



FOR YOUR information



## Crime prevention and safety: Child abduction

**F**EW moments, hours or days... or years... can be terrifying when a child has disappeared. It is enough to wrench the heart right out of a caring parent's chest. The fact is: child abduction happens. In the event, the risk is real. Here's what you can do to prevent it and then, what to do if it happens to you.

Most children reported as abducted have either run away or are "lost" (but then found) as a result of a misunderstanding about where they were supposed to be. But there remains that small risk of horrible crime that the child must learn to avoid.

\* Have a recent photo of your child handy at all times.

\* Set age-appropriate boundaries for your child.

\* Never leave a young child alone in a public place. Leaving an infant in a parked car while you run in for groceries may be convenient but it may also be putting your child at great risk. Give each child receive, at a bare minimum, these basic instructions:

\* No need to spook the child must they need to be aware of the risk, and that inevitably requires some "spooking". Be direct but don't make it overly frightening as you may mark the child for life and spark lifelong fears and paranoia. Give each child receive, at a bare minimum, these basic instructions:

\* Make sure the child knows that most abuse and abductions occur by a family friend or relative (about 75%). In any event, coach the child to make a ruckus, yell "No!" if someone asks, or tries, to touch their private parts, or grabs them in a threatening manner. Get away as quickly as possible and most importantly. Tell a parent or another trusted adult about the approach the person made to you. Speak up! It could save your life!

\* The bare fact is that most child abductors are men.

\* Don't go anywhere, accept any gift or enter any stranger's car without checking with a parent or guardian.

\* Going outside alone means being outside a parent's eyesight and exposure, in particular, to passing-by vehicle traffic. Make the child aware of the remote but real risk of child abductors and that the offenders are quite capable of using trickery to entice a child away, such as "can you help me look for my puppy?" or "can you come here and tell me where I am on this map?" We raise our children to be polite and this is exploited by the abductors who use this to lure the child.

\* Adjust these instructions from time to time as the relevant child grows older. Teenagers are not exempt or immune from the interests of child abductors or sexual abusers. The Internet appears to be a portal of choice for pedophiles.

If the child has gone missing from home, search the house first. Kids love crawl spots and may be stuck or fallen asleep. Don't be shy to call your child loudly by name even in your own house. Kids can get lost trying to return home - they may not have been abducted; they may simply be lost. Retrace their route home as well as possible accidental detours they may have taken. Chase down their friends who may have seen them last - use the phone first - time may be of the essence. If in doubt, call the police immediately. Be prepared to provide your child's name, height, weight and all unique identifiers such as eye colour, hair colour and length, clothes last worn, eyeglasses or braces.

Source: www.duhaime.org

## LAW event

# Need for an all-inclusive preventive law against Trafficking in Persons

**W**E need to develop and adopt a comprehensive law against Trafficking in Persons, which not only protect and assist the victims of trafficking but also provide strategy to prevent and address the problems of tackling the main culprits who organise and operate the heinous crime of trafficking in persons. Trafficking being an organised crime is more difficult to solve than most other criminal offences and without an all-inclusive law which address all the natures of trafficking, e.g. sex trafficking, labour trafficking, organ trafficking, it becomes very tricky to accuse someone under the offence. Most times the crime is categorised under illegal migration, smuggling etc. in order to retrieve the victim and provide protection. Remarks from guests of honours, which included the High ranking govt. officials and human rights activist. Md. Shah Alam, AIG (Crime 3), from Police Headquarters, highlighted the grave need for a more proactive approach in addressing the crimes of trafficking.

Association for Community Development (ACD), with support of Winrock International and funded by USAID organised a National Level Sharing for Adoption of Comprehensive Law against Trafficking in Persons on August 2, 2010 in a city hotel. This event was based on the cumulative findings from a number of workshops in Chapai Nowabgonj, Thakurgaon, Dinazpur, Panchagar, Jaypurhat and Naogaon districts under Rajshahi and Rangpur districts carried out by ACD. They identified several social problems along with problems in legal aspects and loopholes. For example, an adult male victim of trafficking cannot get proper justice under the existing law. ACD at the event presented a case study of such an individual and the stakeholders at the event got to hear firsthand the difficulties this individual and his wife faced and how they have been fighting to get free from the clutches of the criminals. They explained how ADC and the Bangladesh Police came to their assistance. Their case is still ongoing.



On assessment of this case study several other issues came into focus such as the lack of a clear definition of the crime of Trafficking in Persons and the lack of protection of victims and witnesses involved in such a crime. There are existing time lags in submission of the investigation reports by the law enforcements and also a lengthy process once the cases are at the courts. Another issue highlighted was that internal trafficking is not dealt with in the several laws which are used in addressing cases of trafficking.

