



HUMAN RIGHTS monitor



US: immigration detainees at risk of sexual abuse

Government should act quickly to increase protection, improve procedures

THE US government needs to strengthen its protection of people in immigration detention to prevent sexual abuse and to ensure justice for victims, Human Rights Watch said in a report released on August 25, 2010. The 24-page report, "Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention," describes documented incidents and allegations of abuse. It also discusses recent proposals by Immigration and Customs Enforcement (ICE) to address the issue. Human Rights Watch emphasised that the agency should make improvements swiftly to improve oversight of the entire detention system and ensure accountability. "ICE has finally recognised the need for stronger protection of people in detention against sexual abuse, but it needs to play catch up quickly," said Meghan Rhoad, women's rights researcher at Human Rights Watch. "ICE needs to get new rules in place and make sure the rules have the teeth to ensure compliance from the hundreds of facilities across the detention system", Meghan added.

Human Rights Watch also expressed concern that the changes ICE proposes will have limited impact if ICE only makes changes to its standards. It has refused to issue bind-



ing legal regulations to address problems with detention conditions. ICE has proposed many of the policy changes since allegations emerged in May that a guard employed by a contractor, Corrections Corporation of America, at the T. Don Hutto immigration facility in Texas had sexually assaulted several detainees. The guard, who was arrested on August 19, 2010, on suspicion of official oppression and unlawful restraint, allegedly groped women while transporting them to an airport and a bus station where they were being released.

The proposed policy changes include prevention measures such as prohibiting guards from searching detainees of a different gender and setting restrictions on when guards may transport detainees of a different gender. ICE also plans to publish a revised detention standard on sexual assault that contains improvements in required medical procedures in rape cases and improved procedures for data collection about incidents of abuse. Human Rights Watch said that further policy improvements are needed to limit unnecessary searches of detainees and to ensure that victims of abuse are informed of the availability of visas that would allow them to stay in the US so that they can cooperate with law enforcement in criminal cases related to abuse. "Giving detention standards the force of law is critical for remedying a host of abuses," Rhoad said.

The frequency with which sexual assault, abuse, and harassment occur in detention is largely unknown. The Bureau of Justice Statistics collects some data on the problem that includes incidents in facilities run by or exclusively for ICE. But it does not tabulate the numbers of assaults on immigration detainees held in state and county jails where ICE rents a portion of the bed space. In its June 2009 report, the congressionally mandated National Prison Rape Elimination Commission said that immigrants in detention face particular challenges in reporting abuse, including a lack of information about rules governing staff conduct and fear of speaking out against the same authority that is seeking their deportation. In 2007, a trafficking victim was sexually assaulted in a Florida jail with which ICE had a contract to rent bed space for immigration detainees. Women detained on criminal charges who were housed in the same dormitory assaulted the trafficking victim while she was partially incapacitated by prescribed sedatives.

Key recommendations from the report include:

- Institute legally binding detention standards applicable across all types of immigration detention facilities.
- Ensure that reports of sexual abuse are thoroughly investigated.
- Improve the monitoring of compliance with detention standards by detention facilities.
- Expedite implementation of the detention standard on preventing and responding to sexual assault and abuse across all facilities holding ICE detainees.
- Require detention centers to facilitate on-site access for local community providers of support services for sexual assault survivors.
- Standardize procedures for ensuring access to appropriate relief measures for victims, including release from detention and visas to remain in the United States and assist law enforcement.
- Ensure that detainees are fully informed about their rights with respect to sexual assault, abuse, and harassment.
- Review the department's experience in prosecuting sexual assault and abuse in immigration detention with a view to improving procedures and prosecution rates.
- Pass legislation setting standards for detention conditions.

YOUR Advocate

This week your advocate is Barrister Omar Khan Joy of the Supreme Court of Bangladesh and Head of 'The Legal Counsel'. His professional interests include commercial law, corporate law, family law, land law, constitutional law, banking law, arbitration and intellectual property laws. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

Reader's query

I have been in a serious relationship with a person for five years. We were supposed to get married but due to some unavoidable circumstances we broke up. He has some personal photographs and videos, which were made while we were going out. Now after the break up he has posted my photos and videos all over the Internet, including facebook and two other websites I know of. Please help me. He has absolutely destroyed my reputation and I am extremely depressed and angry. He had no right to do that. Please give me a solution as soon as possible.

