

Bangladeshi women and children are in Indian jail arbitrarily detained. Treaties between the countries are neglected by the officials

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To: NHRC Complaint <cr.nhrc@nic.in>

Cc: Home Ministry <hm@nic.in>, "Home Secretary Govt of W.B." <wb.secyhome@gmail.com>, DG BSF <edpdt@bsf.nic.in>, "DG & IGP, West Bengal Police." <dgpwestbengal@gmail.com>, SP Basirhat K P Barui <spbasirhatoffice@gmail.com>, ohchr-wgad@un.org

To
The Chairman,
National Human Rights Commission,
Manav Adhikar Bhawan,
Block-C, GPO Complex, INA,
New Delhi- 110023

18 April 2022

Respected Sir,

I am writing this complaint regarding detention of Bangladeshi woman and child in West Bengal and accusing and treating them as criminals under Foreigners Act, 1946. Since long MASUM is trying to bring the on-going malpractice into light by making numerous complaints to the NHRC and other relevant departments. The authorities including police and Border Security Force are not at all concerned to enquire into whether the persons including women and children crossed the border from Bangladesh to India were the victims of human trafficking or not. Here I am appending two case details for your perusal.

Case 1: In connection with **Swarupnagar Police Station Case no. 21/2022** dated 10.01.2022 under section 14 of Foreigners Act, the following Bangladeshi woman was arrested:

1) Ms. Jasmin Sheikh, daughter of Late Abdul Gaffar Sheikh, Aged - 30 years, residential address:- Village - Bagarhat, P.O Office – Gojalia Bazar, P.S – Kochua, District - Khulna, Bangladesh.

The victim is a Bangladeshi national, who was trying to enter India from Bangladesh near Bithari BOP on 09.01.2022 at around 10.35 P.M when she was apprehended by 'E' Coy, BSF personnel attached with 112 Battalion, Bithari BSF BOP and on 10.01.2022 at around 8:35 P.M handed over to the Swarupnagar Police Station. The victim was produced before the Basirhat ACJM court on 11.01.2022 and routinely sent to the Dum Dum Central Correctional Home for 14-day jail custody. She regularly come to Durgapur, West Bengal in search of job with the help of the both side local touts. Last time with the help of the local tout she went to Bangladesh to meet her mother. She was illegally detained more than 24 hrs by the BSF and police personnel attached with 112 Battalion of Bithari BSF BOP and police of Swarupnagar PS. **It is unknown why the victim woman was detained in the custody of BSF without handed over to police for about 22 hours!**

Case 2: In connection with **Basirhat Police Station Case no. 22/22** dated 10.01.2022 under section 14 of Foreigners Act, the following Bangladeshi women and children were arrested:

- 1) Ms. Sahida Khatun, wife of Moshi Laskar, age- 35 years, residential address: - Village- Singha, Post Office – Keral Kota, PS – Kolaroa, District - Satkhira, Bangladesh along with her child namely Mikail Laskar, Aged 9 years.
- 2) Ms. Ruksana Khatun, wife of Sirajul Islam, age- 30 years, residential address: - Village and Post Office - Khodey, PS – Kolaroa, District - Satkhira, Bangladesh along with her child namely Sohana Khatun, Aged 10 years.
- 3) Master Jaffar Iqbal (16 years) son of Saha Alam Gazi of village Kolatopi, Koloroa, Satkhira

The victims are Bangladeshi nationals, who were trying to enter India from Bangladesh on 10.01.2022 at around 5:15 A.M when they were apprehended by 'G' Coy, BSF personnel attached with 153 Battalion, Ghojadanga BSF BOP and handed over to the Basirhat Police Station. At 4.35 pm, same day BSF handed over the victims to Basirhat PS. The victims were produced before the Basirhat ACJM court on 11.01.2022 and sent to the Dum Dum Central Correctional Home for 14-day jail custody.

