. In other words, there is little chance to get harassed. The DCT, however, shall make an audit only when a return filed by an individual shows the income as 15% higher, and in case of a private limited company, 20% higher than the last assessed income.

Penalty measures in Self-Assessment

Indeed, a member of a civilised society takes paying taxes as a moral responsibility, and feels that it augments his social dignity. Regrettably, in our country, the mentality to pay taxes as a civil responsibility has not grown up yet. The more one can evade taxes, the cleverer one feels oneself to be. And more regrettably, such evading or avoiding tax does not cast any social stigma on them, rather they in course of time become leaders of the land. The penalty provisions in Self-Assessment system, therefore, bears rationale. According to penalty provisions, if any definite information regarding concealment of income comes to the DCT, he usually orders for fresh assessment, and the penalty for such concealment of income or furnishing inaccurate particulars of income is five times the tax sought to be evaded.

Though having the stern penalty measures, an honest assessee should not feel uncomfortable with the self-assessment scheme. As a matter of fact, this scheme of self-assessment has been taken to relieve the assessee of procedural formalities. If understood properly, taxpayers certainly will embrace it cordially. Undoubtedly it deserves that welcome.

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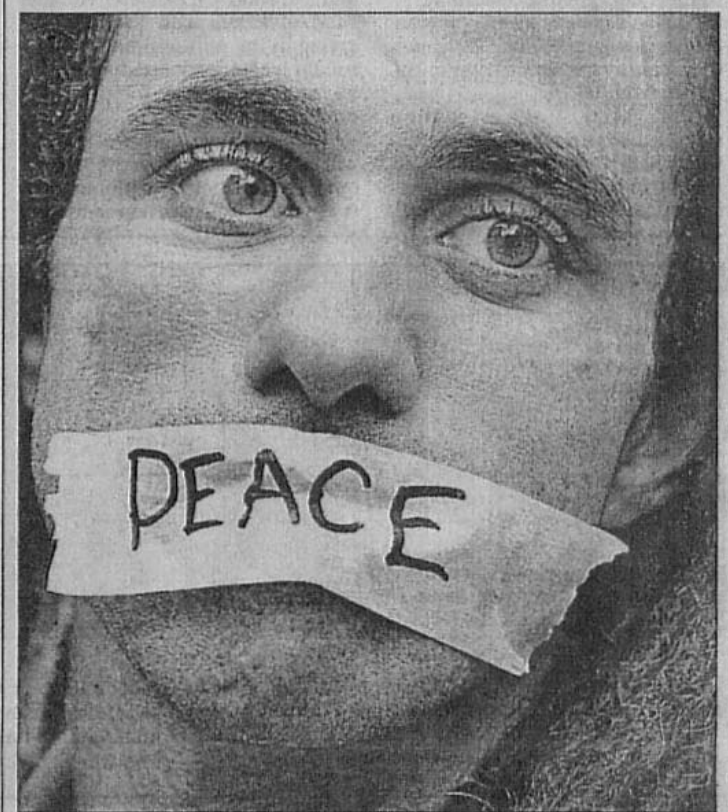
RIGHTS corner



Torture continues at hands of interim Government

IRAQI security forces are committing systematic torture and other abuses against people in detention. Human Rights Watch said in a new report released January 25, 2005. As per the report, Torture and ill-treatment of detainees in Iraqi Custody, documents how unlawful arrest, long-term incommunicado detention, torture and other ill-treatment of detainees (including children) by Iraqi authorities have become routine and commonplace.

While insurgent forces have committed numerous unlawful attacks against the Iraqi police, this does not justify the abuses committed by Iraqi



authorities, the report said.

"The people of Iraq were promised something better than this after the government of Saddam Hussein fell," said executive director of Human Rights Watch's Middle East and North Africa Division. "The Iraqi Interim Government is not keeping its promises to honour and respect basic human rights. Sadly, the Iraqi people continue to suffer from a government that acts with impunity in its treatment of detainees."

Methods of torture cited by detainees include routine beatings to the body using cables, hoses and other implements. Detainees report kicking, slapping and punching; prolonged suspension from the wrists with the hands tied behind the back; electric shocks to sensitive parts of the body, including the earlobes and genitals; and being kept blindfolded and/or handcuffed continuously for several days. In several cases, the detainees suffered what may be permanent physical disability.

Detainees also reported being deprived by Iraqi security forces of food and water, and being crammed into small cells with standing room only. Numerous detainees described how Iraqi police sought bribes in return for release, access to family members or food and water.

