HUMAN TRAFFICKING: REVIEW OF THE RESPECTIVE ACT AND ITS ENFORCEMENT IN BANGLADESH

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Abstract: Trafficking of human being is both a cause and consequence of the violation of human rights. In the modern world, the consequences of trafficking are devastating to its victim and the society. Human Trafficking has become a serious issue in Bangladesh resulting in terrible and sometimes horrifying consequences. This article was made to understand the anti-trafficking law. The objective of this article is to find out the way to overcome the ambiguities and make the mechanisms more functional in dealing with human trafficking related matters and cases. I also tried to point out the reasons behind becoming a victim of human trafficking with relevant case studies and to create awareness on that issue. I hope my discussions, researches and analysis can help our people aware and to prevent the human trafficking in our country even if it is very few. Only then I shall feel I am succeeded.

Keywords: Human Trafficking, Labour Exploitation, Fraudulent Migration, Bangladesh, Constitution Provisions, Convention, Anti-Trafficking Legislations, Human Trafficking Deterrence and Suppression Act 2012.

I. INTRODUCTION

Human trafficking is widespread contemporary problem. Traditional approaches are trying to prevent human trafficking. Human trafficking has not come to represent only the transit of its victims; they are also trafficked for labour exploitation, for marriage, for begging, for service as child soldiers, and for their organs [1]. In whatever form it may happen, it is inextricably linked with forced, fraudulent or involuntary migration or movement of people, and the end-object of this crime is commercial sexual work, forced labour, prostitution, or other forms of exploitation. Migration flows are enormous, and this illicit trade is hidden within the massive movement of people [2]. Supply and demand have created a flourishing business for traffickers. Traffickers choose to trade in humans; because there are low start-up costs, minimal risks, high profits, and large demand [1]. Human smugglers and traffickers are not always motivated exclusively by profit. Some consciously engage in this activity to fund a terrorist group, a guerilla movement, or an insurgency. Others trade in people to provide suicide bombers [2].

II. PRESENT SITUATION IN BANGLADESH:

Bangladesh in recent years has turned out to be a country of both transit and destination [3]. Bangladesh is primarily a source country for human trafficking with poor and disadvantaged Bangladesh is often being trafficked to India, Pakistan, and the Middle East for different kinds of bonded labour, prostitution, and sex slavery [6]. Trafficking has expanded because the transportation infrastructure is there and transportation costs have declined [2]. It goes without saying, therefore, in the absence of proper measures to address poverty, unemployment and violence against women and in the absence of proper structures to facilitate lawful migration, aspiring people who are willing to migrate for a better life will continue to be vulnerable to trafficking. In spite of having a separate special comprehensive anti-trafficking legislation, Bangladesh continues to be ranked Tier 2 by the United States State Department Trafficking in Persons Report [5]. Violations are more frequent when the requirement of future victims does not depend on the treatment of previous victims trafficking. The trade in human beings also operates differently across region depending on the cultural, historical and political contexts and traditions of trade [6].

2.1 Constitutional provisions and obligations on trafficking:

Human trafficking violates the rule of law, threatening national jurisdictions and International law. The Constitution of Bangladesh mandates the establishment of a society based on the rule of law, justice, and of respect for human dignity and worth of all persons. The Constitution bans forced and bonded labour in article 34(1). Article 14 stated that "it shall be a fundamental responsibility of the State to emancipate the toiling masses the peasants and workers and backward sections of the people from all forms of exploitation." Article 18(2) imposes a duty upon the state to adopt effective measures to prevent prostitution. Regarding repatriation of victims, article 31 of the Constitution guarantees every citizen the right to enjoy the protection of law wherever they may be. The obligation of Bangladesh for repatriation of trafficked victims is very much implied in the fundamental rights provision of the Constitution of Bangladesh. With spirit of the Constitution, the High Court Division (HCD) of the Supreme Court issued a verdict upon the Government to repatriate a trafficked girl from Kolkata to Bangladesh [7]. So it can be said that the Constitution guarantees a number of fundamental human rights from article 27 to 44 which

provide for an obligation for the state to prevent violations of human rights in any form, including human trafficking.

