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দাপ্তরিক গোপনীয়তা আইন ও তথ্য-অধিকার

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Sexual Exploitation of Children: A Critical Analysis with Reference to Bangladeshi Law

Md. Abdur Rahim Mia*

1. Introduction

Child Sexual exploitation is a global problem and a serious violation of the human dignity of the child victims. The term '**sexual exploitation of children**' refers to criminal practices that demean, degrade and threaten the physical and psychosocial integrity of children, in particular, sexual abuse by an adult and remuneration in cash or kind to a child or third person(s). Prostitution, pornography, and trafficking for sexual purposes are three primary and interrelated forms of sexual exploitation of children. Other forms of commercial sexual exploitation of children include, but are not limited to, child sex tourism, and child marriages. All these practices violate the rights of children to liberty and security, privacy and integrity, health and in some cases, even the right to life. The Convention of the Rights of the Child (CRC) also guarantees children the specific right to be free from sexual abuse while in the care of guardians or caretakers,¹ and sexual abuse and exploitation in all its forms, including prostitution and pornography.² State parties undertake to ensure all of the rights embodied in the CRC by following children's best interest³ in implementing appropriate legislation⁴ and other measures which promote the recovery and reintegration of child victims.⁵ These rights are most obviously violated when children are sexually abused or exploited. They are also violated when state parties fail to take the necessary steps to punish offenders, reintegrate child victims and prevent sexual abuse and exploitation of children in the first instance. In this context, sexual abuse and exploitation of children is a sensitive issue in Bangladesh. The girls and boys are sexually exploited in many ways within and outside the house in Bangladesh. There are several laws, special laws like the Women & Children Repression Prevention Act, 2000 for the girl child's protection which can be regarded as a good initiative definitely. But still in Bangladesh the issue of sexual exploitation of children are unfolded. Besides vulnerability to life, children are victims of rape, sexual harassment and other forms of torture in Bangladesh. Almost 4 crore 24 lakh children are growing here with different types of psycho-social, insecurity, economic, political and other

* Assistant Professor, Department of Law & Justice, University of Rajshahi, Bangladesh.

¹ Convention of the Rights of the Child, Article- 19

² Ibid, Article- 34

³ Ibid, Article- 3

⁴ Ibid, Article- 4

⁵ Ibid, Article-39

forms of exploitation.⁶ Over the past few years, the incidence of the sexual exploitation of children in Bangladesh has increased.⁷ In addition to child prostitution, child pornography and child trafficking for sexual purposes, childhood marriage and traditional/customary laws contribute to the sexual exploitation of children. In some areas, rape and sexual harassment has led to an increase in trafficking. The sexual exploitation of children though quite prevalent in our country is not usually open to discussion. On the one hand, sexual exploitation is still regarded as a hidden issue in our society; on the other hand sexual practice is a very regular thing of human beings. The definition and the grounds of child sexual exploitation have been discussed in this Article. Some recommendation have been suggested in the conclusion to ensure the rights of children from sexual abuse and exploitation in Bangladesh after examination the related laws. This Article aims to discuss child exploitation with regard to prostitution, trafficking and pornography. It will be impossible to discuss all the areas of child exploitation in an article and therefore all other areas are left for discussion in other occasions.

2. Concept of 'child'

According to the CRC and its two Optional Protocols, a 'child', for purposes of the study, is any human being below the age of 18 years. While the CRC remains the most widely ratified human rights instrument to date, it is interesting that in many societies the upper age of childhood, marking entrance to adulthood, is much lower. This is also the situation in Bangladesh. According to the Nari O Shishu Nirjaton Domon Act, 2000, a child is defined as any person under 14 year of age⁸, whereas the Children's Act, 1974 defines a child as anyone under 16 years of age.⁹ Moreover, socially and culturally, upon reaching puberty most girls are viewed as women. According to the Penal Code, 1860, While an offence constitutes rape, age of the raped has been fixed at 14 years if she is not the wife of the rapist, below 13 years, if she is the wife of the rapist. Furthermore, another peculiar feature of this law is, punishment of the rapist also varies if the raped is not 12 years and she is the wife of the rapist.¹⁰ Meanwhile, according to the National Policy of the Children of Bangladesh, any one who is 17 years of age is a child.¹¹ The narrower definition of childhood up to 14 or 16 years of age depending on the law combined with gender discrimination has a negative impact

⁶ Sangbad Paribixman 2005, ed by Shahabuddin Nipu and Khan Md. Rabiul Alam, (Mass-line Printers, 1/15, Humayun Road, Dhaka, 2006), P. 118.

