



HUMAN RIGHTS monitor



Supreme Court Ruling on Guantanamo: A step towards restoring the rule of law

AMNESTY INTERNATIONAL USA

THE United States Supreme Court has taken a step towards restoring the rule of law for the hundreds of non-US nationals in military custody in Guantánamo Bay.

These detainees have been at the mercy of unfettered executive power for the past two and half years. Today's ruling that the US courts have jurisdiction to consider challenges to the lawfulness of such detentions moves us one step closer to justice and accountability in the context of the USA's 'war on terror' detention policies. The US administration chose the Guantánamo naval base as a location to hold indefinitely, hundreds of those it designated as "enemy combatants" because it believed that it could keep them out of the reach of the federal courts. This decision punctures this assumption. The government should take this ruling to heart and adopt an approach that puts human rights and the rule of law at the centre of the pursuit of security.

Amnesty International emphasised that judicial review of the lawfulness of one's detention is a fundamental principle of international human rights law which now covers all those held in Guantánamo. Judicial review is an integral component of the prohibition against arbitrary detention and a fundamental protection against torture or other cruel, inhuman or degrading treatment. The recent revelations from Abu Ghraib prison in Iraq and the contents of leaked and declassified government memoranda cannot have gone unnoticed by the US Supreme Court Justices.

Throughout this process, the administration has shown a lack of trust in its domestic courts and a disregard for its international obligations. At the same time it asked for others to trust that it

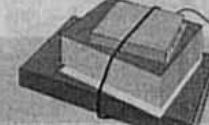


would not abuse its power. That appeal to blind faith has been rejected by the Supreme Court.

Amnesty International believes that all those in Guantánamo should be released unless they are charged with recognisably criminal offences and brought to trial in full accordance with international standards, and without resort to the death penalty. Those held in US custody in Afghanistan or in secret locations elsewhere in the world must also be granted their full rights under international law.

This is an edited version of the Press release of Amnesty International USA Monday, June 28, 2004.

LAW lexicon



Silent partner

A person who invests in a company or partnership but does not take part in administering or directing the organization; he or she just shares in the profits or losses.

Sine die

Adjourned without giving any future date of meeting or hearing. A court that adjourns sine die essentially dismisses the case by saying that it never wants to hear the case again! A meeting which adjourns sine die has simply not set a date for its next meeting.

Slander of title

Intentionally casting aspersion on someone's property including real property, a business or goods (the latter might also be called "slander of goods"). A form of jactitation. For example, stating that a house is haunted or alleging that a certain product infringes a patent or copyright.

Slavery

When a person (called "master") has absolute power over another (called "slave") including life and liberty. The slave has no freedom of action except within limits set by the master. The slave is considered to be the property of the master and can be sold, given away or killed. All the fruits of the slave's labor belongs to the master (see, for example, the extract from The 1740 South Carolina Slave Code in the History of the Law). Slavery was once very prevalent in the world but is now illegal in most countries.

Small claims

A regular court but which has simplified rules of procedure and process to deal with claims of a lesser value. Many jurisdictions have established small claims courts which, because of their structures and reliance on deformalized proceedings, allow for expedited hearings and where representation by lawyer is not required or encouraged. Some typical distinctive characteristics of small claims courts include the ability to serve by regular mail and to seize both a court and an adversary at far less cost than in ordinary courts.

Socage

A term of the feudal system which referred to the tenure which was exchanged for certain goods or services which were not military in nature. Socage is often described as "free and common socage" although the "free and common" qualification is now of a purely historical significance.

Sodomy

Synonymous with buggery and referring to "unnatural" sex acts, including copulation, either between two persons of the same sex or between a person and an animal (the latter act is known as "bestiality"). Most countries outlaw bestiality but homosexual activity is gradually being decriminalized.

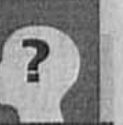


LAW quotations

"Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

Article 22 of the Universal Declaration of Human Rights.

READER'S queries



Your Advocate



This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.