2.2 Legal enactments against trafficking:
The Ministry of Home Affairs has been in the lead role of coordinating counter trafficking activities. Other relevant ministries are also actively engaged in counter trafficking activities and are extending their cooperation to the Ministry of Home Affairs [8]. However, laws alone cannot be the only solution to combat human trafficking. There is the need for other continuing actions for proper implementing the existing laws.

Apart from the constitutional basis, a number of statutes and policies together provide for the legal regime against trafficking in human beings. The recently enacted statute Human Trafficking Deterrence and suppression Act (HTDSA) 2012 provides the most comprehensive legislative framework for the prevention of trafficking, prosecution of traffickers and the treatment or protection of actual and potential victims of human trafficking. Other major laws within the anti-trafficking legal regime include: the Emigration Ordinance 1982, the Penal Code 1860, the Children Act 1974, the Bangladesh Passport Order 1973, the Passports Act 1920, the Passport (Offences) Act 1952, and the Bangladesh Labour Act 2006. The HTSDA includes some provisions to mitigate some of the identified problems which are supplementary to the Evidence Act 1972 and the Code of Criminal Procedure 1898. Prior to the enactment of the HTDSA, there were two pieces of domestic legislation that specifically addressed trafficking in persons: The Suppression of Immoral Trafficking Act 1933 and The Women and Children Repression Prevention Act (WCRPA) 2000 (amended as 2003).

2.3 Narrative discussion on the HTDSA 2012:
The parliament of Bangladesh passed the HTDSA 2012. This is the first law in Bangladesh, to some extent, also in South Asia, to include labour trafficking. The new statute provides for accountability of the government and non-public organizations that would be undertaking activities under the law. The statute lays down for private public partnership for its implementation and sets out a number of principles for implementation. It provides the following basic features:

- Trafficking has been defined in compliance with international and regional standards
- Abatement of trafficking has been defined as an offence
- Gender neutral law
- Burden of proof of guilt has been imposed upon the accused
- Improved investigation systems
- Establishment of separate tribunals
- Women, children, and disabled persons friendly law
- Admissibility of electronically recorded evidence
- Admissibility of foreign documents as evidence
- Protection order for the victims and witnesses
- Safe home facility
- Repatriation, rehabilitation and re-integration mechanisms
- Financial aid for survivors and recognition of Right to Compensation
- Provision for mutual legal assistance in between recipient and sending country
- Establishment of formation of Human Trafficking Commission
- Corporate liability and doctrine of strict liability has been recognized [9].

The Salient Features of the HTDSA are as follows:

- Section 3 of the HTDSA provides an inclusive and specific definition of human trafficking, meaning trafficking of men, women, or children and for the purpose of any exploitation and section 2(15) gives a non-exhaustive list of actions that would be considered “exploitation.”
- Sections 6 and 7 of the HTDSA provides for stern punishment for the trafficking offence (e.g. death penalty when the offence is in the form of organized crime and imprisonment for life in case of other types of the crime) and provides for ancillary offences (to stop demand side of trafficking).
- Section 5 of the HTDSA provides for the extra-territorial application of the law when the victims or the perpetrators are Bangladeshi nationals and lists trafficking offences as an extraditable offence.
- Sections 21-22 and 27-30 of the HTDSA provide for special Tribunals for the prompt trial of trafficking offence(s) having wide powers.
- Sections 32-40 of the HTDSA describe a package of protective measures mandated for the protection of victims and survivors: identification of victims, rescue, repatriation, rehabilitation, and reintegration.
- Under section 41 of the HTDSA, the Government can sign Memorandum of Understanding or Agreements with the other States where the victims of human trafficking, witnesses, money recovered or received out of the offences are present or probable to be present [9].
- Under section 47 of the HTDSA, Suppression of Immoral Traffic Act 1933 and sections 5 and 6 of WCRPA have been omitted. Section

47(2) violates the stringent provision of Article 35 of the Constitution which prohibits the *ex-post-facto* effect of any legislation. So, the constitutionality of section 47(2) can easily be challenge in the HCD of the Supreme Court of Bangladesh and any such challenge will make every case pending under the Act stayed till the further direction of HCD [10].

