



RIGHTS column



Anti terrorism drive violates human rights in France

IN its effort to fight terrorism, France routinely arrests and prosecutes people for being associated with possible terror suspects, undermining international fair trial standards, Human Rights Watch said in a new report released today.

"Using the criminal justice system is the right way to fight terrorism," said Judith Sunderland, Europe and Central Asia researcher at Human Rights Watch. "But prosecuting people because of who they know and what they think sacrifices basic rights, and that is wrong in principle and dangerous in practice."

The 84-page report, "Preempting Justice: Counterterrorism Laws and Procedures in France," looks at how France uses a vaguely defined 'terrorism association offense' to arrest large numbers of people based on minimal evidence. Human Rights Watch documented credible allegations that terrorism suspects are subjected to oppressive questioning in police custody, linked to a policy that delays a suspect's access to a lawyer. Many suspects go on to spend long periods in pre-trial detention. Human Rights Watch talked to two dozen people caught up in terrorism investigations and trials, and conducted interviews with counterterrorism officials and judicial authorities.

The lack of appropriate safeguards within the criminal justice system puts France on the wrong side of human rights law.

France is renowned for its preemptive criminal justice approach to countering terrorism. Specialised prosecutors and investigating judges work closely with police and intelligence services to break up alleged networks before they commit a terrorist attack. But reliance on the broad offense of "criminal association in relation to a terrorist undertaking" means that large numbers of people are arrested on the basis of minimal evidence and detained for extended periods. Prosecutions are often based on intelligence material, including from countries with poor records on torture, which defendants cannot effectively challenge.

"France is too eager to set aside rights for the sake of efficiency," said Sunderland. "To be a real leader, France should uphold rights while confronting terrorism."

Human Rights Watch will discuss its findings and recommendations during a round-table on human rights and the fight against terrorism in Europe at the Third World Forum on Human Rights in Nantes, France, on July 2. Safeguards in police custody are a particular concern. Terrorism suspects can be held for up to six days in police custody. Suspects can only see a lawyer after three days of police questioning, undermining the right to an effective defense and putting detainees at risk of ill-treatment. When they do finally see a lawyer, the visit is limited to 30 minutes and the lawyer usually knows almost nothing about the reason for the arrest. By law, police do not have to tell suspects that they have the right to remain silent, and anything they say can be used against them if charges are filed.

Rachida Alam, 34, was arrested along with her husband in May 2004. She was subjected to 25 hours of interrogation during her three days in police custody without once seeing a lawyer. A diabetic, Alam had to be taken to the detention facility's hospital three times.

Human Rights Watch interviewed suspects who said that sleep deprivation, disorientation, constant, repetitive questioning, and psychological pressure are common in police custody. Human Rights Watch also documented credible allegations of physical abuse.



PHOTO:EUROPARL-EUROPA-EU

Emmanuel Nieto, 33, was arrested in October 2005 largely on the basis of statements made by a man detained arbitrarily in Algeria. Nieto claims he was subjected to physical abuse at the hands of the police during his four days in custody, including being punched, forced to kneel for long periods of time, and grabbed by the throat. He was questioned for a total of 45 hours in 13 different sessions.

Suspects charged with terrorism offenses are usually remanded to long periods of pre-trial detention. A reform from 2001 allowing decisions on custody to be made by a separate "liberty and custody" judge has made little difference in limiting pre-trial detention in such cases.

The breadth of the terrorism association offense can lead to a conviction based on a low standard of proof and weak evidence such as that suspects know each other, are in regular contact, or share particular religious and political beliefs.

Interviews with French counterterrorism officials, terrorism suspects and their families, and defense lawyers suggest that France's approach risks alienating Muslims, potentially radicalizing individuals, and eroding trust in law enforcement and security forces. Neighbors are less likely to tip off the police about suspicious behavior if they don't believe the accused will be treated fairly. "Sarkozy has called the fight against terrorism a 'battle of ideas,'" Sunderland said. "The way to win that battle is to ensure that countering terrorism doesn't come at the expense of the human rights of suspects." The report contains concrete recommendations to the French government to strengthen safeguards in the criminal justice system, including:

- Making the offense of criminal association in relation to a terrorist undertaking more precise and requiring proof of intent to participate in a plan to commit terrorist acts;
- Improving safeguards in police custody, in particular access to a lawyer from the outset of detention and during all interrogations;
- Reinforcing the role and independence of the "liberty and custody judges," and
- Ensuring that evidence obtained under torture and ill-treatment, including from third countries, is inadmissible in any criminal proceedings.