There are few laws which are used to address the crime of trafficking. These include the Constitution of Bangladesh, the Penal Code 1860, the Women and Children Repression Prevention Act 2000, the Children's Act 1974, the Bangladesh Passport Order 1973, the Passport (Offence) Act 1952, The Emigration Ordinance 1982, the Extradition Act 1974 and the Bangladesh Labour Code 2006. Yet, even with all these laws being used, a lot of times the crime cannot be caught under the monstrous crime it actually is.

Dr. Kamal Uddin Ahmed, Joint Secretary (Political), Ministry of Home Affairs was the chief Guest at the event who urged that along with a more pre-

define definition of trafficking, measures should be taken which would ensure incorporation of the laws. He pointed out the importance of ratification of international conventions and mutual legal assistances (MLAs), since trafficking is a crime not confined to a single state. He also informed that such a MLA has been ratified for criminal matters with India on January 11. Further bilateral agreements need to be made with other neighbouring countries in order to combat Trafficking in Persons more effectively. In order to encourage greater participation of the survivors of trafficking he suggested establishment and recognition of compensation for victims, shelter facilities, security and rights based repatriation. Privacy of the victims must be maintained as a norm and non-criminalisation of the victims must also be ensured.

Joint Secretary (Cell), Ministry of Women and Children Affairs, Dennis Sharma, Acting Mission Director, USAID, Nishat A Chowdhury, National Programme Officer, IOM, Salima Sarwar, ED ACD, Salma Ali from BNWLA and some other experts also shared their findings on the matter at the event.

- Compiled by Law Desk.

## LAW update

# Live-in relationships

SWATHY GOPAL

**I**N a much awaited observation on live-in relationships, the Supreme Court opined that a man and a woman living together without marriage cannot be construed as an offence. "When two people want to live together, what is the offence? Does it amount to an offence?" a special three-judge Bench constituting the Chief Justice of India, K.G. Balakrishnan and Justices Deepak Verma and B.S. Chauhan observed. The Supreme Court said that there was no law prohibiting live-in relationships or pre-marital sex. "Living together is a right to live" the Supreme Court said, apparently referring to Article 21 of the Constitution of India which guarantees right to life and personal liberty as a fundamental right. The Supreme Court made the observation while reserving its judgment on a Special Leave Petition filed by a noted South Indian actress, Khushboo seeking to quash 22 criminal cases filed against her after she allegedly endorsed pre-marital sex in interviews to various magazines in 2005 (S. Khushboo v. Kanniammal and Anr. 2010 (4) SCALE 462).

### Meaning

Live-in relation i.e. cohabitation is an arrangement whereby two people decide to live together on a long-term or permanent basis in an emotionally and/or sexually intimate relationship. The term is most frequently applied to couples who are not married.

### Position of live-in relationships in India

In India, cohabitation had been a taboo since British rule. However, this is no longer true in big cities, but is still often found in rural areas with more conservative values. Female live-in partners have economic rights under Protections of Women and Domestic Violence Act, 2005.

The Maharashtra Government in October 2008 approved a proposal suggesting that a woman involved in a live-in relationship for a 'reasonable period', should get the status of a wife. Whether a period is a 'reasonable period' or not is determined by the facts and circumstances of each case.

The National Commission for Women recommended to the Ministry of Women and Child Development in 30th June, 2008 that the definition of 'wife' as described in section 125 of Cr.P.C., must include women involved in a live-in relationship. The aim of the recommendation was to harmonise the provisions of law dealing with protection of women from domestic violence and also to put a live-in couple's relationship at par with that of a legally married couple. There was a Committee set up by the Supreme Court for this purpose, called the Justice Malimath Committee, which observed

that "if a man and a woman are living together as husband and wife for a reasonable long period, the man shall be deemed to have married the woman."

The Malimath Committee had also suggested that the word 'wife' under Cr.P.C. be amended to include a 'woman living with the man like his wife' so that even a woman having a live-in relationship with a man would also be entitled to alimony. On 16.09.2009, the Supreme Court in a case (*Abhijit Bhikasesh Auti v. State Of Maharashtra and Others*) observed that it is not necessary for a woman to strictly establish the marriage, to claim maintenance under section 125 of Cr.P.C. A woman in a live-in relationship may also claim maintenance under section 125 Cr.P.C.

In a case (*Payal Katara v. Superintendent Nari Niketan Kandri Vihar Agra and Others.*)



the Allahabad High Court ruled out that "a lady of about 21 years of age being a major, has the right to live with a man even without getting married, if both so wish". The Supreme Court observed that a man and woman, if involved in a live-in relationship for a long period, they will be treated as a married couple and their child would be considered as legitimate.