Broken  
Dhanmondi, Dhaka

Response

I am really sorry to know about the unwanted sufferings that you are currently going through. I understand that your ex-boyfriend is tarnishing your reputation by way of publishing your intimate photos and videos in the web. I must admit that it is not really a very easy matter for me to address, as the theoretical solution and the reality may not match. From a legal point of view, you certainly have legal remedies. By acting in the way you have described, your former boyfriend have violated many provisions of the Penal Code of Bangladesh meaning that he has apparently committed many crimes. Consequently, you may decide to file a criminal case against him and compel him to face the trial at court. If your allegations are provided, he is likely to face imprisonment. Alternatively, you may seek assistance from the law enforcing agencies, like police and also from RAB by way of filing General Diary to the police and then further complain to the RAB. We



would love to believe that the personnel from the law enforcing agencies will act fairly and professionally to help you out of the misery (and will not put you into further nuisance!)

However, though you have every right to file a case, it may not always be the best solution! I understand that in our social circumstances, filing the case or even sometime involving the police may put you into further social trouble. This is very sad but very true. Consequently, to think in a more practical way, you should immediately sit with him along with a mediator, who may be one of your close and common friends. You should ask him to remove the posted photographs and videos. Using a common friend is always a good way of dealing with such situations. If this does not work, you should notify your parents to handle the matter. Remember that your parents are always your best friend and they

are there to rescue you from the distress. They may be able to talk to the boy and he may then realize the gravity of his activities and may decide to act rationally. The option of going to the court is always open, but I always prefer this only as the last resort.

Meanwhile, you may try to report to the facebook administrator about the matter and request them to block the account containing the photographs. Similarly, you may try with the administrators of the other websites as well.

Though it is now too late for you, but I must say that prevention is better than cure. So, you should not have done something that could possibly put your reputation into serious jeopardy. Though this writing, I specially warn the teenagers to be aware of what they are doing. I hope that my advice will help you to tackle this problem.

For detailed query contact omar@legalcounselbd.com.

LAWS FOR everyday life

How to gift immovable property?

SYED GOUSEZZAMAN HAIDERI ALI

GIFT is one of the modes of transfer property. In every society and in every legal system there is a provision for making gift. Gift is a transfer of movable or immovable property made voluntarily and without any consideration. In Indian Subcontinent there are provisions of gift in:

- (1) Transfer of Property Act 1882
- (2) In Muslim Hanafi Law
- (3) In Muslim Shia Law
- (4) In Hindu Dayabhaga Law
- (5) In Hindu Mitakshara Law

Last week, we discussed the way of gift under Muslim Hanafi law. This week, the rest of the provisions are discussed below:

Gift according to Shia law

Provisions of gift under Shia Law are almost similar to Hanafi law except which are mentioned below.

- (1) Revocation of gift  
In Hanafi law a gift can be revoked only by the decree of a court but in Shia law the decree of a court is not necessary. A gift can be revoked only by the declaration of revocation by the donor. In Hanafi law gift between husband and wife is irrevocable but in Shia law gift between husband and wife is revocable. In Hanafi law gift is irrevocable when the donee is related to the donor within the prohibited degrees. In Shia law gift to any blood relation is irrevocable whether the donee is within the prohibited degrees or not.
- (2) Gift with a condition  
In Hanafi Law, when gift is made with condition then the gift will be valid and the condition will be void. Under Shia law if the condition is subsidiary to the gift then both the gift and the condition are valid. If the gift depends upon condition attached then both the gift and the condition will be void.
- (3) Gift with life interest  
Shia law recognises gift with life interest. In Hanafi law gift of life estate of the corpus of the property is not valid but the gift of life estate of usufruct, profit or interest of the property is valid.

Gift under Hindu law

Hindu law defines gift as the creation of another person's proprietary right after the extinction of one's own proprietary right in the subject matter of the gift. In Hindu Laws the essentials of a valid gift are:

- (1) an offer or declaration of gift by the donor,
- (2) an acceptance of gift by the donee,

(3) and delivery of possession of the subject matter of gift.

