

RIGHTS corner



Indian government should ensure torture law meets international standards

AMNESTY International has urged the Indian government to help end the routine torture of those held by police and prison authorities by ensuring the new Prevention of Torture Bill in India, 2010 meets international standards before adopting it.

The Bill, which is expected to be considered by the Select Committee of the Upper House (Rajya Sabha) of the Indian Parliament on 17 October, will address many forms of torture routinely employed by Indian police and prison officials. The Bill was passed by the Lower house (Lok Sabha) on 6 May 2010.

"If India is serious about its aspiration to be a regional and global power, it needs to address the issue of torture and ensure that the human rights of those it arrests and detains are protected," said Madhu Malhotra, Amnesty International's Asia-Pacific Deputy Programme Director.

Amnesty International said the Bill must be amended to bring it in line with international standards. For example, not limiting torture to practices causing physical suffering, not keeping a six-month deadline for making complaints about torture and annulling current provisions which allow law enforcement officials and security forces virtual immunity against prosecution for perpetrating torture.

Torture in state detention is endemic in India, involving a range of practices including shackling, beatings and the administration of electric shocks. Disadvantaged and marginalized groups including women, Dalits, Adivasis and suspected members of armed opposition groups are those most commonly abused.

According to official reports, 127 people died in police cus-



today in India in 2008-09, although the figure could be higher since several states failed to report such deaths.

Torture is also reportedly widespread in prisons. The National Human Rights Commission registered 1,596 complaints of torture of prisoners in 2008-09. The number of deaths due to torture is not routinely reported.

The vast majority of cases of torture inflicted on detained people in India are unlawful and punishable under current Indian law, however prosecutions are extremely rare.

Law enforcement personnel enjoy virtual immunity from prosecution for torture and other human rights abuses, and prosecutions remain sporadic and rare.

In "disturbed areas", such as Jammu and Kashmir and the north-eastern states where the Armed Forces Special Powers Act is in effect, Armed Forces personnel enjoy additional immunity protection and there is virtually no accountability for violations.

In 1996, the Indian Supreme Court issued specific guidelines to authorities safeguarding detainees' rights in all cases of arrest or detention, however they are seldom enforced.

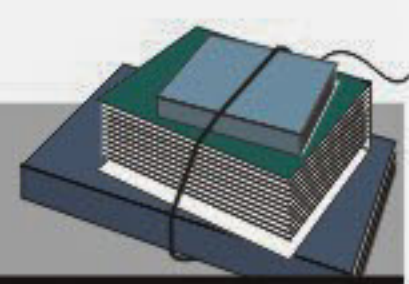
There is also a lack of effective systems to independently monitor the conduct of the authorities with regards to torture and other forms of mistreatment. The Prevention of Torture Bill in India, 2010 is meant to bring India closer in line with the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. India signed the Convention in 1997 but has yet to ratify it.

"The Indian government should amend and adopt this Bill to help address key issues, but more needs to be done to ensure India is able to meet international conventions against torture," said Madhu Malhotra.

"The Indian government further needs to ratify the UN Convention Against Torture ensuring people are no longer mistreated while they are detained."

Source: Amnesty International.

LAW lexicon



Equitable action - An action which may be brought for the purpose of restraining the threatened infliction of wrongs or injuries, and the prevention of threatened illegal action.

Equity - Justice administered according to fairness; the spirit or habit of fairness in dealing with other persons.

Equity, courts of - Courts which administer a legal remedy according to the system of equity, as distinguished from courts of common law.

Escheat - The process by which a deceased person's property goes to the state if no heir can be found.

Escrow - Money or a written instrument such as a deed that, by agreement between two parties, is held by a neutral third party (held in escrow) until all conditions of the agreement are met.

Esquire - In the United States the title commonly appended after the name of an attorney. In English law a title of dignity next above gentleman and below knight. Title also given to barristers at law and others. Abbreviated: Esq.

Estate - A person's property.

Estate tax - Generally, a tax on the privilege of transferring property to others after a person's death. In addition to federal estate taxes, many states have their own estate taxes.

Estoppel - An impediment that prevents a person from asserting or doing something contrary to his own previous assertion or act.

Et al - An abbreviation of the Latin et alii, meaning "and others," ordinarily used in lieu of listing all names of persons involved in a proceeding.

Et seq - An abbreviation for the Latin et sequentes, meaning "and the following," ordinarily used in referring to a section of statutes.

Source: Jurist International.