III. INVOLVEMENT OF BANGLADESH WITH THE WORLD TO COMBAT TRAFFICKING:

Internationally, trafficking was also recognized as emerging law enforcement and human rights issue [11]. Bangladesh has also made commitments at the international level to combat human trafficking. Bangladesh ratified the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) 1979; Bangladesh participated in the First World Congress against Commercial Sexual Exploitation of Children held in Stockholm in 1996 and the Fourth World Conference on Women held in Beijing in 1995. At the regional level, Bangladesh demonstrated its commitment to combat human trafficking by joining the Third SAARC Ministerial meeting on Children held in Rawalpindi in 1996. Bangladesh has assumed obligations to effectively prevent and prosecute the offence of trafficking in children and women under the SAARC Anti-Trafficking Convention 2000 and certain other international instruments which are as follows:

- The Convention for the Suppression of the Trafficked in Persons and of the Exploitation of the Prostitution of Others 1949.
- The Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices Similar to Slavery 1956.
- The ILO Convention (No. 182) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 1999.
- The ILO Forced Labour Convention (No. 29) on Forced or Compulsory Labour 1930.

Moreover, on 13 July 2011, the Government has ratified the UN Convention against Transnational Organized Crime, 2000. Bangladesh has also recently ratified another ancillary international instrument, namely, the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990. Ratification of this Convention is sure to have a positive impact on Bangladesh's efforts to prevent and combat human trafficking. Further, the most notable anti-trafficking instrument, the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, 2000 (Palermo Protocol) is currently ratified [12].

IV. CASE STUDIES UNDER REGARDING ACT:

4.1 Domestic Sex Trafficking

A girl Sondari Akhter Sumi (fake name) aged about 14 years came to a connection with a woman (dalal) while she was searching for a job in Dhaka. Fraudulently she was sold at Rothkhola brothel in Faridpur. One Momotaz Begum (sardarni) bought her for ten thousand taka from that dalal woman and detained her at brothel. Sundary was often forced to engage in prostitution. She would be tortured mercilessly if refused to do the immoral act. One day Sonduri Akhter contacted her uncle Jalal through one client's mobile. Sonduri's uncle Jalal contacted Bangladesh National Women Lawyers' Association (BNWLA). With the assistance of BNWLA, local police force rescued Sundary and a case was filed on 2 January 2012 under section 6(2)/7/11 of Human Trafficking Suppression and Deterrence Ordinance 2011 with Kotowali police station. Police arrested accused Momtaz Begum in connection with this case. This was the first case filed under the Human Trafficking Suppression and Deterrence Ordinance 2011 [13].

4.2 Domestic child trafficking:

Rina Begum (fake name) aged about 18 years was given birth a male child at 10.02.2016. In the next morning of 11 February 2016 around 10 a.m. she was waiting on a road in Shahjahanpur (Dhaka) for a bus to go to her native village Gazipur with her newly born child. At that moment a man and woman came and introduced them as husband-wife to her. The woman said her name is Salma Akter (32) and the man is Saiful Islam. They were asking to Rina Begum about the child and wanted to know whose child is he. They also said to her that, "You are a poor lady. You do not have enough money to cherish him. Give him to us. We do not have any children. We will grow him up so well and educate him properly." During the conversation Salma Akter took the child in her lap. In a stage, they both leave that place very tactfully with the child and without consent of Rina Begum. Later Rina Begum wrote a complaint to the RAB and urged to find out and rescue her missing child. Being informed of her written complaint, RAB gathered information from their secret source about a human trafficker gang that staying at Shahjahanpur with a newly born child. On 12 February 2016 RAB raided there and arrested some people of the gang and also rescued a three days old baby boy. After more interrogation they confessed that they grabbed the child for trafficking on 11 February 2016. They gave description of the place from where they were stolen the baby. RAB understood that the baby was stolen from exactly the same road where Rina Begum's child was stolen. Accused were found as some active members of a human trafficking gang and they have been trafficking child since a long time. On 13

February 2016 the victim filed a case in Shahjahanpur police station under section 8/10(2) of the HTDSA 2012. Trafficking gang members moves around in our society as normal citizens. It is so difficult to figure them out because they are well skilled to manipulate people. Sometimes it is possible to catch or arrest the traffickers and bring back the children safely. But in common grounds they lost forever.

