

LAW REFORM

GLOBAL LAW UPDATES

Innocence Project in the pitfall of criminal justice system



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The New York based Innocence Project is a legal attempt that is committed to exonerate wrongly convicted people through the use of DNA testing and to reform the criminal justice system for preventing future injustice. The standard that must be met by the prosecution in criminal cases is 'beyond reasonable doubt'. But after the emergence and activism by the Innocence Project in the USA criminal justice system, it must now be accepted that guilt beyond reasonable doubt in the courtroom does not always equate to actual guilt. This is one of the potential answers for why the western thinkers ardently criticise imposition of death penalty and supports the abolition of it. The adversarial system relying largely upon the police investigation and the court having a standard of judging the accused 'beyond the doubt', at times pave the way for 'beyond the doubt' guilty dictum wrongfully. The evidence law has shown an alarming limitation in deciding the guilt of the accused.

One instance can be of Jennifer Thompson, a rape victim from USA whose testimony helped wrongfully convict Ronald Cotton, an innocent man, stated in the New York Times. "I studied every single detail on the rapist's face. I looked at his hairline; I looked for scars, for tattoos, for anything that would help

me identify him. When and if I survived the attack, I was going to make sure that he was put in prison and he was going to rot ... I knew this was the man. I was completely confident. I was sure ..." She now campaigns to highlight the potential problem of eyewitness identification. The court had reached the decision convicting the accused by the direct evidence from the victim herself which made the sense of 'beyond the doubt' yet resulted in a wrongful conviction. How may it now be accepted that guilt beyond reasonable doubt in the courtroom always equate to actual guilt? The reasons behind wrongful conviction may have played the role in wrongful convictions such as the use of informer evidence, overzealous or improper police investigation or prosecution, tunnel vision, incorrect scientific evidence, plea bargaining, false confessions, community pressure for conviction/media, race and even bad defense lawyering.

The project was established in 1992 at Benjamin Cardozo Law School, Yeshiva University, New York by its co-founders, Barry Scheck and Peter Neufeld. It is estimated that exonerations have occurred in approximately 40 percent of cases that the Innocence Project has been able to investigate till the stage of conclusion, as informally stated by Barry Scheck in 28 January 2003.

Ensuring applicability of the Inno-

cence Project in Bangladesh as well as in the South Asia is a difficult deal. There are instances of wrongful imprisonment in Bangladesh such as the case of Jaha Alam who was accused of misappropriating around BDT 18 crore from Sonali Bank between 2010 and 2011 while the real accused Abu Salek was roaming free. He spent three years in jail before being freed by the *suo moto* order passed by the High Court following a newspaper report. In another case, the victims, Abdul Quader and Mofizur Rahman, were freed in 1989 after serving three years in jail for cattle smuggling from India and were declared innocent after 29 years of being freed. The court or the government has not remedied the wrong in any way. There has been no question on whether they deserve compensation. These instances show that, while DNA testing may unearth the reality of wrongful conviction, the majority of claims of wrongful conviction may not involve DNA evidence. Furthermore, traditional re-investigation of cases is a long and arduous task, particularly in cases where DNA testing is not involved.

The joint venture of science and law to address the international criminal justice problems termed and operating as the Innocence Project is indeed a laudable project. But it also has its own limitations and challenges. It has time and again proved itself effective in

the context of the developed countries. Because the costs and voluntary efforts for the investigation and DNA testing for the exoneration of the wrongfully convicted are surely unbefitting for countries belonging to the third layer of the world. Rather, it is the genuine flaws underlying the criminal justice system and the evidence law that has to be reviewed with proper care. This doesn't negate the credibility of the work of the Innocence Project. The ethos of Innocence Project but needs to be included in the criminal justice system as a way of formal procedure and not merely as a voluntary project undertaken by academic or private personnel. Otherwise it will stay as the legal innovation of the developed countries and the benefit of the science of DNA will remain inaccessible to the people undergoing wrongful convictions around the world. For too long, the voices of the innocent in prisons have been lost amongst the common catch-cri that 'everyone in prison says they are innocent'. However, not everyone in prison does claim to be innocent. Amongst those who do, there will be those who truly are innocent but convicted. The Innocence Project is the pioneer of dismantling the *status quo* in this regard.