The report details serious and widespread human rights violations since 2003, against both alleged national security suspects, including insurgents, and suspected common criminals. It also highlights serious violations committed by Iraq's national intelligence service since mid-2004, principally against members of political parties deemed to constitute a threat to state security.

Human Rights Watch said its investigations in Iraq over a four-month period between July and October 2004 found the systematic use of arbitrary arrest, prolonged pre-trial detention (up to four months in some cases) without judicial review, torture and ill-treatment of detainees, denial of access by families and lawyers to detainees, improper treatment of detained children, and abysmal conditions in pre-trial facilities. The report does not address the mistreatment of persons in the custody of U.S. or other multinational forces in Iraq.

"The Iraqi security forces obviously face tremendous challenges, including an insurgency that has targeted civilians," Whitson said.

"We unequivocally condemn the insurgents' brutality. But international law is unambiguous on this point: no government can justify torture of detainees in the name of security."

With rare exception, the Iraqi authorities have failed to investigate and punish officials responsible for violations. International police advisers, primarily U.S. citizens funded through the United States government, have turned a blind eye to these rampant abuses.

"In the name of bringing security and stability to Iraq, both Iraqi officials and their advisers have allowed these abuses to go unchecked,"

Whitson said. "We have not seen the Iraqi police held accountable for their actions."

Human Rights Watch's interviews included over 60 criminal suspects, most of them referred to the Central Criminal Court in Baghdad and accused of serious felonies, including terrorism, abduction, money laundering, drug trafficking and acts of sabotage. A smaller number accused of less serious offences were held in police stations and referred to Baghdad's other criminal courts.

"They poured cold water over me and applied electric shocks to my genitals. I was also beaten by several people with cables on my arms and back," said a 21-year-old man arrested in July 2004 and accused of links with the Mahdi Army. Another detainee arrested in June 2004 on charges of possession of drugs said: "During the first three days there was continuous torture. I was beaten with an aluminium rod and whistles... Then I was told to sign a statement with my hands tied behind my back, so I didn't even see the paper and I don't know what I signed."

"A new Iraqi government requires more than a change of leadership - it requires a change of attitude about basic human dignity," Whitson said.

Human Rights Watch called on the Iraqi government to promptly investigate all allegations of torture and ill-treatment and bring to justice officials responsible for the abuse of detainees. The government should take urgent steps to ensure compliance with its domestic and international legal obligations that would afford better protection for detainees from abuse, and give serious consideration to granting access to detention facilities under Ministry of Interior authority to independent human rights monitoring groups.

The United States and other donors should ensure that international advisers working with the Iraqi authorities on policing and detentions should give immediate priority to assisting in the establishment of a mechanism for the prompt reporting and investigation of allegations of torture and ill-treatment, including the setting up of an independent complaints body.

Source: Human Rights Watch.

LAW vision

Muslim women's right to maintenance in India

SAUMYA UMA



The erstwhile Rajiv Gandhi government enacted the Muslim Women (Protection of Rights on Divorce Act), 1986 to neutralise the effects of the Shah Bano judgement of the Supreme Court (Mohamed Ahmed Khan vs Shah Bano Begum, 1985). In that judgement, the apex court stated that Muslim women could claim life-long post-divorce maintenance under secular law S. 125, Criminal Procedure Code. The 1986 Act, rather than protecting, ironically sought to restrict Muslim women's right to post-divorce maintenance to three months after divorce. This was a clear case of the government succumbing to conservative and patriarchal forces from the Muslim community, thereby violating principles of justice and equality for women.

Judicial responses to post-divorce maintenance of women

A product of hasty drafting, one provision of the Act - Section 3 (1) - provides that a divorced woman shall be entitled to have from her husband, "a reasonable and fair provision and maintenance" which is to be made and paid to her within the iddat period. An issue that has come up before the courts time and again is the interpretation of the term "reasonable and fair provision". Some courts, such as Kerala, Gujarat and Maharashtra, had interpreted the term in a broad manner and stated that this should include maintenance for the woman's future extending beyond the iddat period. However, other states, such as Orissa, had interpreted the term to be maintenance for and during the period of iddat alone. For several years, the fate of Muslim women's post-divorce maintenance depended on the varying standpoints taken by each High Court.

