



LAW news



'Shadow justice system' in UK criticised

AMNESTY International has accused the UK government of developing a "shadow justice system" that imposes severe restrictions on the rights of individuals suspected of terrorism-related activity.

In a new report, Five years on: time to end the control orders regime, the organisation repeats its call on the UK government to repeal the Prevention of Terrorism Act 2005 (PTA) and abandon the use of control orders that violate the individual's rights to liberty, freedom of movement, expression, association and privacy.

"The measures used under the PTA have created a parallel, unfair and secretive shadow justice system for individuals who are suspected of terrorism-related activity," said Nicola Duckworth, Director of Amnesty International's Europe and Central Asia Programme.

"The effect of the control order regime has been to bypass the ordinary criminal justice system in order to impose severe restrictions on the rights of individuals. Five years on, it is time for an end to the control orders regime."

Control orders, which are imposed by a UK government minister, have been used as an alternative to prosecution or deportation of terror suspects who have not been charged with any criminal offence.



Restrictions can include house arrest, wearing an electronic tag, bans on contacting others and attending public events, limits on banking accounts and restrictions on employment, academic study, travel, telephone and internet use.

Amnesty International has opposed the control orders regime under the PTA since the legislation was drafted.

"Control orders, which are imposed by the executive with only limited judicial scrutiny in unfair procedures, can exert a profound negative effect on the lives of individuals subject to them and their families," said Nicola Duckworth.

"The secret court procedures in control order hearings undermine the individual's right to a fair hearing and the restrictions the control order imposes on a person can amount to a deprivation of liberty."

The Office of Security and Counter-Terrorism in the Home Office has recently embarked on a "rapid review" of six key counter-terrorism powers, including the use of control orders.

Amnesty International has urged the UK government to fully consider human rights implications in the "rapid review" of counter-terrorism legislation.

"The UK has an obligation to prevent and protect against attacks on civilians but counter-terrorism laws must uphold and respect human rights and the rule of law, rather than compromising or eroding them, including by resorting to secrecy and using unfair alternatives to the ordinary criminal justice system."

Source: Amnesty International.

LAW FOR everyday life



How to make gift of immovable property?

SYED GOUSEUZAMAN HAIDERI ALI

GIFT is one of the modes of transferring property. In every society and in every legal system there are laws for making gift. Gift is a transfer of movable or immovable property made voluntarily and without any consideration. In Indian Subcontinent there are provisions of gift in:

- (i) Transfer of Property Act 1882;
- (ii) In Muslim Hanafi Laws;
- (iii) In Muslim Shia Laws;
- (iv) In Hindu Dayabhaga Laws;
- (v) In Hindu Mitakshara Laws.

Gift has been properly defined in section-122 of Transfer of Property Act 1882. According to this section, gift is a transfer of certain movable or immovable property made voluntarily and without any consideration, by one person called the donor, and accepted by or on behalf of the donee.

Section-123 defines how transfer of gift is to be effected. For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.

Gift according to Muslim Hanafi laws

In Hanafi laws and as well as in other schools of Islamic Laws gift is known as 'hiba'. A gift or hiba is a transfer of property, made immediately and without any exchange, by one person to another, and accepted by or on behalf of the latter.

**Persons capable of making gift:** Every Muslim of sound mind and not a minor may dispose of his property by gift. A gift as distinguished from a will, may be made of the whole of the donor's property, and it may be made even to an heir.

**The three essentials of a gift:** It is essential to the validity of a gift that there should be;

- (i) a declaration of gift by the donor,
- (ii) an acceptance of the gift express or implied by or on behalf of the donee, and
- (iii) delivery of possession of subject matter of the gift by the donor to the donee. If these conditions are completed, then the gift is complete.

In Islamic Hanafi Law the registration of a gift is not essential. It can be completed by the delivery of possession. But after the amendment of 2005 of the section-17 of Registration Act 1908, every transfer of property including gift or 'hiba' under Islamic Law must be registered.

**Contingent gift:** A gift cannot be made to take effect on the



happening of a contingency. When a gift is made subject to a condition, then the condition will be void and the gift will be valid.