In Hindu personal law writing or registration of gift is not essential. Gift may be completed only by delivery of possession but, at present gift under Hindu Law can be effected only by section-123 of T.P. Act, where registration is compulsory.

Gift under Mitakshara School of Hindu law

Mitakshara School is prevalent in the western part of India. According to Mitakshara School a Hindu may dispose of his separate or self-acquired property by way of gift. But he cannot dispose



of his coparcenary interest by way of gift unless he is the sole surviving coparcener.

Gift under Dayabhaga School of Hindu law

Dayabhaga School of Hindu law is prevalent in the eastern part of India and in Bengal. According to Dayabhaga School a Hindu can dispose of his separate and self-acquired property and also his coparcenary interest by way of gift. But his coparcenary interest is subject to the claims of those who are entitled to be maintained by him.

The writer is an Advocate of the Supreme Court of Bangladesh.

RIGHTS corner

India: Landmark victory for indigenous rights

AMNESTY International has described the Indian government's decision to reject the bauxite mine project in Orissa's Niyamgiri Hills as a landmark victory for the human rights of Indigenous communities. India's Ministry of Environment and Forests on August 24, 2010 rejected the mine project proposed by a subsidiary of UK-based Vedanta Resources and the state-owned Orissa Mining Corporation, after finding that the project already extensively violates forest and environmental laws and would perpetrate abuses against the Dongria Kondh adivasi and other communities on the Hills. "The Dongria Kondh and other local communities have been struggling for years for

this decision, which is a very welcome one," said Amnesty International's Asia-Pacific Deputy Director, Madhu Malhotra. He added, "The companies and the Orissa government should now guarantee that they will not attempt to simply move the project to another site without ensuring adequate safeguards - they must ensure they will respect the human rights of Indigenous and local communities wherever the companies operate."

Amnesty International called on government authorities to establish a clear and transparent process that seeks the free, prior and informed consent of any Indigenous communities who may be affected by such projects, and respect their decision, in accordance with

national and international law. For eight years, the Dongria Kondh and other communities in Niyamgiri have been protesting against bauxite mining plans by Vedanta Resources subsidiary, Sterling Industries India, and the Orissa Mining Corporation. The communities were concerned that the project, which would have been situated on their traditional sacred lands and habitats, would result in violations of their rights as Indigenous peoples to water, food, health, work and other rights to protection of their culture and identity. "After years of struggle and visits by committees our voice has finally reached Delhi," a Dongria Kondh leader told Amnesty International.

LAW week



Court's ruling on Ershad era

After the Supreme Court's nullifying the fifth amendment to the country's constitution, the High Court will deliver a verdict on the seventh amendment that legitimises HM Ershad's military takeover and the acts under his military rule. An HC bench of Justice Shamsuddin Chowdhury Manik and Justice Sheikh Md Zakir Hossain fixed Thursday, August 26, 2010, for the verdict on a writ petition that challenged the seventh amendment to the constitution. The seventh amendment ratified the proclamation of martial law and other regulations, orders and instructions by Ershad between March 24, 1982, and November 10, 1986. Ershad, the then chief of army staff, declared himself the chief martial law administrator and imposed martial law on March 24, 1982. - The Daily Star, August 26, 2010.

Presidential ordinances to become scarce

Extensive promulgation of presidential ordinances during caretaker governments will no longer be possible, as the president's sweeping legislative authority, in absence of a parliament, has been declared void by the apex court of the country. The same will also be applicable for any outgoing elected government between the dissolution of a parliament and formation of a caretaker government, legal experts said. The original 1972 constitution allowed presidential ordinances on any urgent matter when the parliament would not be in session, and only to meet urgent financial expenditure from a consolidated fund, at the president's discretion, when the parliament would stand dissolved. - The Daily Star, August 26, 2010.

