

DRONE IN BANGLADESH

Safety concerns and regulation



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IKE most of the ICT related innovations, positive and negative coverage on Unmanned Aerial Vehicles (UAV), Unmanned Aircraft Systems (UAS) or Remotely Piloted Aircraft Systems (RPAS) (popularly known as "drones") in popular media is the recent regulatory concern for obvious reasons, even though they promise epoch-making deliverables. When conscious readers condemn the fatalities suffered by the civilians as a consequence of military drone attacks on terrorists, people are simultaneously fascinated to enjoy stunning photographs captured by using drones.

Drones are generally classified based on their propellers and purpose of use. Drones can bear heavy loads, contain camera, stabilizers and be equipped with or without GPS. Uses of drone in diversified activities e.g. from delivery of goods to photography, agricultural farming to wild life protection, monitoring traffic offences to finding out missing people, and exploring mineral resources hard-to-reach to scientific research etc. which are normally difficult for the human being have been gaining popularity.

With all these prospects, unregulated use of drones have raised some privacy, safety and security concerns too, the most important being the aviation security issue. Between April to October 2016, 23 near misses collisions between the aircraft and drones were investigated by the UK Airprox Board, where 12 were at a serious risk of collision, and 1 was passed within 25m of a Boeing 777 near the Heathrow Airport. In 2014, Magistrate Court in the UK fined one £800 and awarded costs of £3500 for dangerous and illegal flying of drone in restricted airspace over a nuclear submarine facility.

Drones, capable to contain cameras, can create serious privacy challenges too and a case of such nature is now pending in the USA Federal Court. The Supreme Administrative Court of Sweden has recently banned the use of surveillance drone cameras without special

permit. In 2015, House of Lords of EU Committee called for compulsory registration of all types of drones to track and manage drone traffic and handle safety concerns.

Use of drones for different purposes have been gaining popularity in Bangladesh too and news reports covered stories on seizure of drone components from Islamic militants, use of drone by the South African Cricket team during their practice session, inspection of Padma Bridge and seizure of drones, with or without owners, in different occasions even though the present Import Policy does not contain specific provisions on drone import in the country.

Following the experience of other countries, the national aviation regulator, the Bangladesh Civil Aviation Authority (CAAB) has also issued Circular to provide information, instructions, requirements, procedures and standards for drone operation in the country's airspace. This Circular includes some blanket provisions to widely cover the operation of RPAS for any professional and/or non-professional purposes like aerial photography, geomagnetic surveying, crop observation, advertising, research and development by obtaining a Special Flight Operation Certificate (SFOC). A major and sound pilot has to meet additional requirements, inter alia, e.g. safe and not reckless or negligent operation to ensure aviation safety and protection of life or property, subscribe to liability insurance etc. The RPAS Operator needs to take prior permission 45 days before the intended date of operation. For import of RPAS, permission from the CAAB is also required.

There are still rooms to improve this CAAB Circular. Instead of covering wide and general provision on registration and operation, provisions developed on the basis of UAV classification seems to work better. Besides, the Circular only refers to penalties and fines for reckless and negligent use of RPAS and procedural aspects are not covered. Thus, it is uncertain how to prove anyone guilty and how to fix the amount of fine

if found someone guilty. Moreover, the requirement for 'appropriate liability insurance' require further clarification. As the CAAB Circular suggests the pilot, operator or importer to follow the manufacturer's instructions, a prospective applicant should carefully look at the manufacturer's liability clause and jurisdiction issue while assessing and signing the purchase agreement.

It may be relevant to mention here that the International Civil Aviation Authority has issued Circular on UAS in 2011 which can be reviewed to understand different aspects in drone regulation. A number of guidance documents published by the Joint Authorities for Rulemaking on Unmanned Systems (JARUS), a group of experts of 46 countries along with representatives from the European Aviation Safety Agency (EASA) and EUROCONTROL, are further available for consideration.