Q: Sometimes we see in the newspaper recruitment advertisement that if any one would like to join their vacant post, then s/he must be signed a bond to continue their job for next 2/3 or more year's minimum. Is there any legal basis for the companies to enforce such rules? If any one gets better chance to another place, then obviously s/he would like to leave the previous job. Then will s/he be able to take any legal action against the company? Please elaborate it in details.

Md. Zillur Rahaman Gandaria, Dhaka.

Your Advocate: Not all things in our official transactions are made in a conscientious or well thought out way. Many things are done routinely as per prevailing practices without bothering much about their legal implications. And some times things are done, policy framed or actions taken from an advantageous and dominant position in disregard of the basic rights of citizens as job seekers, purchasers or users of any necessities of life or subscriber to any consumer goods or item. In these days of globalisation, open market economy and consumerism corporate culture is gradually looming large shutting out state-control over the affairs touching upon the lives of its citizens. As a consequence tendency to take undue advantage over the weaker is growing particularly in the private organisations formed either in the name of trading or welfare. The reflections of the attitude are often found in advertisements for jobs, terms and conditions imposed on the subscribers, price fixed for necessities of life etc. The whole endeavour seems to centre round maximisation of profit or making one-sided benefit turning a blind eye to our constitutional quest for a welfare state through socialism meaning economic and social justice.

Your question is simple. But in our present day reality it is very pertinent and goes deep into our lives as citizens of a modern state and thus calls for a bit of analysis of the background so that you can take the bare technical reply in its true perspective. With that end in view I have spent few words in an attempt to give you an insight. Now let us revert to your question.

The bond that the job seekers are often, I should say, almost in all cases of fresh appointments required to sign reflects the anxiety of an employer that he may suffer loss in terms of investment made against a new employee if he/she leaves his organisation all on a sudden. That again indicates that the employer having realised the higher prospect of the candidates in job market and that they are after a temporary landing space treats them as potential deserters and tries to bound them down by embargo taking the advantage of his position as an employer.

This is a contract apparently signed between two legally competent persons. On the face of the document it is difficult to say that it is illegal. One can agree to the conditions given by others. But every agreement is not contract. Law says All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void. Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. In the job market that you have indicated I don't think there should be any bond of the kind to be signed by the appointee if there is no special arrangements for higher training incurring expenses of the employer or any kind of skill building program for the benefit of the employer requiring special investment or the sudden desertion brings about direct loss or injury of substantial kind. Mere leaving the job for a better opportunity creating a vacancy in the organisation is of no consequence, therefore, entails no action. Moreover law provides that every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

The party who has suffered from the breach of contract can sue for compensation for loss or damage sustained by such breach. But such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

In the light of the discussions made above I am in the opinion that the breach of contract you have indicated is of no consequence if it cannot be shown that the company/organisation has not sustained loss or damage by reason of the breach.

FOR YOUR information

LAW week

The Repression Against Women & Children's Act-1995

FROM LAW DESK.

Under The Repression Against Women & Children's Act-1995 Nari means woman of any age;

Shishu means child under Children's Act-1980.

As per this Act:

**Grievous Hurt:** In case of grievous hurt by the use of poisonous or corrosive substance which may cause of losses the eye sight, disfigure of head or appearance loses of hearing power.

The person will be liable for at least 7 years but not more than 14 years rigorous imprisonment or fine or both.

**Rape:** In case of rape or jointly rape, which cause death of child or woman sentenced to death or life imprisonment.

Moreover, in case of committing or attempt to commit rape cause death or grievous hurt of any child or woman shall be sentenced to death or imprisonment for life.

**Trafficking:** In case of women trafficking one shall be punished for life imprisonment or fine or both. In case of child trafficking the person shall be sentenced to death or imprisoned for life.

**Kidnapping:** In case of kidnapping or abduction for unlawful and immoral activities shall be punishable with imprisonment of life or rigorous imprisonment for a term of 7 years which may be extend to 10 years and also be liable for fine.