Source: Human Rights Watch

LAWS FOR everyday life

When you can lodge a GD?

Mrs. Rahima lives alone with her only son--Abdullah. Abdullah works in a garments factory. Once Abdullah was working in the garments he found that some of his colleagues are involved with stealing clothes from their garments. After noticing that Abdullah made complaint against them and as a result of this, they lost their job within a week. Abdullah was very simple boy, lives with his mother in a slum of Dhaka, earned only taka 3000 per month. Suddenly, one day when he was coming from his office there were no electricity in the road, and he found those people who were rusticated from the job. They threatened him very seriously saying that he had not done a good job. In this way Abdullah was threatened by them five times within two months. Later, being worried Rahima begum discussed this with the owner of the house and he suggested her for general diary, which may help her for future security. Later, Rahima does so detailing the incident in the nearest police station.

The provision of general diary (GD) can be found in the Police Act 1861, section 44, 45 of the said Act deal with the diary which police are supposed to keep. According to the said Act, the duty officer of the police station will record the GD in a record book and in a specific format. It is

such a form as shall from time to time as be prescribed by the Government. As the complaints and charges preferred the name of the person arrested, the names of the complainants, the offences they are threatened with, and the name of the witness who will testify.

GD is lodged in a register named "General Police Diary". It is a 200 page register and duty officer is liable for any ambiguity/complain against lodging GD. Any entry in this GD register can be used as an exhibit in the Court.

The magistrate of the district shall be at liberty to call for and inspect such diary. Government may direct the submission of which returns by the inspector general and other police officers as to such Government shall seem proper and may prescribe the form in which such return shall be made.

A GD can be filed for almost every purpose, albeit it has not any serious effect but it is preventing incident indirectly. Like, if someone is missing, something valuable is missing, if there is a threat etc. Interestingly, news/information about the daily police officials, storage arms and ammunition in a police station, duties of the police officials, news about the locality; like if there is a political meeting that also can be

Snapshots



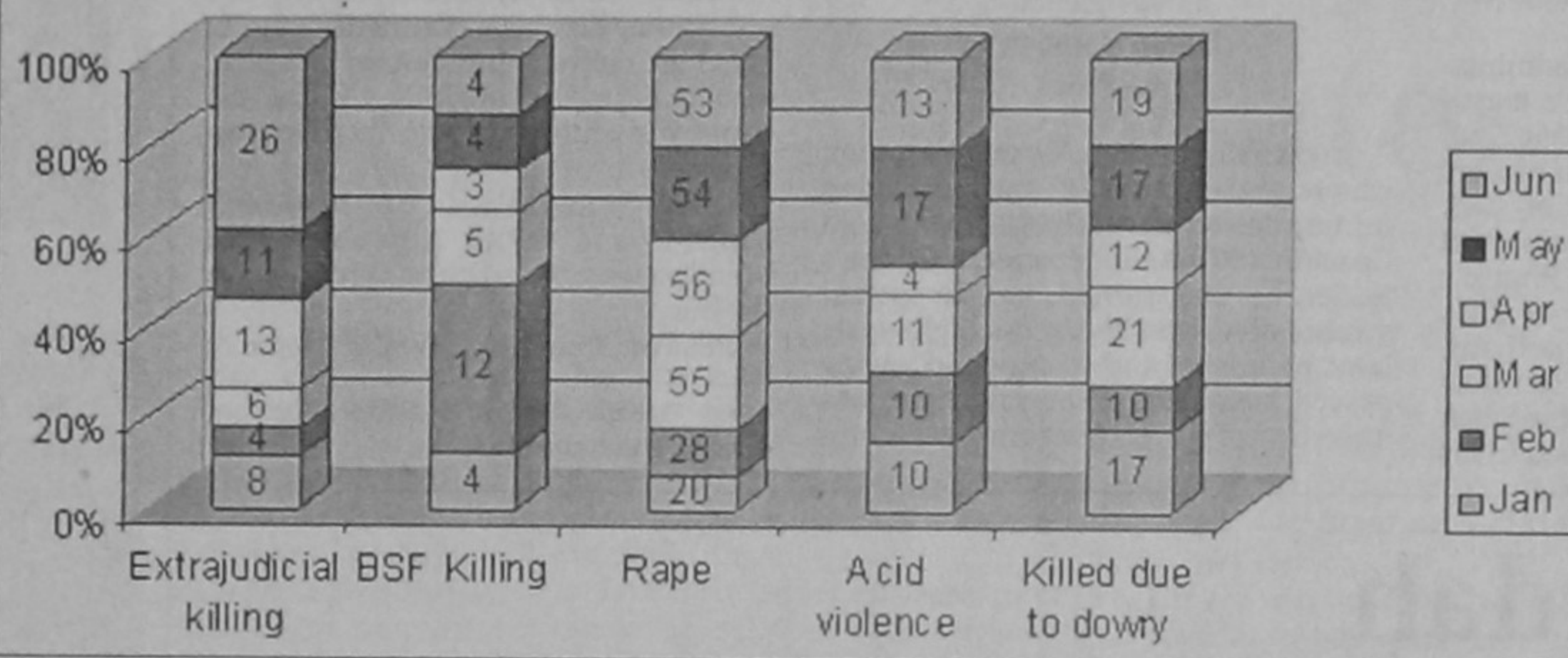
What becomes of unwanted children.