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 am married and have no children. I am 23 years old. Please help me get a divorce from my husband. I want to know the procedure regarding this issue. Please let me know whether I can divorce my husband. Will I get the 'mohor' if I divorce him? Does he need to know about my step? Will he have to sign papers or my sign's enough? Should I have to include any reason in the papers or anywhere else?

Girl23

Response

Thank you for your query. From the given queries, it appears that you have some strong reasons to divorce your husband. It is noteworthy that in Bangladesh family matters are governed by the personal law of each community to which the individual belongs to. Accordingly, the issues like Marriage and Divorce of Muslims are dealt with by the Muslim Law along with pertinent statutory laws of the land.

As far as your first query is concerned, right to give divorce is an inherent right of the husband. However, this right may be delegated by the husband to the wife or any other person. In recent times, it is a common phenomenon that husband delegates the right of divorce to divorce to the wife. You may find the delegation of such right in Clause 18 of your Kabinnama/ Nikahnama. Thus, exercising the said right you can divorce your husband. This is the simplest one and most frequently used one.

Alternatively, you can also divorce your husband under the provisions contained in the Dissolution of Muslim Marriage Act 1939 by resorting to the Court. A woman under the 1939 Act is entitled to obtain for the dissolution of a marriage on any one or more of the following grounds:

1. Where the whereabouts of the husband has not been known for a period of four years.
2. The husband has neglected or has failed to provide for her for maintenance for period of two years.
3. The husband has taken an additional wife in contravention of the provisions of the Muslim Family Law Ordinance 1961.
4. The husband has been sentenced to imprisonment for a period of seven years or upwards.
5. The husband has failed to perform without reasonable cause, his marital obligations for a period of three years.
6. The husband was impotent at the time of the marriage and continues to be an impotent.
7. The husband has been insane for a period of two years or is suffering from leprosy for a virulent venereal disease.
8. The wife, having been given in mar-



riage by her father or other guardian before attaining the age of 18 years, repudiated the marriage before attaining the age of 19 years, provided that the marriage has not been consummated.

9. The husband treats the wife with cruelty that is to say for example habitual assault, living a notorious life by the husband, forces the wife to do immoral acts, disposes of wife's property, restraining her from religious practices etc. Any Divorce has to be registered under the Muslim Marriages and Divorces (Registration) Act 1974.

In relation to your second query, you are certainly entitled to dower i.e. mohor. According to the Muslim Law, the right to get the dower is related with marriage and not with divorce. The amount of the dower is mentioned in the Nikahnama. The husband should not delay in paying the dower after marriage. Unfortunately, however, a malpractice has developed in our country that the husbands defer the payment of dowers and in many cases it remains unpaid. Consequently, in these cases the question of dower arises at the time of divorce. Dower has nothing to do with divorce and you have accrued such right at the time of your marriage.

Nevertheless, you may at your complete discretion decide to waive the right to dower (whether not paid fully or partly) as a consideration for a unilateral divorce initiated by you.

Consent of your husband is not required when the divorce process is initiated unilaterally, i.e. by you alone. You don't even have to give him any prior notification if you don't want to. The divorce notice will be served to our husband and hence the matter will be communicated to him through the said notice.

However, in case of a mutual divorce, the consent of both of you will automatically be there. In unilateral divorce, only the signature of the party initiating the same is needed. On the other hand, in mutual divorce, signatures of both the parties are required.

So far as your last question is concerned, please be informed that you have to state reason(s) while divorcing your husband. The reasons may or may not be mentioned in the Nikahnama or they may fall within the list mentioned above for the purpose of the 1939 Act. Nowadays, one of the common reasons provided by the parties is the lack of understanding between the husband and wife. This is suggested that unless you are in a real conflicting situation, you also mention this reason, as this will suffice.

I hope that the above shall adequately clarify your concerns. In case of a mutual divorce, you may simply consult with a Kazi. In case where the divorce is one sided and the husband is not willing to cooperate, you should consult with a lawyer in addition to the Kazi. If you have finalized your decision of divorce then it should not be a real challenge for you so far as the legality is concerned. Yet, I always advise the couple to think twice with a positive mindset to resolve the matrimonial problems amicably so that the need for divorce can wither away. But, even after giving proper thoughts and reasonable efforts, the things do not change or the causes for divorce remain, you should go for the divorce without wasting some more precious time of your life. We look forward to have happy and prosperous family lives for all.