### Legitimacy of the child born out of a live-in relationship

The Supreme Court on an earlier occasion, while deciding a case involving the legitimacy of a child born out of wedlock has ruled that if a man and a woman are involved in a live-in relationship for a long period, they will be treated as a married couple and their child would be legitimate. Also, the recent changes

introduced in law through the Domestic Violence Act, 2005 gives protection to women involved in such relationships for a 'reasonable long period' and promises them the status of wives. A Supreme Court Bench headed by Justice Arijit Pasayat declared that children born out of such a relationship will no more be called illegitimate. "Law inclines in the interest of legitimacy and thumbs down 'whore' or 'fruit of adultery'."

### Inheritance rights

The Supreme Court held that a child born out of a live-in relationship is not entitled to claim inheritance in Hindu ancestral coparcenary property (in the case of an undivided joint Hindu family) and can only claim a share in the parents' self-acquired property. The Bench set aside a Madras High Court judgment, which

illegitimate. It can also be interpreted in a way in which a child could lay a claim on the share of a parents' ancestral property as they can ask for that parents' share in such property, as Section 16 permits a share in the parents' property. Hence, it could be argued that the person is not only entitled to self acquired property but also a share in the ancestral property.

The Apex Court also stated that while the marriage exists, a spouse cannot claim the live-in relationship with some other person and seek inheritance for the children from the property of that other person. The relationship with some other person, while the husband is living is not 'live-in relationship' but 'adultery' (*Bharatha Matha & Anr. v. R.Vijaya Renganathan & Ors.* 2010 STPL(Web) 406 SC). It is further clarified that 'live in relationship' is permissible in unmarried heterosexuals (in case, one of the said persons is married, the man may be guilty of adultery and it would amount to an offence under Section 497 of the Indian Penal Code).

### Conclusion and suggestions

The law does not prescribe how we should live; it is ethics and social norms which explain the essence of living in welfare model. The Court itself notices that what law sees as no crime may still be immoral. It has said in a judgement of 2006, notices by the Court now, that two consenting adults engaging in sex is not an offence in law "even though it may be perceived as immoral." (*Lata Singh v. State of U.P. and Anr.* AIR 2006 SC 2522). Of course, such protective sanctions may potentially lead to complications that could otherwise be avoided. But simply raising the hammer may not be the best route to taming the bold and the brave. This is not the first time live-in relationship is in the ambit of debates and discussions. There has been a long-standing controversy whether a relationship between a man and a woman living together without marriage can be recognised by law. With changing social hypothesis entering the society, in most places, it is legal for unmarried people to live together. Now even in a country like India bounded by innumerable cultural ethics and rites, the law finds legally nothing wrong in live-in relationships.

This, however, cannot be construed that law promotes such relationships. Law traditionally has been biased in favour of marriage. It reserves many rights and privileges to married persons to preserve and encourage the institution of marriage. Such stands, in particular cases of live-in relationship, it appears that, by and large, is based on the assumption that they are not between equals and therefore women must be protected by the courts from the patriarchal power that defines marriage, which covers these relationships too.

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## LAW week



### 334 NGOs shut in four months

The government cancelled registration of 334 non-government organisations (NGOs) in the last four months for their involvement in corruption, misuse of foreign funds and patronisation of militancy. The NGO Affairs Bureau (NGOAB) launched a stringent drive to clean up the sector and seized moveable and non-moveable property of these organisations, which were operating in the name of social welfare, charity and volunteerism. The move is significant as NGOAB had cancelled only 56 foreign-funded NGOs in the last two decades since 1990. The bureau cancelled the registration in April, May, June, July and August-2, after a series of probes into violation of rules and laws to run foreign-funded projects in the country. - *The Daily Star, August 5, 2010.*

### Punishment stays for errant realtors

A parliamentary body turned down its sub-committee's recommendation for scrapping the proposed real estate law's provision for jail sentences to realtors developing and advertising projects without approval. The parliamentary standing committee on the housing and public works ministry however included three new provisions prescribing jail sentences and fines to land owners for violating contracts with real estate firms. Last year, it formed the three-member sub-committee headed by M Enamul Haque, a realtor-turned-lawmaker, for scrutiny of Real Estate Development and Management Bill. - *The Daily Star, August 4, 2010.*