This inconsistency has been put to rest by a Full Bench of the Supreme Court in Daniel Latifi vs Union of India, 2001. This judgement affirmed the beneficial interpretation adopted by the Bombay High Court and other courts, and confirmed that the clause "reasonable and fair provision" meant life-long post-divorce maintenance to be paid by the husband within the iddat period.

It further said that this was a right of a lump sum provision to be made and paid to the woman soon after her divorce.

The Kerala High Court, through a judgement passed in November 2004 in Abdul Hammed vs Fousiya, has gone a step further and clarified that a Muslim woman would be entitled to post-divorce maintenance from her former husband even if she had remarried after the divorce. It granted the woman maintenance from the date of divorce to the date of remarriage, and stated that remarriage will not justify the former husband from withholding the benefits payable to the wife. Section 125 of the Criminal Procedure Code stipulates that maintenance can be claimed only by a woman who has not remarried after divorce. This archaic provision essentially ensures an ex-husband's control over the woman and her sexuality, even after her divorce, and has no place in modern jurisprudence. Fortunately, there is no such stipulation in the 1986 Act an omission possibly due to hasty drafting!

Constitutional validity of the 1986 Act

The 1986 Act has met with severe criticisms from women's organisations, human rights groups and secular humanists since the time of its enactment. Some such criticisms include:

- The Act discriminates against Muslim women solely on the basis of religion, thereby violating the guarantee of equality and non-discrimination on the grounds of sex and religion, set out in Articles 14 & 15 of the Indian Constitution.
- The Act is impractical in its expectation that parents, brothers and other relatives will shoulder the responsibility for a divorced woman's and her children's maintenance;
- The expectation that a divorced woman will sue her parents/other relatives to obtain maintenance is unrealistic;
- The right of Muslim women to seek maintenance from Wakf Boards is illusory, as many State Wakf Boards are either disfunction or non-existent.
- A provision in the Act that gives the option of applying for maintenance under S. 125 Cr. PC if both parties agree is pointless as few husbands would give the requisite consent.

In Daniel Latifi's case, the constitutional validity of the 1986 Act was challenged. It is interesting to note some of the arguments put forth by advocates representing various players in this process. The advocates for the petitioner argued that the Act was un-Islamic, unconstitutional and it has the potential of suffocating the Muslim women. The Solicitor General supported the Act by stating that personal law was a legitimate basis for discrimination, and that therefore it does not offend Article 14 of the Constitution. The All India Muslim Personal Law Board, as an intervener, defended the 1986 Act and stated that Section 4 of the 1986 Act (mainte-

nance from family, relatives & State Wakf Boards) was good enough to take care of avoiding vagrancy of a divorced woman, and that she need not be dependent on her husband. The Islamic Shariat Board defended the Act by arguing that the 1986 Act was enacted to nullify the erroneous judgement in Shah Bano's case and to bring it in line with Muslim personal law. The National Commission for Women submitted that the court should adopt a broad interpretation of "reasonable and fair maintenance", failing which Constitutional guarantees may be violated.

The Supreme Court said that the provisions of the 1986 Act were a fair substitute to S. 125 Cr.PC. as both the laws sought to prevent vagrancy by compelling those who are under an obligation to support those who are unable to support themselves and that such an object was being fulfilled. On this ground, the court upheld the Constitutional validity of the Act.

The Daniel Latifi case is significant for bringing the whole question of alimony within the right to life under Article 21 of the Constitution, which it emphasised, included the right to live with dignity. Earlier, Indian courts have been reluctant to test aspects of matrimonial law against the cornerstone of constitutional principles of equality, non-discrimination and right to life. The broader implications of the judgement are the potential

it holds for affirmation of the centrality of constitutional values, vis-a-vis discriminatory aspects of matrimonial laws.

Obstacles to accessing justice

The All India Muslim Personal Law Board continues to propagate the view that a man should pay maintenance only till the iddat period; conservatives have popularised the belief among community women and men that it would be sin (haram) for the woman to claim maintenance from her former husband after the expiry of the iddat period, as by then, they would be strangers to each other. In reality, this, in itself, discourages many women from asserting their right to post-divorce maintenance rights. A lack of awareness, poverty, illiteracy, financial implications of litigation and community opposition against claiming post-divorce maintenance cause further obstacles to Muslim women accessing justice. This reinforces the fact that for progressive judgements by courts of law to have considerable impact, it is imperative that legal exercises are complemented by outreach, awareness raising and empowerment of Muslim women at the community level.

The author is a women's rights advocate and Co-Director of Women's Research & Action Group (WRAG), Mumbai.