**Revocation of gift:** A gift may be revoked by the donor at any time before the delivery of possession. The reason is that before delivery of possession, the gift is not complete. Once possession is delivered, a gift can be revoked only by a decree of a court. However a gift cannot be revoked in the following cases,

- (a) when the gift is made by a husband to his wife or by a wife to her husband,
- (b) when the donee is related to the donor within the prohibited degrees,
- (c) when the donee is dead,
- (d) when the thing given is lost or destroyed,
- (e) when the thing given has passed out of the donee's possession by sale, gift or otherwise,
- (f) when the thing given has increased in value, whatever be the cause of the increase,
- (g) when the thing given has undergone so much change that it cannot be identified, as for example when wheat is converted to flour by grinding.

A gift may be revoked by the donor only and not by the heirs of the donor after his death.

**Gift of life estate:** Gift with life interest is valid in Shia Law. In Hanafi Law, there was a confusion during British Period. The British Courts confused

the gift with life interest with 'Vested Remainders' and decided that gift of life estates are not valid in Hanafi Law. But, subsequently confusion was removed.

In Hanafi Law there is a distinction between the 'corpus' of a property and 'usufruct', 'profit' or 'income' of a property. Gift with life interest of the corpus of the property is not valid in Hanafi School. But gift of life estate of the usufruct, profit or income of a property is valid under the Hanafi School. It was decided in *Nawab Umjad Ally Khan's Case (1867)*. In this case 'A' transfers and endorses government promissory notes to the name of his son 'B', and delivers them to 'B'. Thus 'A' retains no dominion over the corpus of the property but stipulates that 'B' should pay the recurring income to 'A' during 'A's' life time.

The Privy Council held both the gift and the condition to be valid. Here, the life interest on the income of the property and not on the corpus of the property. In this case the parties were Shias, but the Privy Council did not proceed to decide the case to enforce Shia Laws which is different from Hanafi Laws and which is in favour of creating life interest. The same principle was also applied in *Mohammad Abdul Ghani v. Fakhr Jahan Begum (1922) 49 I.A. 195*, where both the parties were governed by Hanafi Laws.

(...to be continued)

The writer is an Advocate of the Supreme Court of Bangladesh.



LAW week



Court allows case against MP Shaon

Ibrahim Ahmed's brother filed a murder case with a Dhaka court against ruling party lawmaker Nurunnabi Chowdhury Shaon. Awami League leader Ibrahim died of a gun shot near the parliament building Friday night. The case was filed with a Dhaka court five days after the death of the Awami League activist. Ibrahim's wife Rina Islam had made several attempts to file the case with Sher-e-Bangla Nagar Police Station but it refused to record the case. Police at the station said an unnatural death case was already recorded with the station. Ibrahim's younger brother Masum filed the case against eight named and eight to 10 unnamed people. - *The Daily Star, August 19, 2010.*

Legal ambiguity blocks bringing siphoned-off money back

Loopholes in the existing law is blocking the way of bringing back the money laundered by a number of people including Tarique Rahman and Arafat Rahman Koko, Finance Minister AMA Muhit said. The law needs to be made "more stringent" to bring back the money, he said after the meeting of the National Coordination Committee (NCC) on anti-money laundering at the ministry's conference room. To stop money laundering and financing of terrorism, the NCC meeting approved the draft amendments of the Money Laundering Prevention Act and Anti-terrorism Financing Act. Upon getting the cabinet's approval, the minister expects to place the amendment bill in the parliament in its September session. If passed, the law will pave the way to trace and bring back the money siphoned outside the country, which is not possible as per the existing law. - *The Daily Star, August 19, 2010.*

HC circuit bench to be set up in Ctg

Minister for Law, Justice and Parliamentary Affairs Shafique Ahmed said that a circuit bench of the High Court division will soon be set up in Chittagong for speedy disposal of the pending cases in the region. He said Prime Minister Sheikh Hasina has already consented and the process for setting up of the Bench is waiting for final approval of the chief justice and the president. The law minister said this while exchanging views at a meeting with the leaders of Chittagong District Bar Association (CDBA) at the bar auditorium. The minister attended the meeting as chief guest. In response to various demands of the Bar leaders, the minister said government had already appointed 200 judicial magistrates in the country and another 102 magistrates will soon get appointment to fill up the shortage of judicial magistrates. - *The Daily Star, August 18, 2010.*