recorded as GD. So it can be said that GD register portrays every details about a police station.

-Law Desk.

FACT file

HR Violation Graph 2008 (Jan-Jun)



According to a human rights organisation, Odhikar The fundamental right of freedom of expression has been severely curtailed since the imposition of the State of Emergency on 11 January 2007. People do not have free access to information as journalists continue facing negative pressure for publishing factual reports, contravening recognised rights of press under national and international laws. Pressure on journalists poses a very significant threat. Ranging from telephone calls and threats

to physical attacks - designed to prevent or punish the publication of critical material.

Since 1 January to 30 June 2008, 23 journalists were reportedly injured, while 13 were assaulted. 16 incidents of verbal threats were also recorded. In January the Government asked television channels to avoid all talk shows. In April two journalists were barred from their professional duty at the court. However, incidents of covert restrictions and harassment on print and electronic media are much higher

than reported. One of the latest incidents took place on 30 June, when journalists were covering the proceedings of the GATCO graft case against former Prime Minister Khaleda Zia. The police tried to drive the journalists out of the courtroom, and at one point, Nahid, an assistant Commissioner reportedly flew into a rage and commented 'kick the journalists out'.

Violence against women, in particular, incidents of rape have remained high. In the last six months, 266 women and girls

became victims of rape out of which 113 were women and 153 were children. Actual figures are likely to be much higher since all such violations are not reported to police or in media largely because of associated social stigma and other factors.

On average, 44 women were raped per month. Out of these incidences 107 were gang raped. Out of the 113 women, 37 were reportedly killed after rape and 64 became victims of gang rape. On the other hand, out of 153 girls, 20 were reportedly raped and then killed, while 43 became victims of gang rape.

Other vicious forms of violence against women occur due to dowry demands. Between January and June, a total of 140 women reportedly became victims of dowry demands. Due to dowry related violence, a total of 96 women were killed and 38 tortured. During this time, 6 women reportedly committed suicide, as they could not bear the abuse any longer.

Over this period, a total of 65 persons became victims of acid violence; amongst them, 37 persons were women, 17 men and 11 children (6 girls and 5 boys).

Source: Odhikar.

COURT corridor

'Justice delayed is justice denied'

SULTAN MOHAMMAD WHOID

JUSTICE delayed is justice denied' is a very common adage in the judicial domain. It is one of the most burning problems in the administration of justice. This system of justice is so ambiguous and miserable for the mass people that it cannot be explained in a word. There are many instances that poor people who went to court to address their grievances after selling off their lands and property to meet the expenses of the court, but did not get justice in their lifetime. At present, the only demand of mass people is the speedy approach to justice. Certainly 'speedy approach to justice' is gradually getting the status of an important human right which is also denied by some administrators in justice and the underprivileged people continue to be dominated by them. This day, the judiciary organ is an independent organ in our country from the executive. So, it is high time to adopt effective steps to dispense our justice as early as possible.

How much pain the delay process of justice involves need not be explained. This picture of justice is very much dreadful for our poor citizens. It is generally seen that a case is still hanging in court, which began more than one decade ago. There are many victims who don't easily think of going to court seeking justice because they know it will take years to prove a clearly visible wrongdoer is the actual criminal. Moreover, the impact of this unusual delay in disposal of cases falls on the victims. Due to delay in litigation, people become annoyed to obtain proper justice at any stage and also develop a negative outlook in their mind about the total judiciary schemes including judges, lawyers, associates and the administration of justice etc.