### EC flip-flops on own law

Breaching the law on political parties' registration, the Election Commission decided to give ruling Awami League and 16 other political parties two more months to submit their financial transaction reports. EC officials explained the decision as a step to "avert possible conflict" with the parties that did not submit their financial reports before deadline. According to the Political Parties' Registration Rules 2008, a party must have its financial transactions audited by a chartered accounting firm and submit a copy of the report to the commission by July 31. Although the deadline expired Saturday, the EC allowed the political parties to submit their report on Sunday, as July 31 was a public holiday. Of the 38 parties registered with the EC, only 21 including BNP, Jatiya Party and Jamaat-e-Islami have turned in their reports for the calendar year 2009. - *The Daily Star, August 4, 2010.*

### 4 Jamaat leaders in war trial dock

They are no stranger to court. They stood in the dock before. But their appearance at the International Crimes Tribunal marks a watershed. For it was the first time the four top Jamaat-e-Islami leaders were in court as accused in the long-awaited war crimes trial. Jamaat Ameer Motiur Rahman Nizami, Secretary General Ali Ahsan Mohammad Mojahid, Senior Assistant Secretaries General Mohammad Kamaruzzaman and Abdul Quader Molla were brought to the courtroom. During brief proceedings, the tribunal directed the prison authorities to keep them in custody until further orders in the first complaint case filed with it. The war crimes prosecution filed the case on July 25 under the International Crimes Tribunal Act, and prayed for arrest warrants against the four. In the case, they charged the Jamaat leaders with committing genocide and crimes against humanity and peace during the Liberation War in 1971. - *The Daily Star, August 3, 2010.*

### 5 acquitted of graft cases

The High Court acquitted former Jamaat-e-Islami lawmaker Shahjahan Chowdhury, Awami Svecchasebak League General Secretary Pankaj Debnath, and three others of corruption charges for which lower courts sentenced them to imprisonment for different terms. The three others acquitted are former power secretary ANH Akhter Hossain, Faisal Morshed Khan, son of former BNP foreign minister M Morshed Khan, and Mir Helal Uddin, son of BNP leader and former state minister Mir Mohammad Nasiruddin. An HC bench comprised of Justice Syed Muhammad Dastagir Husain and Justice AKM Zahurul Hoque acquitted the five in separate judgements in response to appeals filed by them against the verdicts of lower courts. Special courts set up during the tenure of caretaker government sentenced them in separate graft cases filed by the Anti-Corruption Commission. - *The Daily Star, August 3, 2010.*

### Report Aila steps in 20 days

The High Court (HC) directed the government to submit a report within 20 days on what steps it has taken for infrastructure developments at the Aila affected areas of the country. The bench also issued a rule upon the government to explain within four weeks why it should not be directed to take necessary steps for infrastructure development at Aila affected areas including repairing of its 1,742 kilometres of embankments and making a law for disaster management. A bench of the HC comprised of Justice AHM Shamsuddin Chowdhury Manik and Justice Sheikh Md Zakir Hossain passed the order following a writ petition filed as public interest litigation by advocate Shahidul Islam, a Supreme Court lawyer. - *The Daily Star, August 2, 2010.*

### Delwar, two other BNP leaders sued

A case was filed against three BNP leaders, including its secretary general, on charges of making threatening speech on July 25 to kill Prime Minister Sheikh Hasina. The accused are BNP Secretary General Khandaker Delwar Hossain, Rafiqul Islam Mia and Moazzem Hossain. Hazrat Moulana Mohammad Elias Hossain Bin Helali, president of Bangladesh Awami Ulema League Central Committee, filed the case with the Chief Metropolitan Magistrate's Court, Dhaka. The court also issued a summons asking the three leaders to appear before it on August 25, taking into cognisance the charges against the three for intimidating to kill the prime minister. - *The Daily Star, August 2, 2010.*

### 8 cheated job seekers return

The eight Bangladeshi jobseekers, whom an organised gang deserted in Malaysia with fake visas of New Zealand, returned home. The victims are Ruhul Amin, Abu Al-Razin, Santo Ghosh, Nesar Uddin, Abul Kashem, Rashed Hossain, Kamrul Islam and Abdul Rahim. "They [human traffickers] took us to Malaysia promising New Zealand visas from there. But they left us there with fake visas," said Ruhul Amin after arriving at Hazrat Shahjalal (R) International Airport. The victims had been conned out of Tk 60 lakh, which they managed by selling land and taking loan on high interest. Stranded from early June till yesterday, they lived on the money sent from home. Meanwhile, the jobseekers contacted Malaysian NGOs Tenganita and CARAM Asia in late June. These organisations verified the visas of New Zealand and found them to be forged. Helpless, the victims filed a case with Dang Wangi Police Station in Kuala Lumpur against traffickers Muazzem Hossain, Alam, Shikder Zakir alias Samrat and Delwar Hossain. - *The Daily Star, August 1, 2010.*

### Dear reader,

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