Mahmudur faces another contempt rule

The Supreme Court (SC) issued another contempt of court rule against detained Mahmudur Rahman, acting editor of the daily Amar Desh, and its publisher Hashmat Ali for publishing a commentary involving the apex court. The court in its rule asked them to explain by August 24 why they should not be prosecuted for publishing the report titled "Swadhin bicharer name tamasa", meaning "Farce in the name of fair trial" on May 10. A six-member bench of the Appellate Division, headed by Chief Justice Mohammad Fazul Karim, issued the rule following a contempt of court petition jointly filed by two SC lawyers Riaz Uddin Khan and Mynul Hassan. The bench directed the prison authorities to produce Mahmudur on August 24 in connection with the latest contempt of court petition. - *The Daily Star, August 18, 2010.*

Why MP-led dev work not illegal

The High Court asked the government to explain why granting Tk 15 crore for each constituency for rural infrastructure development prescribed by lawmakers should not be declared unconstitutional. The Executive Committee of the National Economic Council (Enec) on March 9 approved the five-year-long project of Tk 4,691 crore to carry out development work in 300 constituencies. Following the guidelines of the LGRD ministry, legislators have already sent their proposals to the ministry for development work they want done in their constituencies. Local Government Engineering Department of the LGRD ministry was supposed to start implanting the proposals from this fiscal year. - *The Daily Star, August 17, 2010.*

Cops asked to sue traders

The High Court (HC) directed the police to file criminal cases under the Special Powers Act-1974 against the traders responsible for food adulteration and price spirals. Human Rights and Peace for Bangladesh (HRPB) filed a writ petition as public interest litigation. An HC bench comprised of Justice AHM Shamsuddin Chowdhury Manik and Justice Sheikh Md Zakir Hossain passed the order after hearing the petition. The highest punishment for offence under this act is death. The bench ordered the secretaries to the ministries of commerce, industries and health to continue the mobile courts' operation across the country for the next two months. It directed the inspector general of police, director general of Rapid Action Battalion (Rab) and Dhaka metropolitan police commissioner to provide sufficient forces to the mobile courts as per requirements. - *The Daily Star, August 17, 2010.*

HC pulls for Bhola forest

The High Court issued a three-month injunction against felling of nearly 15,000 trees in the forest and wildlife reserve on Kukri Mukri char to construct a road to link the island with Bhola. The court gave a ruling upon the respondents to show cause why the environment and forest ministry's letter issued on May 16 to allow felling of trees shall not be declared illegal. The HC directive came after Bangladesh Environmental Lawyers Association (BELA) filed a writ petition seeking a court order to prevent cutting of trees on the island. An HC division bench of justices Syed Mahmud Hossain and Govinda Chandra Thakur asked the respondents to reply why the government agencies should not be directed to protect the forest from adverse and contrary activities such as felling of trees. - *The Daily Star, August 17, 2010.*

Move to recruit 101 judges with FF quota

The government has taken initiatives to appoint 101 assistant judges and judicial magistrates in lower courts across the country with a 30 percent quota for the children of freedom fighters for the first time. Bangladesh Judicial Service Commission (BJSC) selects candidates for these posts by holding tests and examinations as per requirements of the government. And the president then appoints them. About 200 posts of assistant judge and judicial magistrate are now vacant, official sources said. - *The Daily Star, August 16, 2010.*

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HUMAN RIGHTS watch

In bold display, Taliban order stoning deaths

THE Taliban on August 15, 2010 ordered their first public executions by stoning since their fall from power nine years ago, killing a young couple who had eloped, according to Afghan officials and a witness.

The punishment was carried out by hundreds of the victims' neighbours in a village in northern Kunduz Province, according to Nadir Khan, 40, a local farmer and Taliban sympathizer, who was interviewed by telephone. Even family members were involved, both in the stoning and in tricking the couple into returning after they had fled.

Mr. Khan said that as a Taliban mullah prepared to read the judgment of a religious court, the lovers, a 25-year-old man named Khayyam and a 19-year-old woman named Siddiq, defiantly confessed in public to their relationship. "They said, 'We love each other no matter what happens,'" Mr. Khan said.

The executions were the latest in a series of cases where the Taliban have imposed their harsh version of Shariah law for social crimes, reminiscent of their behaviour during their decade of ruling the country. In recent years, Taliban officials have sought to play down their bloody punishments of the past, as they concentrated on building up popular support.

"We see it as a sign of a new confidence on the part of the Taliban in the application of their rules, like they did in the '90s," said Nader Naderi, a senior commissioner on the Afghanistan Independent Human Rights Commission. "We do see it as a trend. They're showing more strength in recent months, not just in attacks, but including their own way of implementing laws, arbitrary and extrajudicial killings."