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New ILO Convention aims to protect workers from violence and harassment

Following the global #metoo movement, the International Labour Conference has adopted the Convention Concerning the Elimination of Violence and Harassment in the World of Work 2019 at its 108th session in Geneva.

In its preamble, the Convention recognises that violence and harassment in workplace is a human rights violation, a threat to equal opportunities and it adversely affects a person's psychological, physical and sexual health, dignity, and family as well as social environment. It places special emphasis on gender-based violence, acknowledging that harassment and violence affects women and girls disproportionately and prevents them from accessing, remaining and advancing in the labour market. The Convention advocates for an inclusive, integrated and gender-responsive approach to tackling and ending gender-based violence and harassment at work and recognises the intersectional and multi-faceted forms of discrimination.

The Convention defines violence and harassment as "a range of unacceptable behaviors and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment."

The provisions of the Convention protect all working persons irrespective of their contractual status. It also encompasses workers from both formal and informal sectors and applies to conducts in the course of work or arising out of it including work-related trips, social gatherings, commuting to and from work and work-related communication both physically and through information and communication media.

As a ratifying party to the Convention, a State is directed to implement, through national laws and



policies, the right to equality and non-discrimination in employment and occupation- being particularly sensitive to female workers or other vulnerable groups. In pursuance of such policies, workplace policies on violence and harassment must be introduced and employees must be provided with necessary training for their implementation. Member States must also ensure effective remedy for violence and harassment by including necessary measures including dispute resolution mechanisms within and outside the workplace, special courts and tribunals and legal, social and medical support. Privacy and confidentiality of the complainant, witness and other involved parties must also be ensured.

Although the Convention addresses gender and sex-based violence and discrimination and includes "other vulnerable groups" as a consideration in policymaking, it makes no express mention of the LGBTQ community, despite the insistence of campaigners which means the Convention inclines to the heteronormativity that women rights narrative is inclined to.

FROM LAW DESK (SOURCE: UN.ORG).

YOUR ADVOCATE



LEGAL REMEDY FOR EMAIL HACKS

This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

Query
I am a journalist working with a daily newspaper based in Dhaka. For official purposes, I maintain communication with different stakeholders through email. Very recently, my email account was hacked and I could not access it for four-five days. Later, I regained access with the help of one of my IT specialist friends. In this situation, can I sue anyone for hacking my email account? What is the legal procedure?

Kabir Moula, Dhaka

Response
Dear Mr. Moula
Thank you for your query. I can understand your situation regarding the hacking of your email account and in context to it, I can suggest some possible legal steps you can take against the hacker. Section 2(9) of the Information and Communication Technology (ICT) Act 2006 defines, electronic mail as information that is generated electronically and transmitted using internet. Causing disruption to the accessibility to your email account would definitely make the hacker liable under this Act.

Firstly, we need to look into Section 34(2) of Digital Security Act 2018, where hacking is defined as follows-

- (a) To destroy, change, format, cancel any information of the compute data storage or to reduce the value or suitability of it or damaging it in any other way, or
- (b) Without ownership or possession illegally entering and damaging any computer, server, computer network, or any

electric system.
Considering this, your offender or suspect can easily be held in front of Law for his action of having an illegal possession of your email account.

Furthermore, we need to see what the possible legal consequences the suspected offender can face under Section 34 (1) of Digital Security Act 2018. It states that hacking will be considered an offence and an offender will be sentenced to a term of imprisonment not exceeding 14 years or with fine not exceeding Tk.1 Crore or both. Previously, Section 56(1) of ICT Act would have been applied here, but due to the enforcement of the Digital Security Act, the previous provision of the ICT Act regarding the punishment of the hacker got abolished as stated in Section 61 of the Digital Security Act 2018.