The process of delay in litigation is equally known to all and nevertheless it may sound inconsistent with due process of law. The fact remains that the very cases are

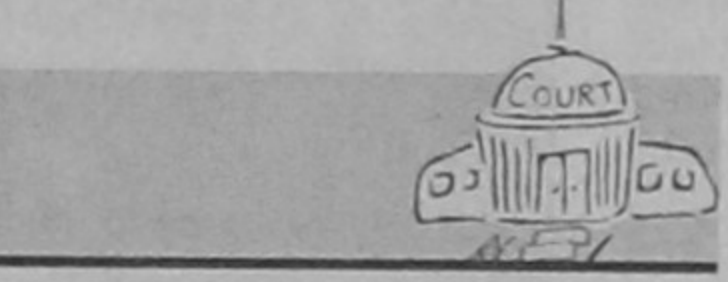
misused and abused in order to delay cases for an indefinite period and ultimate success in the cause often proves false. Now, law is an effective weapon in the hands of the state to mitigate the social needs by ensuring proper justice in time. Such effort of law is liable if justice fails to mitigate the misery of the mass people due to delay in litigation only and the faith in justice can never be instilled in the mass people if the state doesn't ensure the speedy process of justice.

In the field of justice, delay in litigation is traditionally practiced in our country as like at the same time as denying due process of law. The result is that cases are piled up in all the courts hugely day by day. Basically, the delay in litigation is incredibly practiced in civil courts. Our civil courts are governed by the Civil Procedure Code 1908 which was enacted during the British reign. But, after the independence, the government of Bangladesh had taken an attempt to accelerate the civil procedure system. The problem of delay in litigation including arrears of cases has been engaging the attention of the Law Commission for a long time and as a result of its recommendations made from time to time, reasonably wide changes have been made in the provisions of the Code in 1983 by making an Ordinance with a view to removing the causes of delay. Before such amendment Ordinance, there was no limitation to submit the court-fees and other relevant documents. But, by this Ordinance, the parties to a suit have to submit the proper court-fees with all relevant documents within 21 days after issue of summons and the plaintiffs have to submit all documents at the time of institution of the suit to focus on the cause of action. On the other hand, there was no specific time for examination of the defendants/witnesses and in framing of issues before such amendment. But, after promulgation of the Ordinance, no time is allowed for examination of the defendants/witnesses after 2(two)

months. The delay in litigation is practiced in our judicial domain for in a day. But, it is as much crucial an issue that our Government has to take immediate steps to diminish this problem. However, from my view, following steps can be adopted to change the current character of administration of justice:

- The atmosphere of justice must be corruption free.
- Adequate number of judges should be ensured.
- Justice administration system should be easy and not much expensive. Although the Constitution guaranteed equal rights for all citizens in getting justice, in practice a vast majority of the people, who are economically weak, do not enjoy this right. Even, the poor and disadvantaged groups in the rural areas cannot think of moving to higher courts to seek justice and get remedy for violation of their rights because of expensive higher judiciary.
- Justice should not become the hostage of class.
- In preserving various records of the courts modern technology should be widely used.
- Multiplicity of laws on a particular issue should be evaded.
- It also seen that the lawyers may not be ready to argue the case and hence regularly submit 'time petitions'. So, frequent taking of time by the lawyers must be stopped. In Bangladesh constitution, there is a provision for getting speedy trial of every accused person of criminal offence as per Article 35(3). Besides, as per Article 22 of this constitution the judiciary is separated from executive organ, which has already been executed from 1st Nov, 2007. Now, our expectation is much more from the judiciary than before. So, we are looking forward to see that the judiciary organ is how far responsible to accelerate our prior procedure in litigation to remove the misery of the inhabitants of Bangladesh.
- Lack of good lawyers. The attitude of some of the lawyers is also to some extent responsible for delay.
- Accumulation of cases.
- Insufficient number of judges.
- Lack of proper observation of the provisions of the Codes.
- A large number of cases that come before the Supreme Court cannot be concluded hastily due to interpretation of legislative enactment in question.
- Delay in proper investigation or inquiry in litigation.
- Variety of laws on a particular issue.
- Inadequate office equipment and machinery.
- Unreasonable absence of witnesses.
- Cumbersome execution procedure of decrees in civil cases.
- Lack of utilization of modern technology in keeping records and documents.

Actually, delay in litigation is practiced in our judicial domain for



LAW week



Young offenders getting into serious crimes

Growing negligence by, and indifference of, parents towards children could be the cause behind increasing cruelty in juveniles as is evident from the growing number of offences committed by them.

Experts say the general quality of society is equally to blame for this. They site reasons as absence of moral and social values in society, effect of private tuitions based education, the extent of "satellite TV culture" and inadequate recreation facilities for the growth of a healthy mind on the growing rate of juvenile crime.

Statistics made available from a Save the Children, UK study show a gradual increase in the number of children confined in jails or child development centres in the first four months of the current year, suggesting an increase in offences committed by them. -The Daily Star, July 01, 2008.