⁷ UNICEF. Commercial Sexual Exploitation and Sexual Abuse of Children in South Asia. 2001, p.12.

⁸ Nari O Shishu Nirjaton Domon Ain, 2000, Section- 2(k)

⁹ The Children's Act, 1974, Section-2(f)

¹⁰ The Penal Code 1860, Section 375

¹¹ Shahabuddin Nipu and M. Rabiul Alam Khan (ed), Sangdad Paribixman 2005, (Mass-line Printers, 1/15, Humayun Road, Dhaka, 2006), P.115

on the female child, particularly when she reaches puberty and is more likely to become vulnerable to sexual abuse and exploitation. It should be noted that most adolescents are also children (according to UNICEF and WHO definitions an adolescent is between 10 and 19 years of age). When the adolescent girl reaches puberty, which could be as early as 10 years of age, a drastic change takes place in the girl's life: whereas she may have previously freely mixed and played with boys, she now is likely to be restricted to her home, forced to wear a conservative *salwar kameez*. She is often no longer viewed as a child, but as a woman and moves straight into marriage even though she is unprepared, both psychologically and physically.¹² With respect to sexual abuse it appears that no age is a safe age. Children are always vulnerable, but the highest number of abuses occur in children from 10 to 14 years of age. In Bangladesh there remains vagueness as to the age of childhood.

3. Concept of Child Sexual exploitation

Child sexual exploitation involves practices by which a person, usually an adult, achieves sexual gratification, financial gain or advancement through the abuse or exploitation of a child's sexuality by abrogating that child's human rights to dignity, equality, autonomy, and physical and mental well-being, i.e. trafficking, prostitution, sex tourism, pornography, rape and sexual harassment. Sexual exploitation involves maximum benefits to the exploiter and an abrogation of the basic rights and dignity of the children.¹³ Those who profit from child sexual exploitation may be from a wide range of persons, including parents, family members, procurers, agents, community members—largely men, but also women.¹⁴ According to the UNICEF definition, 'sexual abuse' becomes sexual exploitation when a second party benefits—through a profit or through a *quid pro quo*—through sexual activity involving a child. This can include prostitution and child pornography. With regard to child 'sexual exploitation,' the child knows the organizers for example, the madams or pimps, but the 'customers' are often at least in the beginning strangers.¹⁵ Sexual exploitation is globally understood to include the following: trafficking in children for purposes of sexual exploitation, child sex tourism, distribution of pornographic material featuring children, sexual abuse rings, the exploitative use of a child in prostitution or other

¹² Jeffery, Roger and Basu, Alaka M (eds.) *Girls Schooling, Women's Autonomy and Fertility Change in South Asia*, (New Delhi: Sage Publications, 1996) pp.184-204.

¹³ Available at <http://caster.ssw.upenn.edu/~restes/CSEC.htm> (visited on 16th December 2005)

¹⁴ S C Singh 'Trafficking and Sexual Exploitation of Children: National and International Perspectives' Indian Journal of human Rights and Justice, Vol-2, (2006), Serials Publications, New Delhi (India), P.146

¹⁵ Turid Heiberg, *Commodities in stigma and shame: an international overview of Save the Children's work against Child Sexual Abuse and Exploitation* (Save the Children, 2001) p.13.

unlawful sexual practices.¹⁶ Most victims of child sexual exploitation in Bangladesh were brought to the city by someone from their village, most commonly a woman, with the promise of a job. After a few weeks of hardship in the streets these same women lured the children into the sex trade, as the easiest and fastest way of earning a living. Those who visited their homes usually told their families that they were employed as domestic workers. Research indicates that of those engaged in the sex trade:¹⁷

- (a) 68% were unwillingly forced into it;
- (b) 40% of the male sex workers willingly joined the sex trade after they were persuaded into homosexual activity with friends;
- (c) 47% of the female sex workers were sold to pimps. Whether they are brought into the sex trade willingly or unwillingly, a common perception is that once the children, both boys and girls, have been "spoiled", they are not accepted by society.