The stoning deaths, along with similarly brazen attacks in northern Afghanistan, were also a sign of growing Taliban strength in parts of the country where, until recently, they had been weak or absent. In their home regions in southern Afghanistan, Mr. Naderi said, the Taliban have already been cracking down.

"We've seen a big increase in intimidation of women and more strict rules on women," he said.

Perhaps most worrisome were signs of support for the action from mainstream religious authorities in Afghanistan. The head of the Ulema Council in Kunduz Province, Mawlawi Abdul Yaqub, interviewed by telephone, said Monday that stoning to death was the appropriate punishment for an illegal sexual relationship, although he declined to give his view on this particular case. An Ulema Council is a



body of Islamic clerics with religious authority in a region.

And less than a week earlier, the national Ulema Council brought together 350 religious scholars in a meeting with government religious officials, who issued a joint statement on Aug. 10 calling for more punishment under Shariah law, apparently referring to stoning, amputations and lashings.

Failure to carry out such "Islamic provisions," the council statement said, was hindering the peace process and encouraging crime.

The controversy could have implications for efforts by Afghan officials to reconcile with Taliban leaders and draw them into power-sharing talks.

Afghan officials, supported by Western countries, have insisted that Taliban leaders would have to accept the Afghan Constitution, which guarantees women's rights, and not expect a return to Shariah law.

The stoning deaths were confirmed by Afghan officials in the area on August 16, 2010. Mahbubullah Sayedi, a spokesman for the Kunduz governor's office, condemned the executions, and said there was ample provision

in Afghan law for prosecuting someone if they were accused of adultery or other social crimes.

"We have courts here, and we can solve such cases through our judicial organisations," he said. "This act is against human rights and against our national Constitution."

The couple eloped when the man was unable to persuade family members to allow him to marry the young woman. She was engaged to marry a relative of her lover, but was unwilling to do so, according to Mr. Khan.

Mohammed Ayub, the governor of nearby Imam Sahib district, also confirmed the stoning deaths, which took place in the local bazaar in Mullah Quli village, in Archi district, a remote corner of Kunduz Province close to Tajikistan.

The couple eloped to Kunar Province, in eastern Afghanistan, staying with distant relatives, but family members persuaded them to return to their village, promising to allow them to marry. (Taliban men are legally allowed to marry up to four wives). Once back in Kunduz, however, they were seized by the Taliban, who convened local mullahs from surrounding villages for a religious court.

After the Taliban proclaimed the sentence,

Siddiq, dressed in the head-to-toe Afghan burqa, and Khayyam, who had a wife and two young children, were encircled by the male-only crowd in the bazaar. Taliban activists began stoning them first, then villagers joined in until they killed first Siddiq and then Khayyam, Mr. Khan said. No women were allowed to attend, he said.

Mr. Khan estimated that about 200 villagers participated in the executions, including Khayyam's father and brother, and Siddiq's brother, as well as other relatives, with a larger crowd of onlookers who did not take part.

"People were very happy seeing this," Mr. Khan maintained, saying the crowd was festive and cheered during the stoning. The couple, he said, "did a bad thing."

A spokesman for the Taliban, Zabiullah Mujahid, praised the action. "We have heard about this report," he said, interviewed by cellphone. "But let me tell you that according to Shariah law, if someone commits a crime like that, we have our courts and we deal with such crimes based on Islamic law."

Mr. Naderi, from the human rights commission, pointed to a string of recent cases of summary justice by the Taliban. In northwestern Badghis Province on Aug. 8, a 41-year-old widow, who was made pregnant by a man she said promised to marry her, was convicted of fornication by a Taliban court. She was given 200 lashes with a whip and then shot to death, according to Col. Abdul Jabar, a provincial police official, who said the killing was ordered by the local Taliban commander, Mullah Yousef, in Qadis district.

President Hamid Karzai's spokesman, Waheed Omer, said: "President Karzai was deeply saddened and grieved when he heard that news. Nine years ago and we still see the Taliban doing events like that in Badghis."

Time magazine focused widespread indignation on Afghanistan recently by putting on its cover a picture of an 18-year-old woman from Oruzgan Province whose nose and ears were cut off by her Taliban husband after she had fled her child marriage to him.

Amnesty International condemned the latest stonings, calling them the first such executions since the fall of the Taliban in 2001. "The Taliban and other insurgent groups are growing increasingly brutal in their abuses against Afghans," said Sam Zarifi, an Amnesty International official.

Source: UN Wire.