



LAW monitor



LAWS FOR everyday life



Anti-terrorism ordinance, 2008

The government proclaimed one law with far reaching and serious consequences without any discussion or consultation whatsoever. The Anti Terrorism Ordinance 2008 issued on 11 June 2008 contained not only a new definition but gave list of terrorist acts. According to Section 6, acts or omissions constituting threats to unity, integrity, security or sovereignty of Bangladesh, creating panic among the people, or obstructing official activities would be regarded as 'terrorism'.

This definition is quite broad and vague, opening up possibilities of abuse. This unilateral decision shows dangers of having an unelected government in office. It was even difficult to obtain the text of the law for sometime.

The law provides a minimum sentence, three years rigorous imprisonment to life term as well as death sentence. Under Section 7, persons can be charged for extending financial or other support to terrorist activities, even on the basis of reasonable suspicion. Crimes under this Ordinance are non bailable. It authorizes police to detain a person on remand for ten days, which can be extended to five more days by the court. Section 28 authorizes the government to set up special Anti Terrorism Tribunals to try cases under this Ordinance. The Tribunal has to follow special procedures.

According to Section 41, the government may transfer, on "reasonable grounds," any case relating to crimes under this Ordinance, from any Sessions Court or tribunal to any Special Tribunal, or from any Special Tribunal to any Sessions Court, at any stage prior to the completion of depositions.

The Ordinance gives extensive powers to law enforcement



agencies, over and above the wide power given by existing legislations to arrest without warrant, on mere suspicion, and powers of preventive detention. There is no authority in Bangladesh to scrutiny the powers of such agencies.

Odhikar believes that terrorism should not be addressed from law and order perspectives alone; it has to take into account the economic, social, political, cultural context. An anti-terrorist law that extricates citizens from their constitutional and human rights can not be acceptable. Moreover, criminal activities mentioned in the Ordinance could be addressed under the existing penal laws.

Odhikar apprehends that the Ordinance would be used to persecute political opposition, human rights defenders, trade unions and other activists in the name of ensuring security of the State. As the definition is so vague and broad, it can catch all, even legitimate protests exercising constitutional rights, could be perceived by the government as threats against State and as such terrorism.

The law provides the authority to ban any organization purportedly engaged in terrorism and prohibits and criminalizes statements in support of a banned organization without needing to show that the speech directly incited a criminal or terrorist act. This is a tool that government would use against its adversaries.

Considering the grave consequences for human rights and that it was promulgated without any public consultation or participation whatsoever, Odhikar demands that the next Parliament should not only debate or discuss, in the house and in the committee, but must solicit public opinion, though public hearings and other means. Without broader public consultation, this law should not be approved, since there are strong opposing views, that laws already in place adequately address issues covered by the Anti Terrorism Ordinance 2008. All aspects must be duly considered before the adoption of this law. It has to provide adequate safeguards against its abuse.

In addition, the government also introduced the Money Laundering Ordinance, 2008 in April.

Source: Compiled from Human Rights Report 2008, by Odhikar.

LAW lexicon



Preponderance of proof - Greater weight of the evidence, the common standard of evidence in civil cases

Presentence report - A report to the sentencing judge containing background information about the crime and the defendant to assist the judge in making his or her sentencing decision.

Presentment - Declaration or document issued by a grand jury that either makes a neutral report or notes misdeeds by officials charged with specified public duties. It ordinarily does not include a formal charge of crime. A presentment differs from an indictment.

Presumption of law - A rule of law that courts and judges shall draw a particular inference from a particular fact, or from particular evidence.

Pretermitted child - A child born after a will is executed, who is not provided for by the will. Most states have laws that provide for a share of estate property to go to such children.

Pretrial conference - Conference among the opposing attorneys and the judge called at the discretion of the court to narrow the issues to be tried and to make a final effort to settle the case without a trial.

Prima facie case - A case that is sufficient and has the minimum amount of evidence necessary to allow it to continue in the judicial process.

Source: Juris International.

Justice system for young delinquents

There is no denying that a separate and sensitised justice administration system is required to deal with delinquent children. The Convention on the Rights of the Child (CRC) obliges state parties to "recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for human rights and fundamental freedoms of others and which takes into account the child's assuming a constructive role in society".

ACTS that qualify as crimes in the eyes of law are not typical of any particular age group. Any person of any age can do things that may fall within the legal definition of crimes. Children are no different. In every legal system a minimum age is set for incurring criminal responsibility. In layperson terms, children below this age would not have to take responsibility for their deeds, be it a misdeed. Then, what will happen to those that are beyond this age limit but are still children? They must be brought to the justice system but not with the same rigor which is applied to adult criminals.

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The law dedicated for this purpose in Bangladesh is the Children Act, 1974. In this law a 'child' is defined as a person under the age of sixteen years of age. Though the provisions of this Act for treating juvenile delinquents are not in line with the internationally recognised standards in many respects, the below provisions are worth-reading:

THE CHILDREN ACT, 1974

Juvenile Courts

3. Notwithstanding anything contained in the Code, the Government may, by notification in the official Gazette, establish one or more Juvenile Courts for any local area.