For detailed query contact omar@legalcounselbd.com

HUMAN RIGHTS monitor

EU: Act on international crimes in Burma

GOVERNMENTS concerned about war crimes and crimes against humanity in Burma should move beyond mere condemnation and establish a United Nations commission of inquiry as follow-up to a UN expert's report on Burma released on October 18, 2010, Human Rights Watch said. In a letter to European Union High Representative Catherine Ashton, Human Rights Watch called for Ashton and the EU to back the report of the UN special rapporteur on Burma, Thomas Quintana, and show leadership in support of a commission of inquiry.

More than 12 countries have publicly supported a commission of inquiry into violations of international humanitarian and human rights law in Burma, including EU member states such as the United Kingdom, France, Netherlands, the Czech Republic, Slovakia, Ireland, as well as the United States and Canada. The EU is the lead sponsor of the annual Burma resolution at the UN General Assembly, which is currently in session in New York.

"Expressions of support for a UN commission of inquiry in Burma are mere lip service if not followed-up by action at the highest levels of the EU," said Lotte Leicht, EU director at Human Rights Watch. "A commission of inquiry needs determined diplomatic engagement by EU institutions, the 27 member states, and others to rally global support for a successful UN resolution."

In its letter, Human Rights Watch expressed disappointment with Ashton's apparent lack of interest in strong and timely EU action on a commission of inquiry in Burma. Human Rights Watch urged Ashton to provide leadership and coordinate demarches to mobilise support for a commission of inquiry. Based on past experience, such as establishing a

commission of inquiry for Darfur in Sudan, the EU's determination to act on accountability issues at the UN can produce results, Human Rights Watch said.

Burma's security forces have committed deliberate attacks on civilians, summary executions, sexual violence, torture, use of child soldiers, attacks on populations' food supplies, forced displacement

Leicht. "Burma's courageous civil society activists, monks, students, ethnic minorities, and opposition leaders have called for an international commission of inquiry. They won't get a democratic government on November 7, but the UN can take a first step to ensure justice and that it will no longer be cost-free to continue committing human rights abuses."

In his latest report released on October 18, Quintana expanded and strengthened his call for a commission of inquiry. His report states: "If the Government fails to assume this responsibility [to investigate international crimes], then the responsibility falls to the international community... [T]he United Nations can establish a commission of inquiry into crimes against humanity through resolutions adopted by the Human Rights Council, the General Assembly or the Security Council, or the Secretary-General could establish it on his own initiative. Justice and accountability are the very foundation of the United Nations system rooted in the Universal Declaration of Human Rights which calls for an international order in which the rights and freedoms set out in the Declaration can be fully realized. Failing to act on accountability in Myanmar will embolden the perpetrators of international crimes and further postpone long-overdue justice."

"Combating impunity for war crimes is one of the EU's stated priorities, and its 27 member states and the high representative should heed Quintana's call for justice by vigorously pursuing the establishment of an international commission of inquiry," said Leicht. "Victims of international crimes in Burma deserve nothing less."

Source: Human Rights Watch.



LAW week



Accuser now speaks for the accused

The accuser sided with the persons accused of manufacturing adulterated paracetamol syrup that caused the death of 76 children in 1991. Standing on the dock 16 years after hearing of the much-publicised case against Adflame Pharmaceuticals began, complainant Abul Khair Chowdhury, the then drug superintendent, spoke in favour of the five accused, three of them still on the run. A puzzled prosecution immediately sought an adjournment on the proceedings. The Drug Court of Judge Mohammad Abdul Majid adjourned cross-examination of the complainant till January 5 following the petition by prosecutor Mahmud Hossain Jahangir. Prosecutor Jahangir said, "I was stunned hearing the answer. I saw the case was going to be lost and I had no other option left but to seek an immediate adjournment." - The Daily Star, October 21, 2010.

CJ in disguise visits Dhaka lower courts

Chief Justice ABM Khairul Haque in guise of a general visitor made surprise visits to different lower courts in Dhaka to see their proceedings. ABM Khairul Haque, the 19th chief justice of the country, is the first CJ known to make such visits. Sources said the CJ went to the court area around 11:30am and visited different courtrooms of the Dhaka District and Sessions Judge, Metropolitan Sessions Judge, Chief Metropolitan Magistrate and Chief Judicial Magistrate. Supreme Court Registrar Ashraful Islam and others accompanying him were all in plain clothes. Most of the judges and magistrates while conducting their court's proceedings could not recognise the chief justice. At some courts, he sat on the sofa meant for the lawyers and litigants, the sources added. - The Daily Star, October 21, 2010.