Our fact finding reveals that the arrested Bangladeshi women and children entered India for the purpose of working in India as they are terribly poverty-stricken people with no jobs in Bangladesh. In several other instances they also enter India for the purpose of medical treatment as there are limited facilities in Bangladesh. Most of them work as domestic helper, construction worker and hotel workers in various locations of India. The victims are either trying to enter India through the border or return to their home in Bangladesh with the help of local touts, involved in cross

border illegal movements (both side of the border), when they are being arrested by the Border Security Force (BSF) personnel. These touts / middlemen / *DHURS* are operating in connivance with border guards of both sides, India and Bangladesh. The Bangladeshi persons arrested were treated as accused under the Foreigners Act and no attempt is being taken up by the police or the concerned court to ascertain whether they were the victims of human trafficking or not. Such approach of the criminal justice system is against the advisory issued by the Government of India vide office memorandum No. 14051/14/2011-F.VI of Ministry of Home Affairs (Foreigners Division) Government of India Dated 1st May, 2012 clearly states as “(IV) it is seen that in general, the foreign victims of human trafficking are found without valid passport or visa. If, after investigation, the woman or child is found to be a victim, she should not be prosecuted under the Foreigners Act. If the investigation reveals that she did not come to India or did not indulge in crime out of her own free will, the State Government / UT Administration may not file a charge sheet against the victim. If the charge sheet has already been filed under the Foreigners Act and other relevant laws of the land, steps may be taken to withdraw the case from prosecution so far as the victim is concerned. Immediate action may be taken to furnish the details of such victims to the Ministry of External Affairs (Consular Division), Patiala House, New Delhi so as to ensure that the person concerned is repatriated to the country of her origin through diplomatic channels” and (v) During the interim period, pending repatriation, the victim may be taken care of in an appropriate children’s home, or “Ujjawala” home or appropriate shelter home either of the State Government concerned or of any NGO aided by the Government of India / State Government.’

This approach is also violating the Article 6, 7, 8, 11 and 12 of the MOU between The Government of the Republic of India and The Government of the People’s Republic of Bangladesh on Bilateral Cooperation for Preventing of Human Trafficking especially trafficking in Women and Children; signed by both countries on 30th May 2015.

The blindfolded system routinely followed by the various stakeholders of our criminal justice administration should be stopped. The treaty signed by India and Bangladesh on 6 June 2015 should be honoured by all.

I also want to mention that State agencies should pay respect to Constitution of India, in Article 51(c).

The present complaint reflects that the law enforcing agency by arresting the above stated persons and implicating them under the Foreigners Act as accused persons acted mechanically without giving any importance to legitimate entitlements of those arrested persons.

The incidents are not only violating the advisory of Government of India but in violation of Goal Number 16 of Sustainable Development Goals of UN, Government of India is a party to set the goals and obliged to adhere the same.

Under the circumstances I would request your authority to intervene in this present complaint and consider the following demands of justice for the victims: -

- The whole matter must be investigated by one neutral investigating authority.
- The concerned authorities must be directed to hold an inquiry in compliance with the treaties, MOUs with Bangladesh and advisory issued by the Government of India vide office memorandum No. 14051/14/2011-F.VI of Ministry of Home Affairs (Foreigners Division) Government of India Dated 1st May, 2012 and pending the inquiry the victim women and children must not be treated as accused.
- The victim persons including children should be immediately repatriated to their own country and prosecution launched against them should be withdrawn at the earliest.
- The BSF police and lower judiciary of the State of West Bengal be sensitized to prevent human trafficking. NHRC should come forward to check the systematic violation.

Thanking you
Yours truly

Kirity Roy
Secretary, MASUM

Accused Challan

In the Court of Ld. ACIM at Basirhat, North 24 Parganas

(Through GRO Basirhat Court)

Ref: Swarnapnagar PS Case No-21/2022, Date-10.01.2022, U/S 188 IPC & 12 PP Act & 14 Foreigners Act.

Name of accused persons:-

1. Tasmin Sheikh (30 Yrs) D/O-Late Abdul Gaffar Sheikh of Vill-Bagarhat, PO-Gojalla Bazar, PS-Kochua, Dist-Khulna (Bangladesh). 2] Kabirul Mondal (35 Yrs) S/O-Late Golam Nabi Mondal of Vill-Dogachhla, PO-Paddapukur, PS-Ashe Nagar, Dist-North 24 Parganas (WB)

Escort party:-

(1) 12/10/20 Kabirul Mondal.

(2) 12/10/20 Fulan Biswas

CSB

Submitted
-Asst. Akhman Soren
S/O Swarnapnagar PS.
dt - 11/01/22