

Today (on 3.4.2009) Geo News Television Channal has released a video film of a 17 years old girl being whipped in public. The punishment was administered by some unknown persons. In the film, one person had held the girl from hands, the other from feet and the third one is beating her with a whip. The victim girl is continuously crying/screaming. The charge is that she went out from her home with a *Namahram*. The exact place of incident has not been reported, however, it appears to be some place in Mingora or some village in Swat. Probably, the said news is also released by the foreign media.

2. It is a very cruel act, in violation of the fundamental rights and giving very bad name to the country. The treatment is also in violation of Islamic norms/principles.

3. The Constituion of Pakistan guarantees fundamental rights of its citizens. No person can be deprived of life, liberty without due process of law. The dignity of person is inviolable. No person can be subjected to tourture or other cruel, inhuman or degrading treatment/punishment. Punishment of whipping is prohibited by law. The incident therefore, constitutes a serious violation of the Constitution/law.

4. It may be pointed out that according to Article 247 of the Constitution the executive authority of the Federation extends to the Tribal Areas including the Provincially Administered Tribal Areas (PATA). The Federal/Provincial laws do not automatically apply to the Tribal Areas, however, such laws can be extended to it with the approval of President/Governor. Relevant portion of Article 247 is as under: -

“(1) Subject to the Constitution, the executive authority of the Federation shall extend to the Federally Administered Tribal Areas, and the executive authority of a Province shall extend to the Provincially Administered Tribal Areas therein”.

(7) Neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Consitution in relation to a Tribal Area, unless (Majlis-e-Shoora (Parliament) by law otherwise provides:

Provided that nothing in this clause shall affect the jurisdiction which the Supreme Court or a High Court exercised in relation to a Tribal Area immediately before the commencing day.”

5. It is pointed out that in the 1970's; the Supreme Court and High Court jurisdiction was extended to PATA.
6. In view of the above, HCJ may consider taking action in the matter under Article 184(3) of the Constitution.

~~Registrar~~
3.4.2009

HCJ

7. I have perused the above note. It is a serious matter of violation of fundamental rights, guaranteed under the Constitution of Pakistan. We do not know the exact place/venue of the incident and the circumstances in which the punishment by whipping is administered, but it certainly constitutes a serious violation of law and fundamental rights of the citizens of the country. Therefore, under Article 184(3) of the Constitution the matter be fixed before a larger bench on Monday i.e. 6th April, 2009 at 9:30 a.m. The Bench shall comprise:

Mr. Justice Iftikhar Muhammad Chaudhry, HCJ
Mr. Justice Javed Iqbal
Mr. Justice Sardar Muhammad Raza Khan
Mr. Justice Khalil-ur-Rehman Ramday
Mr. Justice Faqir Muhammad Khokhar
Mr. Justice Mian Shakirullah Jan
Mr. Justice Raja Fayyaz Ahmed
Mr. Justice Ch. Ijaz Ahmed
8. Geo TV, which has shown the video in this regard is directed to produce the CD of the incident. Geo, Aaj, and Express T.V.'s may jointly compile the video material of the incident and arrange to display the same before the Court on the date fixed.
9. Notices be issued to Secretary, Ministry of Interior, Government of Pakistan, Chief Secretary, Government of NWFP, Inspector General of Police, NWFP, to appear in person on the date fixed.
10. Secretary, Ministry of Interior is directed to procure the victim (girl) and produce her before the Court on the date fixed.
11. Notices be also issued to Attorney General for Pakistan, Advocate General, NWFP and President, High Court Bar Association, NWFP to appear on the fixed date to assist the Court.

Chief Justice
03.04.2009

Registrar

8/4.