Govt mulls law to restrict tree felling

The government is planning to formulate a law restricting wholesale felling of trees as part of its policy to mitigate climate change, Law Minister Shafique Ahmed has said. "There could be a provision that two trees have to be planted if one falls one tree," he said, emphasising that the environment must be protected to save mankind. Shafique was addressing the launching of a report on climate change discourses in Bangladesh at the National Press Club in the capital as the chief guest. Dushtha Shasthya Kendra (DSK), a local NGO, came up with the report. The minister observed that although no major research has been done to assess the impact of climate change on Bangladesh, the reality is, country's food production, water resources, health and livelihoods are already being affected and will continue to be affected. - The Daily Star, October 20, 2010.

Chairman of Law Commission resigns

One and a half years before the completion of his tenure, Bangladesh Law Commission chairman Justice MA Rashid resigned from his office citing personal reason. He was appointed to the commission on April 21, 2009 for a three-year term. The government accepted his resignation soon after the letter, dated October 06, 2010, was received by the secretary to the legislative and parliamentary affairs wing of the law ministry. Talking to The Daily Star, Law Minister Barrister Shafique Ahmed confirmed the resignation. Dr M Shah Alam, a member of the commission, is likely to become the acting chairman of the commission until the government appoints its new chief, sources at law ministry said. - The Daily Star, October 20, 2010.

Govt moves to dispel confusion on religion

Prime Minister Sheikh Hasina said her government would exchange views with the religion-based political parties to dispel confusion over constitution amendments. Presiding over the weekly cabinet meeting, she also said Bismillahir Rahmanir Rahim in the preamble to the constitution would stay, and so would Islam as state religion. Besides, the government would not seek any constitutional ban on religion-based politics, she told the meeting. The prime minister said she wants the Islamist parties to have a clear understanding of the government move regarding constitution amendments, cabinet sources said. However, Jamaat-e-Islami and Islami Oikya Jote, components of the BNP-led four-party alliance, would not be invited to the talks, a senior minister told The Daily Star. - The Daily Star, October 19, 2010.

Special court reads out charges against 623

As a special court resumed trial of 623 accused from 13 Rifle Battalion, the prosecutor told the court that the bloody mutiny at BDR Headquarters began from this battalion. He said sepoy Moin, one of the key planners of the mutiny, who first attempted to kill the then BDR director general during Darbar on February 25 last year, was from this battalion. Moin has been absconding since then. Prosecutor Lt Col Akhter Hamid Khan, who is also commanding officer of 13 Rifle Battalion, was placing charges against the accused before the court set up at the Darbar Hall in Pilkhana. If the jawans of this battalion would not assist sepoy Moin, the BDR officers did not have to lay down their lives, he said. After Lt Col Hamid's deposition the court started reading out specific charges against each of the accused. - The Daily Star, October 19, 2010.

AL tag used to grab land, river

A self-proclaimed ruling Awami League leader is setting up a brick kiln on a government land in the district's Baufal upazila, defying the local administration's orders. Nasim Ahmed, who claims to be the president of Bangladesh Awami Peshajibi League's central committee, began constructing the brickfield to the east of Gopalia Bazar launch terminal at Kachipara union around three weeks ago. Kazi Alamgir, organising secretary of Patuakhali district AL, said there is no such organisation affiliated with the party, and that they do not know anyone named Nasim Ahmed. Talking to The Daily Star last night, AL presidium member Obaidul Quader said, "Such phantom organisations have mushroomed since Awami League came to power. They use the party's name in illegal activities, and so legal actions must be taken against them." - The Daily Star, October 18, 2010.

Fake medicine factory busted

A team of Rapid Action Battalion yesterday busted a fake homeopathy medicine factory and arrested five people in this connection from Old Dhaka's Babu Bazar area. They also seized around 1,200 litres of rectified spirit from the spot. The arrestees are factory manager Mohammad Jasim Uddin, workers Nazrul Islam, Alamgir Hossain, Mizanur Rahman and Mohammad Mainuddin. Owner of the factory Hero Kamal, however, managed to escape arrest. A team of Rab-10, accompanied by Superintendent of Drug Administration Akib Hossain, raided the factory on the first floor of S Ahmed Market in Mitford. The team seized around 1500 bottles, each containing 100ml of rectified spirit, said Maj Harun-ur-Rashid, deputy director of the Rab unit. - The Daily Star, October 18, 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