Charges framed against Huji man Zandal

A Sylhet court framed charges against Harkatul Jihad al Islami (Huji) operative Abu Zandal in a case filed in connection with the grenade attack on British high commissioner Anwar Choudhury on May 21, 2004.

The Court of Additional District and Session's Judge Ferdous Ahmed framed the charges against the Huji man. The Criminal Investigation Department (CID) submitted supplementary charge sheet against him on March 11.

Zandal and other accused were produced before the court yesterday. The judge fixed August 5 for the next court day for the case filed under Explosive Substances Act.

Zandal is the son of Nurul Islam of Alamdanga under Lohagara upazila in Narail. He has been in jail due to cases filed against him in Dhaka. He was arrested months ago and grenades were recovered in his possession. -The Daily Star, July 01, 2008.

Embassy staff to meet Kuwaiti officials on workers' plight

Bangladesh Embassy officials in Kuwait hold talks with Kuwaiti authorities to discuss the plight of 765 Bangladeshi workers -- which include over 300 women -- who have not been paid for the last six months by their employers.

The cleaning companies they worked for did not arrange return tickets for these workers on completion of their contracts and now the residency permits of some have also expired.

"We have an appointment with the Kuwaiti Labour Department and the companies involved on Monday morning," Shahrir Kader Siddiky, labour councillor of Bangladesh Embassy in Kuwait, told The Daily Star over telephone.

Meanwhile, the National Assembly of Kuwait has formed a technical labour committee to look into and defend the rights of expatriate laborers, the Kuwait Times. The committee, after conducting an extensive study on the plight of laborers submitted a mechanism to address the problems faced by laborers. The committee also suggested a study to raise the minimum wage for workers. -The Daily Star, June 30, 2008.

Crime world beckons 7 lakh slum kids

Around seven lakh children living in slums of the six metropolitan cities of the country are susceptible to a life of crime because of lack of any proper mechanisms to protect them. In the absence of any social safety nets to guard their well-being, juveniles raised in slums and streets without proper care or guidance from parents are easily lured into committing criminal offences. According to government estimates, seven lakh children are among the 50 lakh people -- a number estimated by a Centre for Urban Studies survey in 2005 -- residing in slums in six metropolitan cities, and their numbers are ever increasing. In exchange for very small amounts of money, youngsters are being hired by gangsters to carry or use firearms or peddle drugs. These children don't know any better than falling into such traps, and where they understand the gravity of the jobs they are hired for an empty stomach often overrides considerations. -The Daily Star, July 02, 2008.

LAW lexicon



Expert testimony - Testimony given in relation to some scientific, technical or professional matter by experts, i.e., person qualified to speak authoritatively by reason of their special training, skill or familiarity with the subject.

Ex post facto - After the fact, ordinarily used in reference to constitutional prohibition on ex post facto laws. For example, a person cannot be punished for conduct committed before a criminal law was enacted.

Expungement - The process by which the record of criminal conviction is destroyed or sealed.

Extradition - The surrender of an accused criminal by one state to the jurisdiction of another.

Extraordinary writ - A writ, often issued by an appellate court, making available remedies not regularly within the powers of lower courts. They include writs of habeas corpus, mandamus, prohibition and quo warranto.

Fair market value - The value for which a reasonable seller would sell an item of property and for which a reasonable buyer would buy it.

False arrest - Any unlawful physical restraint of another's personal liberty, whether or not carried out by a peace officer.

False pretenses - Representation of some fact or circumstance which is not true and is calculated to mislead, whereby a person obtains another's money or goods.

Family law - Those areas of the law pertaining to families, i.e., marriage, divorce, child custody, juvenile, paternity, etc.

Federal Bureau of Investigation (FBI) - A federal agency which investigates all violations of federal laws.

Federal Communications Commission (FCC) - A federal agency which regulates interstate and foreign communications by wire and radio.

Federal Deposit Insurance Corporation (FDIC) - An agency which insures deposits in banking institutions in the event of financial failure.

Federal Mediation and Conciliation Service - An agency which provides mediators to assist in labor-management disputes.

Federal Register - A daily publication which contains federal administrative rules and regulations.

Fee simple absolute - The most complete, unlimited form of ownership of real property.

Felony - A serious criminal offense. Under federal law any offense punishable by death or imprisonment for a term exceeding one year.

Dear reader, We would like to address daily life problems and the solutions to them. Please write to us if you have any queries, comments or ideas regarding problems you would like to be informed about in Law & our rights. -Law Desk

Corresponding with the Law Desk

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