4.3 Domestic sex trafficking:

According to secret information, police found out some illegal activities are occurring in a house of Uttara (Sector-7) since a long time. Illegal activities included taking and dealing in drugs like alcohol, weeds, yaba tablets etc. and prostitution; sexually exploitation on girls and women. After getting the information, police raided there and arrested all. After interrogation the arrested, police got the information that Shafiqul Islam (30) brought girls and then he locked them forcefully to entertain different people for money through prostitution. They also used those girls and women for their own entertainment. If anybody refused to do such prostitution, they tortured them even physically. A case was filed on 8 April 2015 at Uttara East police station under Section 11/12 (1) of HTDSA 2012. All the convicts were arrested and sent to the learned court for trail.

In our society, mostly in the city area landlords let their rentable houses or apartments to completely unknown family or a person or a group of persons. They do not even check identifications of those tenants. Criminals take advantage of this. Their criminal activities keep going under the mask of innocent tenants. The above mentioned case is very good example for describing the danger.

4.4 International labour trafficking:

Insaan Ali (50), his nephews Alim Uddin and Kamal, Brother-In-Law Md. Shahnoor and two more people from his local area were paid Taka 12,90,000 and 7,50,000 on 22.02.09 and 3 April 2012 respectively to the No.1 arrested convict S.B. Wadud (33) for sending them abroad purpose. On 10 April 2015 the accused informed Insaan Ali over a phone call that only Shahnoor's visa and plane ticket had confirmed. They came to Dhaka from Tangail. After then, the accused took Shahnoor to Chittagong from Dhaka by bus and trying to send Shahnoor abroad by River but Shahnoor denied. He escaped from there and came back to the home. After hearing the real fact, Insaan Ali said the accused to send Shahnoor abroad by air but the accused refused and replied he could not send him by air and also threatened them to kill. Later, according to their complaint, RAB-1 (Uttara) raided and arrested the accused on 12 June 2015 from his residence and also recovered 72 passports from his wooden wardrobe. A case was filed with Dokkhinkhan police station under section 6(2)/8(1) of HTDSA 2012. The hearing of this case is continuing in the learned court.

Every country has its own legal procedures, migration or immigration policies, rules and regulations. Every responsible citizen should follow the rules to migrate or immigrate or travel abroad. Sometimes it is impossible to allow everyone for going abroad due to some issues about International or National limitations, bindings and obstacles. So that people will try illegal way to fulfill their purposes. As a result, they become victim of human trafficking, suffers in many ways including loss of lives. So, no one should take risk by adopting any illegal way, even how much it seems profitable.

4.5 International sex trafficking:

Rotna (fake name and aged about 23 years) and Meghla (32) worked together in a garment. They went out for their workplace on 5 April 2013, around 7 a.m. in the morning from their own residence. After 9 p.m. Rotna's mother Kohinoor Begum (40) noticed Rotna did not return home yet. So she made a call to Meghla's mobile phone. Meghla said to her that, they both could not return home because of political strike and they are staying at her In-Law's home. Till 7 April 2013 Kohinoor begum called several times in Meghla's mobile to know about her daughter, Meghla replied the same. In 7 April 2013 when Kohinoor Begum called once again in Meghla's mobile, Meghla informed her that Rotna got married with a boy whom she was in an affair named Milon and they went to Barishal. In the next day 8 April 2013, Meghla informed Kohinoor Begum that, Rotna has gone to the India with her husband Rubel alias Babu. There she got a job in a garment factory. Meghla also informed her that Rotna's new boss offered to pay 10,000 taka as her monthly salary. But Kohinoor Begum refused the offer very strictly and said to Meghla to bring her daughter back. Even she refused to receive Rotna's last salary which Meghna withdrew from the garments and trying to give her. Meanwhile, Meghla managed to make a conversation between Rotna and Kohinoor Begum over telephone in 9 April 2013 when Rotna was at India. Rotna said she will be returned home within 4-5 days. After 4-5 days later Meghla said Kohinoor Begum that she was going to India with two girls from Kamrangir Char and when she would return home, she brought Rotna back with her. In the meantime Rubel called in Kohinoor Begum's mobile phone and makes a demand of 10.000 taka to let her daughter back on 11.0413. Kohinoor Begum realized that her daughter has been a victim of human trafficking and trafficked in India within the period of time from 5 April 2013 to 11 April 2013 and filed a case with Hajaribag police station under section 7 of HTDSA 2012. Later the truth was found in victim's own statement. Victim said that she was tempted by their deceitful offers and trafficked to the India. She was even forced to do prostitution. When she has came to know about she was going to sell out in Two lacs taka, somehow she could manage to escape away from their grapple and

came back to Bangladesh in her home with the help of people. The case is under trial in the learned court. Women in every culture assume a significant role in human trafficking. But only in China has a woman been found at the top of a major transnational trafficking organization. Sister Ping was sentenced to thirty-five years' imprisonment by an American court for conspiracy to commit alien smuggling, other smuggling charges, and money laundering after many Chinese died on her vessel the *Golden Venture* off the East Coast of the United States [14].