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Javed Iqbal
Mr. Justice Sardar Muhammad Raza Khan
Mr. Justice Khalil-ur-Rehman Ramday
Mr. Justice Faqir Muhammad Khokhar
Mr. Justice Mian Shakirullah Jan
Mr. Justice Raja Fayyaz Ahmed
Mr. Justice Ch. Ijaz Ahmed

Suo Moto Case No. 1 of 2009

(Whipping on a 17 years old girl in Swat)

Attendance:

Sardar Muhammad Latif Khan Khosa, Attorney General
Mr. Ziaul-Rehman, Advocate General, NWFP
Mr. Abdul Latif Afridi, ASC, President Bar Association, NWFP
Syed Kamal Shah, Secretary, Interior
Mr. Javed Iqbal, Chief Secretary, NWFP
Malik Naveed Khan, IGP, NWFP
Mr. Khushal Khan, DCO, Swat

Date of hearing: 6.4.2009

ORDER

Learned Attorney General, who appeared on Court's notice stated that in view of the information, tendered by private T.V Channels i.e. Geo and others about happening of an incident of flogging, allegedly took place in Tehsil Kabal, District Swat, police has already registered a case under sections 365/354-A/342/337-L/121-A/120-B/122/124-A/148/149 PPC and 7-ATA.

2. Malik Naveed Khan, IGP, NWFP stated that FIR, though has been registered but it is not known exactly as to where the incident of flogging had taken place. However, an investigation team, headed by DPO and Acting DIG, Swat namely Danishwar, two DSPs and two Inspectors has been constituted to probe into the matter. He further stated that according to the rumors there were two incidents of such like cases, happened some time before, in which one Chand Bibi and Moharaja were statedly subjected to flogging. On coming to know about the present incident, efforts were made to produce Mst. Chand Bibi before this Court but she appeared alongwith her husband Adalat Khan before the

Commissioner Syed Muhammad Javed and Qazi Riaz, Illaqa Qazi and both of them made statements u/s 164 Cr.P.C, denying such incident. On our query he stated that the lady is not willing to appear before media etc., therefore, Commissioner and Allaqa Qazi had gone to her house for recording their statements. Copies of both the statements have also been placed on record.

3. It is true that on basis of material i.e. video etc. matter requires detailed probe to locate the place of incident, application of the law over there and to ascertain as to whether the sentence of flogging was awarded lawfully or otherwise, therefore, we consider it appropriate that a thorough inquiry is required to be conducted in this behalf. We may further observe here that the investigation team, besides examining different aspects of the case, may also examine the notables of the area because according to the statement of Chand Bibi and Adalat Khan, no such incident had taken place, therefore, possibility cannot be ruled out that some fake CD or material, with ulterior motives, has been prepared in order to unnecessarily malign the people of Swat, who now are demanding for application of Sharia Laws in that area.

4. We have informed to learned Attorney General that this Court is bound to ensure that a law is implemented in its letter and spirit, in accordance with the provisions of the Constitution and if there is any unlawful order and provisions of the Constitution are being violated particularly with regard to the dignity of human being then action is required to be taken in exercise of jurisdiction under Article 184(3) of the Constitution but if the law has taken its course and the culprits whosoever they may be are booked for this incident and they are being dealt with in accordance with law, then the Court is not required to go deep into the matter because it is job of the investigating agencies headed by officer of the rank of IGP. Secretary Interior who should be overall responsible to ensure the implementation of law particularly, provincially administered tribal areas, where jurisdiction of his Court has been extended in terms of Article 247 of the Constitution and he should ensure that law and the Constitution is fully implemented, because we feel that IGP and Chief Secretary represent to the Federal Government in the Province and on behalf of Federal Government he can supervise to such matter and ensure that there should not be any lawlessness and highhandedness.

5. Mr. Latif Khan Afridi, learned Advocate and President High Court Bar Association also appeared on court's notice and explained that there is lot of lawlessness in the different parts of NWFP. However on this learned Attorney General assured that the Federal Government as well as Provincial Government fully realize their duties and they are taking into consideration and going to hold a high powered meetings headed by Prime Minister of the Country in order to ensure that lawlessness is controlled not only in NWFP but all over the country.

6. To ensure the progress in the case, Secretary Interior also submitted a report which is duly signed by him as well as Chief Secretary and IGP, NWFP. Let Interior Secretary, Chief Secretary and IGP, NWFP submit fortnightly report to the Registrar for our perusal in Chambers.

Case is adjourned for a date in office.

Islamabad, the
6th April, 2009
Nisar/*