**Dowry Death:** If the husband of a woman, his father, mother, guardian, relatives or any other person on his side may cause death of the woman shall be sentenced to death or life imprisonment.

But if they cause grievous hurt of a woman then they shall be sentenced to imprisonment for life or for 14 years rigorous imprisonment, which will not be less than 5 years and shall also be liable to fine.

**Muktapon (Ransom):** In case of muktapon the person shall be punished for life imprisonment.

This is a translated and shorter version of the main act.



Govt introduces bill to amend criminal law

The government on 4th July introduced a bill in parliament seeking amendment to the Criminal Law Amendment Act of 1958 to make it consistent with the Anti-corruption Commission Act.

Law Minister tabled the Criminal Law Amendment (Amendment) Bill 2004, terming it essential for an independent and effective functioning of an Anti-corruption Commission. He told the House, with passage of the bill, the government would neither be able to withdraw a corruption case nor to appoint public prosecutors to deal with corruption cases. These powers are vested with the Anti-corruption Commission. The bill also empowers the Anti-corruption Commission to arrest any government official on charge of corruption without the government's permission. - Daily Star, 5th July.

Cabinet approves World Bank legal immunity

The cabinet decided to provide legal immunity to the World Bank in Bangladesh, approving a bill seeking amendments to the International Financial Organisation Order 1972. Once the Amendment Bill is passed and the immunity comes into effect, the World Bank will be exempted from any legal action in Bangladesh. The bank formally asked the government for legal immunity about three years back, after being sued by its discharged staff member Ismet Zerir Khan. The government subsequently sought legal opinion from the attorney general and the Ministry of Law, Justice and Parliamentary Affairs. Two attorneys general in their opinions, said as a body the World Bank, is not eligible for immunity under the existing legal provisions. But officers and employees of the World Bank are eligible for such a privilege, they added. However the Asian Development Bank in 1973 and also other UN organisations are enjoying the similar facility. - New Age, 5th July.

Manik Saha Murder, Court accepts charge sheet

A metropolitan magistrate's court on Monday accepted charge sheet in journalist Manik Saha murder case. The charge sheet against 12 accused in the case was submitted on June 20 to the Court of Metropolitan Magistrate by Officer-in-charge of Khulna Police Station. Four of the accused now in jail. Khulna police filed two cases, one for murder of the journalist and the other under Explosives Act, on January 19. Charge sheet in the case under Explosives Act was submitted on March 19, accusing 13 people. - Daily Star, 7th July.

Ahsanullah Master Murder CID to submit charge sheet

The Criminal Investigation Department (CID) will submit the charge sheet in the Ahsanullah Master MP murder case on July 10. The four-member CID team has already prepared a draft of the charge sheet. Sources close to the team said some 25 people, including 15 of the 18 accused in the first information report (FIR). The slain lawmaker's brother lodged the case accusing 17 people of the murder. State Minister for Home Affairs ordered the investigation officer to complete the probe immediately and submit the charge sheet in a month. - Daily Star, 7th July.

CJs should have no monopoly on chief adviser's post

Former chief justices (CJs) should not have a monopoly on the post of chief adviser to the caretaker government, eminent jurist Barrister Amir-Ul Islam expressed on 6th July in the High Court. Barrister Amir said this while pointing out the drawbacks of the 13th amendment to the constitution, which the Awami League (AL) conceived of and hammered at in 1995-96 and the then ruling BNP framed. During the hearing that began on June 29 on the writ petition challenging the 13th constitutional amendment making way for national election under caretaker government, the lawyer for one of the defendants, the AL, subscribed to the amendment but said it needs to be improved by incorporating changes. He suggested the changes may be brought through consultation with and consensus among the political parties to ensure a "check and balance" in the caretaker government. - Law Desk.

Speakers' Houses in JS Complex Court stops move to gag media, denies stay prayer

The Appellate Division turned down a plea to ban media reports on constructions on the Sangsad Bhaban complex minutes after it also did not grant another prayer for a stay on a High Court order declaring construction of the residences of speaker and deputy speaker illegal on 7th July.