So, it looks like under the Section 34 of the Digital Security Act, you will be able to sue the suspected hacker for his offence. For that, you have to lodge a written report or complaint to your local police station and they would take all the necessary steps regarding your situation.

Moreover, if you are living under the jurisdiction of Dhaka Metro Police (DMP), then you can easily contact their cyber security and crime division. They also have a Facebook page where you can leave a message and they will usually give you a prompt response.

I hope that the aforesaid information and advice answers your query.

BOOK REVIEW

Nuclear energy regulation and the environment

NAININ BEGUM

The very timely written book of Professor Abdullah Al Faruque on nuclear power titled *Nuclear Energy Regulation, Risk and the Environment*, published in 2018 by Routledge, makes an important contribution in the field of nuclear energy law which is still evolving. The book is divided into eleven chapters. Chapter one describes the importance and significance of nuclear energy. Alongside examining the risk factors associated with nuclear power, this chapter also elaborates its benefits and highlights the evolution of nuclear energy as a separate branch of international energy law. The chapter discusses the use of nuclear energy in the context of sustainable development and evaluates its role in addressing climate change. It also examines three significant nuclear accidents namely the Three Mile Island accident 1979, the Chernobyl accident 1986 and the Fukushima accident 2011 and their effects on the environment.

The theoretical relationship between international energy law and environmental law has been explained in chapter two. In particular, it examines how international environmental law instruments regulate nuclear activities. On the other hand, it also analyses the environmental provisions found in the treaties relating to nuclear energy.

Chapter three focuses on the international legal regime on non-proliferation of nuclear weapons and denuclearisation. It examines the effectiveness of the Treaty on Non-Proliferation of Nuclear Weapons (NPT) and the Comprehensive Test Ban Treaty (CTBT). It analyses different global and regional treaties on denuclearisation as well. The chapter also highlights international judicial developments on regulation of nuclear activities. It analyses the decisions of ICJ in nuclear test cases, the 1996 ICJ Advisory opinion on the legality of the threat or Use of Nuclear Weapons and the Marshall Island cases regarding compensation for

nuclear damage.

Nuclear waste management is a daunting task for countries with nuclear power plants. Chapter four examines both soft law and hard law instruments on the management of nuclear wastes. In particular, it discusses the IAEA's 1990 Code of Practice on the Transboundary Movement of Radioactive Waste, the Joint Convention on the Safety of Spent Fuel and Radioactive Waste Management 1997, EU Directives and the IAEA Standards on Management of nuclear wastes. It is observed that national regulatory frameworks on nuclear waste management must incorporate international standards developed by the IAEA and the Joint Convention.