Powers of juvenile courts, etc

5. (1) When a Juvenile Court has been established for any local area, such Court shall try all cases in which a child is charged with the commission of an offence and shall deal with and dispose of all other proceedings under this Act, but shall not have power to try any case in which an adult is charged with any offence mentioned in Part VI of this Act.

(2) When a Juvenile Court has not been established for any local area, no Court other than a Court empowered under section 4 shall have power to try any case in which a child is charged with the commission of an offence or to deal with or dispose of any other proceeding under

this Act.

(3) When it appears to a Juvenile Court or a Court empowered under section 4, such Court being subordinate to the Court of Session, that the offence with which a child is charged is triable exclusively by the Court of Session, it shall immediately transfer the case to the Court of Session for trial in accordance with the procedure laid down in this Act.

No joint trial of child and adult

6. (1) Notwithstanding anything contained in section 239 of the Code or any other law for the time being in force, no child shall be charged with, or tried for, any offence together with an adult.

(2) If a child is accused of an offence for which under section 239 of the Code or any other law for the time being in force such child but for the provisions of sub-section (1) could have been tried together with an adult, the Court taking cognisance of the offence shall direct separate trials of the child and the adult.

Sittings, etc of juvenile courts

7. (1) A Juvenile Court shall hold its sittings at such places, on such days and in such manner as may be prescribed.

(2) In the trial of a case in which a child is charged with an offence a Court shall, as far as may be practicable, sit in a building or room different from that in which the ordinary sittings of the Court are held, or on different days or at different times from those at which the ordinary sittings of the Court are held.

Adult to be committed to sessions in a case to be committed to sessions

8. (1) When a child is accused along with an adult of having committed an offence and it appears to the Court taking cognisance of the offence that the case is a fit one for commitment to the Court of Session, such Court shall, after separating the case in respect of the child from that in respect of the adult, direct that the adult alone be committed to the Court of Session for trial.

(2) The case in respect of the child shall then be transferred to a Juvenile Court if there is one or to a Court empowered under section 4, if there is no Juvenile Court for the local area, and the Court taking cognisance of the offence is not so empowered.

Provided that the case in respect of the child shall be transferred to the Court of Session under section 5 (3) if it is exclusively triable by the Court of Session in accordance with the Second Schedule of the Code.

Presence of persons in juvenile courts

9. Save as provided in this Act, no person shall be



present at any sitting of a Juvenile Court except—
(a) the members and officers of the Court;
(b) the parties to the case or proceeding before the Court and other persons directly concerned in the case or proceeding including the police officers;
(c) parents or guardians of the child; and
(d) such other persons as the Court specially authorises to be present.

Dispensing with attendance of child

11. If at any stage during the hearing of a case or proceeding, the Court is satisfied that the attendance of a child is not essential for the purpose of the hearing of the case or proceeding, the Court may dispense with his attendance and proceed with the hearing of the case or of the proceeding in the absence of the child.

Factors to be taken into consideration in passing orders by courts

15. For the purpose of any order which a Court has to pass under this Act, the Court shall have regard to the following factors:—

(a) the character and age of the child;
(b) the circumstances in which the child is living;
(c) the reports made by the Probation Officer; and
(d) such other matters as may, in the opinion of the Court, require to be taken into consideration in the interest of the child.

Provided that where a child is found to have committed an offence, the above factors shall be taken into consideration after the Court has recorded a finding against him to that effect.

Reports of probation officers and other reports to be treated confidential

16. The report of the Probation Officer or any other report considered by the Court under

section 15 shall be treated as confidential:

Provided that if such report relates to the character, health or conduct of, or the circumstances in which the child or the parent or guardian of such child is living, the Court may, if it thinks expedient, communicate the substance thereof to the child, or the parent or guardian concerned and may give the child or the parent or guardian of such child an opportunity to produce evidence as may be relevant to the matters stated in the report.

Prohibition on publication of report disclosing identity, etc of child involved in cases

17. No report in any newspaper, magazine or news-sheet nor any news giving agency shall disclose any particular of any case or proceeding in any Court under this Act in which a child is involved and which leads directly or indirectly to the identification of such child, nor shall any picture of such child be published:

Provided that, for reasons to be recorded in writing, the Court trying the case or holding the proceeding may permit the disclosure of any such report, if, in its opinion, such disclosure is in the interest of child welfare and is not likely to affect adversely the interest of the child concerned.

Establishment and certification of Institutes

19. (1) The Government may establish and maintain training institute for the reception of children and youthful offenders.

(2) The Government may certify that any training institute not established under subsection (1) or any industrial school or other educational institution is fit for the reception of children or youthful offenders.

—Compiled by Law Desk.

LAW week

New seat order unsettles JS

In protest at the rearranged seating arrangements, the BNP-led opposition lawmakers walked out of parliament shortly after the House returned from a two-day recess.