Ordinary citizens are confused regarding the import and use of recreational drones in the country. Since there is no specific provision in CAAB Circular in this regard, it can be interpreted that such drones are exempted though some were already arrested. Therefore, the CAAB can come up with separate Document on the safe and permitted use of recreational drones to remove prevailing misconceptions. As even in developed countries like USA, drone 'flying for fun' is strictly regulated, such drones must be registered for regulatory purposes in densely-populated Bangladesh too. This can be done online or Customs Declaration Form. CAAB can also publish booklets containing relevant information for the hobbyists for flying drones within permissible legal boundary. Widespread use of drones in near future is no more fiction or prediction, it's obvious. Nevertheless, their success will greatly depend on their sound management and proper regulation.

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This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies.

Query:

A few days back while I was going to office, a bus out of nowhere (the bus had no indicator at all), turned to it extreme right from the extreme left of the road and almost hit my car. When the bus stopped to drop off passengers at the middle of the road (!), I got down and charged the driver. He said that he did nothing wrong and most importantly he did not hit my car. When I asked him whether he had a valid license he said he does but will not show me and left. I would like to know what the legal remedy I have when we are the victims of such unruly/reckless driving. Most of them neither have valid license nor do they follow any traffic rules. Moreover, it has become a regular scenario

absolutely whimsically and they stop anytime anywhere no matter what may be the result. We have mostly taken the same for granted and we hardly see any action being taken against them by the traffic police! I understand that you are particularly desirous to know the legal remedy for: 1) unfit vehicle, 2) driving without any license, 3) reckless driving and 3) taking up and setting down passengers at the middle of the road.

Let me first discuss the issue regarding the unsatisfactory condition of the vehicle. As per the Motor Vehicles Ordinance 1983 (the 'Ordinance'), before using any motor vehicle in any public place it is mandatory to get a certification of registration and

Ordinance also gives power to any police officer to detain such vehicles.

Even if the said certificates are obtained (properly or improperly!), driving or allowing a vehicle to be driven with defects or in an unsafe condition constitutes an offence. In such case, the owner or the driver of the vehicle may be punished with imprisonment or fine, or with both. Moreover, section 160 of the Ordinance also gives power to any police officer in uniform to arrest such person.

Now, let us come to the issue of driving without valid licence. As per section 3 of the Ordinance everyone should have a valid licence issued to him authorising him to drive any motor vehicle. It is also the responsibility of the owner to ensure that the person whom he is permitting to drive the vehicle holds a valid licence. As per section 138 of the Ordinance, if a person drives or allows a person to drive a motor vehicle, and more specifically any public service vehicle without a valid license, shall be punishable with imprisonment which may extend to four months, or with fine which may extend to five hundred taka, or with both. However, please note that, the driver of the motor vehicle is not bound to produce his license for inspection for anyone other than a police officer or any Inspector of Motor Vehicles.

As for the most important issue of "reckless driving", the person shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred taka, and his driving license shall be suspended for a specified period. Moreover, the Ordinance gives power to any police officer in uniform to arrest such driver. I think all the local buses are driven recklessly all the times. Driving buses with due care is rather an exception.

Even though in every area there is a bus stand to take up and set down of passengers, it has become a common practice for the buses to stop anywhere on the road. As per section 137 of the Ordinance, such drivers may be punished with fine which may extend to two hundred taka.

Now, if you face such a situation in future, the first thing I would suggest you to do is to look for a traffic sergeant. If there is one, you can report the matter to him. On the other hand, if there is none nearby, you must take a note of the plate number of the vehicle and make a GD at the nearest police station. Besides we should protest such reckless driving on the spot as opposed to just taking the things for granted.

FOR DETAILED QUERY CONTACT: OMAR@LEGALCOUNSELBD.COM



that local buses stops at the middle of the road and take in and drop off passengers. In such circumstances can you please advice what legal remedy available to us?

Ariyan
Dhamondi

Response:
Dear Ariyan, thank you for your query. It is unfortunate that such scenario has become a regular incident in our country, whether within the cities or on the highways. Almost all the buses are being driven

a certificate of fitness. The Inspector of Motor Vehicles, before providing the fitness certificate, is required to ensure that the vehicle is not mechanically defective. Thus, while obtaining the required certificates, the vehicle is being tested (!) by the competent authorities.