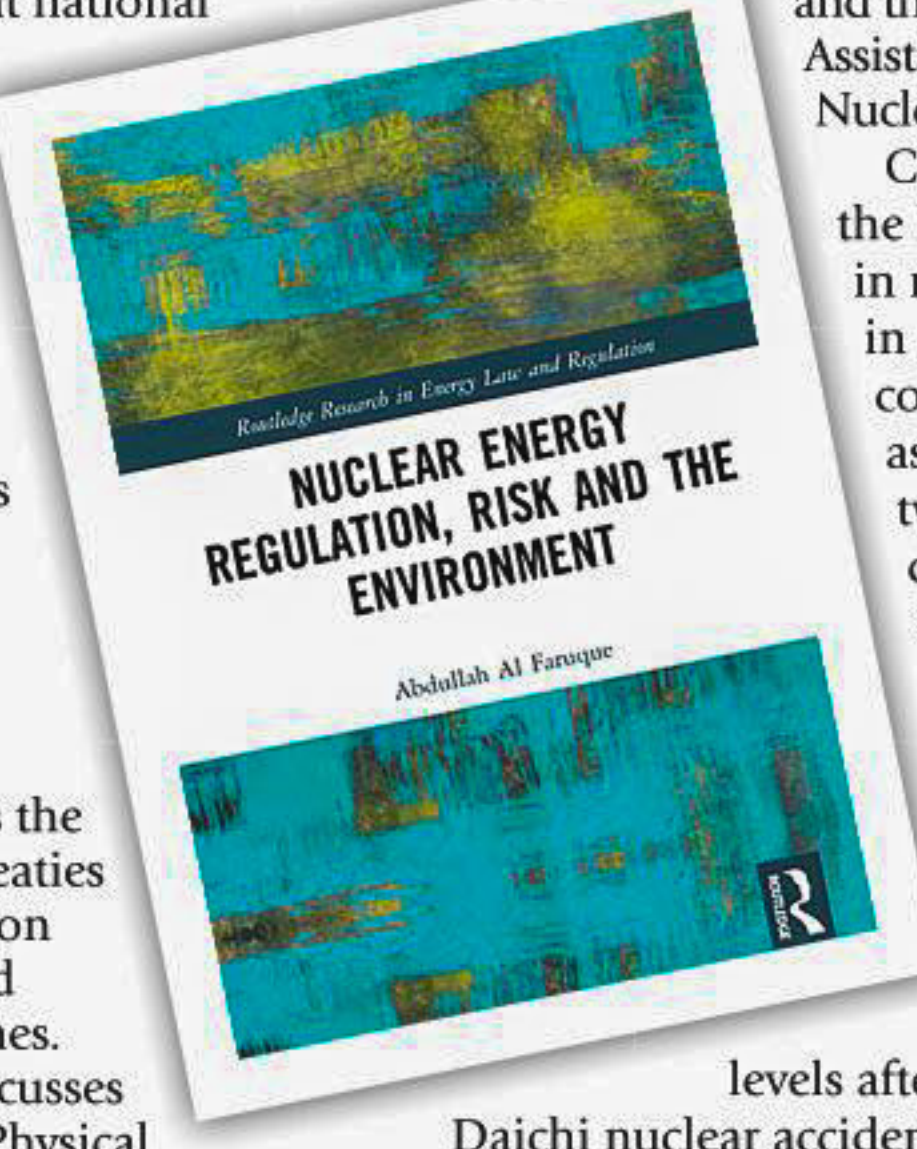
Chapter five considers the synergy between nuclear safety as well as security and discusses relevant international treaties. In relation to nuclear safety it analyses the provisions of relevant treaties such as the Convention on Nuclear Safety 1994, and the IAEA Safety Guidelines. Regarding security, it discusses the Convention on the Physical Protection of Nuclear Material 1980, the Convention for the Suppression of Acts of Nuclear Terrorism 2005, and the protocols to the Four Geneva Conventions of 1949. Given the inadequacy in existing international legal regime concerning nuclear safety, it is argued in this chapter that effective security measures of nuclear energy must be ensured at national level.

Chapter six identifies the regulatory issues and challenges of decommissioning of nuclear installations while chapter seven deals with international liability regime. In particular, it discusses the principles relating to liability of third party for nuclear accidents under the Paris Convention 1960, the Vienna Convention 1963, the

Joint Protocol of 1988, the Supplementary Convention of 1997 and two protocols. It is observed that although the current liability regime is much improved from its earlier version, its effectiveness is limited due to sparse participation of States in the international treaties. Chapter eight addresses the issues of notification, emergency preparedness and responses to a potential or actual nuclear accident and in this regard, it analyses the effectiveness of the Convention on Early Notification of a Nuclear Accident 1986 and the Convention on Assistance in the Case of Nuclear Accident 1986.

Chapter ten looks at the legislative trends in nuclear energy in two developed countries such as USA, UK and two developing countries- India and Bangladesh. Chapter eleven provides an overview of regulatory responses at global, regional and national levels after the Fukushima Daichi nuclear accident.

Given the dearth of literature on this issue, this book has added a very significant dimension to the discourse. The book is lucid, readable and marked by clarity and consistency in argument. This well researched and thought-provoking book is a most welcome addition to the growing literature on the subject. Since Bangladesh is entering into nuclear energy era and it has adopted regulatory framework on nuclear energy, this book will be useful for experts, professionals, academics and researchers in this field.



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