They accused Speaker Abdul Hamid of a partisan role, and said they will talk to him today to decide when they will join parliament again. de some changes to the arrangements laid out by his predecessor Jamiruddin Sircar. He allocated the opposition lawmakers eight seats in the front and second rows, down from 21. -*The Daily Star, January 29, 2009.*

Telecoms watchdog made all too mighty

The caretaker government on December 22 approved an ordinance amending the Telecom Act, 2001 bypassing the telecoms ministry and in contradiction with existing laws, making BTRC extraordinarily powerful.

The approval appears surprising as earlier that month the finance ministry rejected BTRC's proposal to amend the Act to make it more powerful and financially independent. The finance ministry observed that many of the proposals violate the constitution.

The ordinance gives Bangladesh Telecommunication Regulatory Commission (BTRC) authority to call law enforcers for any reason and any time to arrest persons violating the Act without warrant. It also says in dealing with telecoms related crimes, the punishment outlined in the ordinance will overrule any other laws of the land.

One of the major parts of the amended ordinance titled "Amended Telecom Act-2008" is that the telecom watchdog will have full control of inquiry and investigation of any violation and at the same time no court can execute trial without report from BTRC investigators. -*The Daily Star, January 29, 2009.*

Multi-party JS body to check ordinances

Parliament will constitute a 15-member special committee to scrutinise the ordinances to be tabled as bills and make recommendations on those.

To be comprised of senior lawmakers from different political parties, the committee will be authorised to examine legislative proposals till the standing committees are formed. Officials at the parliament secretariat said the matter has been included in the orders of the day. The legislature sits at 4:45pm today after a two-day recess.

A total of 122 ordinances promulgated by the immediate past caretaker government were placed before the House

Sunday for decision within the next 30 days whether they would be ratified. -*The Daily Star, January 28, 2009.*

Poll results of seven upazilas cancelled

The Election Commission (EC) suspended poll results of seven upazila parishads on grounds of massive irregularities in the elections, following an investigation sparked by an onslaught of complaints from defeated candidates.

After a series of meetings over the last couple of days, the commission also decided to launch a judicial inquiry to find the details of the irregularities. Earlier, the commission suspended polling in six other upazilas preceding and during the elections due to similar allegations which will be investigated as well.

The EC also decided to let the judicial inquiry committee investigate alleged involvement of government ministers and ruling party lawmakers in the January 22 local government election irregularities. -*The Daily Star, January 28, 2009.*

Govt leans on advisory clout

The new government has amended its rules of business, empowering Prime Minister Sheikh Hasina to appoint as her advisers and special assistants as many persons as she deems necessary.

The amendments authorise the premier to determine the terms and conditions of the appointments as she deems expedient in public interest, and also allow her to let any of the advisers or special assistants attend meetings of the cabinet or any other government committee.

Exercising his constitutional authority, President Iajuddin Ahmed brought the amendments to some sections of the rules of business, sources in the cabinet division said. Prime Minister Sheikh Hasina has already appointed to herself six advisers with the ranks and status of full-fledged ministers. -*The Daily Star, January 27, 2009.*

Telegraph scripts trouble

The Anti-Corruption Commission (ACC) recommended Bangladesh Telecommunications Company Ltd (BTCL) to permanently close all its telegraph offices after a probe revealed that expenditure of the almost idle and corruption-riddled offices were 15 times their income between 2000 and 2008.

The investigation found that even though telegraph is hardly used nowadays, there are about 3,500 people employed in 450 telegraph offices in the country. A number of employees are involved in abusing power and corruption causing a huge loss of government money, the ACC said.

The probe also revealed that during the eight years each

telegraph office on a monthly average received and distributed telegrams worth only Tk 200. -*The Daily Star, January 27, 2009.*

Over 100 complaints lodged with EC

The Election Commission (EC) Secretariat received around 100 complaints from losing upazila election candidates, alleging that ruling Awami League (AL) lawmakers and activists influenced voting, intimidated voters, stuffed ballot boxes, and beat up their polling agents.

There was a similar complaint against BNP leaders and activists in relation to the election in a upazila. The EC is now investigating the complaints and figuring out legal actions to take if any of the allegations prove to be true.

Meanwhile, the EC decided to collect video footages from different private television channels to find evidence that support the allegations. -*The Daily Star, January 26, 2009.*

3 investigations find 3 different reasons

Three probe committees that investigated the recent break-ins at Rail Bhaban in Dhaka and a railway office in Chittagong came up with three different conclusions.

However, all the reports said no important files went missing. The probe committee formed by Bangladesh Railway filed its report saying "organised criminal gangs" took advantage of security guards' negligence in duty and committed the burglary at Rail Bhaban. The committee formed by the communication ministry said "criminals broke in to search for something valuable but illegal" and

After talks between chief whips of the treasury and opposition failed to resolve the row over seat plans Tuesday, the speaker made it was not a mere theft incident.

The other probe committee investigating the Chittagong railway office break-in said it was "a simple lifting incident".

Lack of coordination and difference of opinion became more visible after the two committees probing the Rail Bhaban break-in submitted their reports and Criminal Investigation Department (CID) and Detective Branch (DB) of police made arrests separately. -*The Daily Star, January 26, 2009.*

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