4.6 State Vs. Anjali Debi Alias Monju Debi [15]

Anzali Debi alias Monju Debi (20), the Indian national, illegally entered into Bangladesh and apprehended by the mob at Pabna on 17 March 2002 while she was running away after lifting a child named Habib aged about 4 years. On interrogation, the said woman disclosed that she abducted the child for sending him abroad. Pabna Police Station took up the investigation of the case, submitted charge sheet against alleged accused under section 6(1) of WCRPA 2000 for child trafficking. At the end of trial, the learned Judge of the Nari-o-Shishu Nirjatan Daman Tribunal, Pabna, found Anjali guilty of the charge leveled against her and sentenced to death on 15 June 2005. Later Anjali moved to the High Court Division of the Supreme Court. Finally, as the charge was made against Anjali under improper law, she was set free, the impugned Judgment was declared set aside. The accused was acquitted from charge based on the following grounds:

- That the offence was attempt to abduct and this is not an offence under Women and Child Repression Prevention Act 2000 (amended as 2003).
- The prosecution case doesn't match with the spirit of Sec. 6(1) of the Women and Child Repression Prevention Act 2000 (amended as 2003) which defines child trafficking.
- That the Principle of Natural Justice speaks that when there are two parallel laws, harsh law should not be applied to an accused as the accused has the right to fair trial which cannot be possible under harsh law [16].

V. RECOMMENDATIONS:

Trafficking networks include both economically and politically motivated criminals. Different forms of violent political action are funded by human trafficking. Trafficking undermines democracy, rule of law, and accountability of governments. State officials such as border patrol members, customs officials, law enforcement officers, and members of the security apparatus are often trafficking facilitators, but they participate in this repression for personal gain and not in the interests of the employers. After surveying the several courts, it is clear that not so much case filed under this Act. Most of the time victims are not willing to file cases. If victims files case then witnesses don not present in the hearing, so finally justice is delayed. Sometimes traffickers will threaten the victim or the victim's family to withdraw the case. As a result, most trafficking cases are withdrawn before they ever reach trial. Therefore, adequate protection and safety should be ensured for the victims so that they can give evidence without fear. They must be kept in safe custody of a well-guarded rehabilitative institution. During a trial, the victims should be protected at all times and separated at all times from the accused. Multi-jurisdictional law enforcement personnel, lawyers, and an array of benefit providers must consider the varying levels of trauma the victim has endured and the victim's cultural background when addressing his or her needs. Victims should be put at the center of the case because of their importance to the prosecution. In fact, victim's cooperation was seen as essential to the success of the prosecution for many prosecutors. The life of trafficking victims turns to be complex and hard to restore their live. Trafficking victims die, become seriously ill, or are injured in the world each year as a result of the hazardous work conditions. For many who are impaired, there are no effective treatments, as they are psychologically damaged for life, suffering frequent nightmares and flashbacks and manifesting suicidal tendencies. In addition, there are some families who refuse to accept the survivors back due to fear of social stigma. Trafficked persons or children have special physical, emotional and mental health needs that need to be dealt with by someone with expertise in working with individuals who have undergone this type of trauma. But such expertise is still lacking in Bangladesh [17].

CONCLUSION:

Human trafficking is a phenomenon which undermines the value, worth, and dignity of the persons trafficked. Bangladesh has taken the problem of human trafficking seriously. Without a strong and effective legal regime, traffickers will continue to exploit and take advantage of the vulnerabilities of the poor and marginalized, especially women and children. Bangladesh has taken several important steps in its fight against human trafficking, most significantly the enactment of the HTDSA and Execute bilateral agreements between SAARC, Middle-Eastern, and other countries. But the result is no satisfactory. People awareness is necessary to combat the crime of human trafficking.

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