In Bangladesh, most of the local bus owners do not have these certificates. As per section 152 of the Ordinance, such persons shall be punishable with imprisonment for a term which may extend to three months' or with fine which may extend to two thousand taka, or with both. Moreover, the

Glimpses at the SC decisions of 2016



January: HCD's order to halt slum eviction

In response to a writ petition filed by Ain O Salish Kendra, the High Court Division on 21 January directed the government to halt the eviction at Dhaka's Kallyanpur slum that houses about 40,000 low-income dwellers. Apart from setting a three-month stay order on the drive, the Court also warned the government not to harass or arrest any slum dwellers without any specific allegation.

February: Launch of HCD's online cause list

On February 1, the age-old printed cause list of the High Court Division (a roll of cases to be heard by the Court any day) made available online by the Supreme Court. The High Court judges now make serial numbers for hearing of the cases and the list is posted on the Supreme Court website www.supremecourt.gov.bd after 8:00pm before the day of the hearing.

March: Islam survived as a state religion

On 28 March, the High Court Division rejected a writ petition challenging the constitutionality of Islam as a state religion, on the ground that the petitioners (fifteen distinguished citizens) had no *locus standi* (meaning jurisdiction) to move such a petition.

April: HCD's directives on LLB (Hons.) programme

On 13 April, the High Court Division declared the activities of Darul Ihsan University illegal for not complying with the laws. The Court also specifically delivered a set of directives regarding the LLB (Hons.) programme run by private universities.

May: HCD declared the 16th constitutional amendment unconstitutional

On 5 May, the High Court scrapped the 16th constitutional amendment that restored the parliament's power to remove Supreme Court Judges. The Court considered the 16th amendment illegal, unconstitutional and against the principles of the separation of state powers and the independence of the judiciary.

June: HCD asked tanneries to pay fine until relocation

On 16 June, the High Court Division ordered the owners of 154 tanneries in the capital's Hazaribagh to pay Tk 50,000 each a day in compensation for damaging the environment until they relocate their factories to Savar Tannery Industrial Estate.

July: HCD confirmed death penalty for 6 JMB militants
On 28 July, the High Court Division confirmed the death sentences against six militants for carrying out a suicide bomb attack at Gazipur Bar Association office over 10 years ago that killed nine people and injured around 80.

August: SC's order in favour of Buriganga river

On 29 August, the Supreme Court ordered the Department of Environment to collect a fine of Tk 1.04 crore from 14 industries for polluting the Buriganga river in Shyampur area of Dhaka. The five-member bench of the Appellate Division headed by Chief Justice Surendra Kumar Sinha passed the order after hearing a petition filed by Human Rights and Peace for Bangladesh.

September: HCD's order to recognise guerrillas as freedom fighters

The High Court Division on September 8 directed the government to recognise 2,367 members of the guerrilla force and also ordered to give them proper status, dignity and facilities of the freedom fighters.

October: Schoolboy acquitted from the charge of online threat to MP

On 18 October, the High Court declared illegal a mobile court verdict that sentenced Sabbir Shikder, a school student of Tangail, two years' jail last month for threatening Awami League MP Anupam Shahjahan. The Court also directed the Chief Judicial Magistrate of Tangail to launch a judicial inquiry on the basis of the statement given by Sabbir before it on September 27.

November: 3 medical colleges fined by the SC

The Supreme Court on 27 November fined three private medical colleges Tk 1 crore each for admitting candidates, who did not meet requirements set by the health ministry, in admission tests. The medical colleges are: Mainamoti Medical College, BGC Trust Medical College and Southern Medical College. The apex court ordered the colleges to give half of the fine to Chittagong University (CU), which controls their professional examinations, and to deposit the rest in the name of two charitable organisations by two weeks.

December: SC ordered the law ministry to issue judges' conduct gazette

Saying that the President was misled, the Supreme Court on 12 December directed the law ministry to issue a gazette notification finalising the rules determining the discipline and conduct of lower court judges by 15 January 2017. The direction came up a day after the President decided that there is no need for a gazette notification on the rules regarding the discipline and conduct of the lower court judges.