5th amendment verdict paves way for justice

The recent judgment of the Supreme Court cancelling the fifth amendment to the constitution has opened the door for challenging the legality of the controversial secret trial of Bir Uttam Colonel Abu Taher. Taher's relatives and the lawyer who moved the petition challenging the trial's legality narrated the background of their coming forward. They said the perspective has changed after the Supreme Court's historic verdict that declared illegal the governments and military rule and martial law regulations between the murder of Bangabandhu Sheikh Mujibur Rahman on August 15, 1975, and April 9, 1979. Khandker Mushtaque Ahmed, Abu Sadaat Mohammad Sayem and Maj Gen Ziaur Rahman led the governments during that period. "This changed perspective prompted us to correct the historic wrong of executing Teher in a farcical trial under a Martial Law Tribunal," Prof Anwar Hossain, brother of Col Taher, told The Daily Star at his Dhaka University home. - The Daily Star, August 25, 2010.

Man's battle restores people's right

Maqud Alam's fundamental right to property was infringed. He sought redress from all government departments concerned, but they did not quite extend a helping hand. So finally he embarked on a lengthy legal battle for his right, but could not move forward without challenging the 5th amendment to the country's constitution. His challenge to the legality of the 5th amendment paved the way for the Supreme Court Appellate Division's recent landmark ruling which declared that amendment illegal and void. And his victory in the 34-year long battle not only restored his family's ownership of the property at 11 Waizghat Road in the capital, but also restored the constitution's legal supremacy. The judgment declared illegal the first martial law regime that ushered in the 5th amendment. - The Daily Star, August 25, 2010.

Relics haunt constitution

The Supreme Court's recent nullification of the constitution's 5th amendment left the country's supreme charter with some remnant clauses which are now either contradictory or irrelevant. A study by the parliamentary special committee for constitutional amendment identified 11 articles for special attention when it reviews the entire constitution for necessary amendments. Some of those articles contain serious anomalies. The law justice and parliamentary affairs ministry, and Law Commission agreed with the study report prepared by the chair and co-chair of the special committee in association with the parliament secretariat, committee sources said. - The Daily Star, August 24, 2010.

Cops to arrest errant drivers

Law enforcers will make arrests for reckless driving and won't allow slow moving vehicles on highways across the country to avert road accidents. Against the backdrop of high rate of road crashes, the decisions came at a meeting styled "Checking Road Accidents" at the police headquarters in the capital yesterday. Contacted, the police department however didn't give any timeframe for the implementation of these decisions. Dhaka Metropolitan Police Commissioner AKM Shahidul Hoque told The Daily Star after the meeting that police will arrest drivers on charge of rash driving irrespective of any accident occurring or not. Deputy Commissioner (traffic) Selim Mohammad Jahangir who attended the meeting told The Daily Star that they would move the vehicle using a wrecker after arresting its driver. - The Daily Star, August 24, 2010.

SC's firm no to toxic ship

The Supreme Court directed Bangladesh Ship Breakers' Association (BSBA) to execute the High Court order to get all scrap ships decontaminated at source and outside Bangladesh territory. A full bench of the SC passed the order during hearing of an appeal filed by BSBA seeking a stay on the HC order. The BSBA sought to import toxic ships within the interim period until the government formulates guidelines for the ship-breaking yards. The HC division in its order on May 11 directed BSBA to have pre-cleaning certificate of decontamination before importing vessels into Bangladesh for breaking. "The order means the ship breakers would not be able to import toxic ships," said Syeda Rizwana Hasan, chief executive of the Bangladesh Environmental Lawyers' Association (BELA). - The Daily Star, August 23, 2010.

Veil can't be forced: HC

The High Court issued a suo moto order directing the government to ensure that no woman is forced to wear borkha (veil) or religious attires at the educational institutions and offices across the country. The court also ordered the government to ensure that the cultural activities and sports in the educational institutions are not restricted in any manner. An HC bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Sheikh Md Zakir Hossain came up with the order following a news item published in a Bangla daily yesterday with the headline "Rani Bhabani Mahila College - Borka Na Porle Ashte Mana" meaning the students of Rani Bhabani Women's College without veils are barred from entering the college. The news item said the Principal of the college in Natore Mozammel Haque, who joined the college two months ago, has stopped any cultural activities and sports at the college and restricted the entrance of the students (female) without borkha or veil to the college. - The Daily Star, August 23, 2010.

Dear reader,

You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those. Please send your mails, queries, and opinions to: LawDesk, The Daily Star 19 Karwan Bazar, Dhaka-1215; telephone: 8124944, 8124955, fax 8125155; email: dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net