As soon as the bench declined to pass the order, the attorney general sought an embargo on media coverage of development work on the Sangsad Bhaban complex. The High Court on June 21 declared the constructions illegal following a writ petition filed by Bangladesh Paribesh Andolon (Bapa) and the Institute of Architects, Bangladesh (IAB). As soon as the government gets the certified copy of the June 21 High Court verdict, it plans to seek permission to file an appeal petition against the order, according to sources in the Public Works and Housing Ministry. - Daily Star, 8th July.

US lawmakers move against human trafficking

US lawmakers were considering how to strengthen efforts against the illegal enslavement of humans for sex and forced labour, which remains a problem in the United States nearly 140 years after it was outlawed. Washington has sought to lead the international fight against human trafficking and has threatened sanctions against nations which tolerate the trade or fail to take adequate efforts to stop it. US officials estimate that between 600,000 and 800,000 people are forced into slavery each year, including between 14,500 and 17,500 in the United States. Many of these are women and children kidnapped or lured into prostitution or forced labour. The multibillion-dollar trade ranks among the fastest-growing transnational crimes. - AFP, Washington, 8th July.

Auditor general lodges appeal with JS body for protection

Comptroller and Auditor General (Cag) Asif Ali yesterday lodged an appeal with the Public Accounts Committee (Pac) of the Jatiya Sangsad seeking its protection against violation of the constitutional rights of his office by the Railway Division. The parliamentary body is now examining the rules and regulations to dispose of the appeal, the first of its kind in Bangladesh. Earlier on July 5, the parliamentary body decided to summon the secretary of the communications ministry, director general of the Railway Division and officials concerned at its next meeting slated for July 20. A team of Cag's office recently went to the railway division to check purchase documents, but the officials misbehaved with them and denied them access to the papers. - Daily Star, 8th July.

EC decision on Mannan's poll petition after July 18

A stormy scene was witnessed in the Election Commission secretariat during the hearing of the petition filed by Bikalpa Dhara Bangladesh candidate Major (rtd) Mannan alleging massive rigging and fraud in the Dhaka-10 by-election. After hearing both sides, the acting Chief Election Commissioner (CEC) Safiur Rahman said the decision on the case would be announced after July 18. He advised Mannan to submit documentary evidence in favour of his allegations by July 15 and the ruling party candidate to submit his papers if any by July 18. The counsel for the four-party candidate denied the allegations claiming that polling was totally free and fair with no coercion and intimidation from any quarter. At one stage, the two lawyers exchanged bitter and hot words creating a noisy scene in the conference room of the EC. - Bangladesh Today, 9th July.

Show cause notice on jail super

The financial loan court-4 of Dhaka on Thursday issued a notice on the jail superintendent of Munshiganj to show cause as to why the court would not proceed against him on contempt of court charge for non-compliance of a court order. Judge of the court directed jail super to appear before the court to explain within three days of receipt of the notice. The court passed the order upon his refusal to release a debtor after receiving a court order. The court sentenced the debtor for civil imprisonment for six months in a money execution case on May 24 this year. - New Age, 9th July.

LAWSCAPE



Law Professor

The professor of a contract law class asked one of his better students, "If you were to give someone an orange, how would you go about it?" The student replied, "Here's an orange." The professor was outraged. "No! No! Think like a lawyer!"

The student then replied, "Okay, I'd tell him 'I hereby give and convey to you all and singular, my estate and interests, rights, claim, title, claim and advantages of and in, said orange, together with all its rind, juice, pulp, and seeds, and all rights and advantages with full power to bite, cut, freeze and otherwise eat, the same, or give the same away with and without the pulp, juice, rind and seeds, anything herein before or hereinafter or in any deed, or deeds, instruments of whatever nature or kind whatsoever to the contrary in anywise notwithstanding...'"

Corresponding with the Law Desk

Please send your mails, queries, and opinions to: Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email <slawdesk@yahoo.co.uk>