4. Different grounds of child sexual Exploitation in Bangladesh

There are 1.8 million children involved in sexual work in Bangladesh and sometimes that children involved in sexual work are treated as offenders, rather than victims, and that often they are held in prisons while their cases were being settled.¹⁸ Article 18 of Bangladesh Constitution, 1972, states that, 'state shall adopt effective measures to prevent prostitution and gambling.' In practice, however, forced sexual exploitation is maintained through coercion, physical force, emotional blackmail, economic deprivation, social isolation, and even threats of death. The majority of Bangladeshi children forced into prostitution are based in brothels, with a smaller number of girls exploited in hotel rooms.¹⁹

4.1 Child Prostitution in Bangladesh

In Bangladesh sexual exploitation on prostitution is the most prevalent type of violence against female children and adolescents. Many girls are forced into prostitution and must endure mental and physical abuse. According to BNWLA, poverty, illiteracy, child marriage, cultural practices, economic status, illegal migration and above all,

¹⁶ INCIDIN (1997), p. 13.

¹⁷ Economic and Social Commission for Asia and the Pacific Sexually Abused and Sexually Exploited Children and Youth in South Asia: A Qualitative Assessment of their Health Needs and Available Services', UNITED NATIONS (UNITED NATIONS PUBLICATION), New York, 1999, ST/ESCAP/2038

¹⁸ UNITED NATIONS Press release, 'Committee on the Rights of the Child', AFTERNOON 4 June 2007

¹⁹ Plan Bangladesh. *Children's Consultation – Bangladesh Report*. 2004. A full discussion on this issue can be found in Section 2.2.

girls' low status in society, encourage and sustain this exploitation.²⁰ Different grounds of child prostitution in Bangladesh are as follows-

• 4.1.1 Girls and boys being sexually exploited on the street

While all children are at risk of sexual abuse, children living on and off the street are particularly vulnerable to sexual abuse and exploitation. According to a 'conservative' estimate made in 1990 by Department of Social Services (DSS), there were 1.8 million street children living in urban areas in Bangladesh with a projected 3-4 million by 2000.²¹ Moreover, they are at high risk of being picked up by the police sent to a Vagrants' Homes. A survey of street children living in Khulna, Barisal and Jessore towns was undertaken by the DSS, Ministry of Social Welfare. 9% of the children reported being the target of sexual harassment by police.²² A report commissioned by Concern Bangladesh revealed that a common complaint of both girls and boys being sexually exploited on the streets is forcible rape and sex without payment.²³ Moreover, children being sexually exploited in street-based sex work had to share one-fifth of their income with police and *mastans* (musclemen) equally.²⁴ Most of the women had worked in other low-paying occupations previously: garments, domestic service, hotels or restaurants. CARE's peer educators mentioned that in the garment industry they worked long hours for a low salary and to secure and keep their jobs, many had to appease the recruiter; often through sex.²⁵ The girls who switched from the garment industry to street-based sex work admitted that they face problems of police and *mastans*, and have to pay informal taxes to various people, however, they still earn significantly more than they did before.²⁶ Some indicated that they go back to work in the garment industry when they are not able to get clients, indicating that there is movement between different types of employment.

4.1.2 Girls engaged in hotel-based prostitution

Findings from rapid assessments of hotel-based sex work taking place in Dhaka, Chittagong Barisal, Comilla and Rajshahi suggest a low prevalence of girls under 18 years of age engaged in hotel-based prostitution. Findings from Dhaka indicate that the

²⁰ UNIFEM. *Study on Analysis of the Laws Related to Trafficking and Sexual Exploitation against Women and Children*. 2004. p.11.

²¹ Department of Social Services, Ministry of Social Welfare, *A Review of Existing Services Relating to Street Children (Khulna, Barisal and Jessore)* Appropriate Resources for Improving Street Children's Environment (ARISE) BGD/97/028) December 1999, p. iv.

²² Department of Social Services (1999) p. 25.

²³ READ, *Need Assessment Survey of the Disadvantaged Women and Children in the Urban Areas of Bangladesh* (Dhaka: Concern Bangladesh, March 2000), p.vi.

²⁴ Ibid.

²⁵ UNAIDS Country Programme South Asia, 'SHAKTI A Brothel and Street-Based Sex Worker Project in Bangladesh' in *Female Sex Workers' Projects in South Asia DRAFT* (New Delhi, UNAIDS, no date) p.6.

²⁶ Ibid.

average age of the women is 21 years, with many starting after they reached the age of 18 years. It is likely, however, that a minority of girls of 16-18 years of age are involved. Hotel-based prostitutes earn substantially more than do street and brothel-based prostitutes. Like girls engaged in other types of prostitution, they keep it hidden from their families and their biggest fear is that their secret will be discovered. The research findings indicate that there is no link between hotel-based and brothel-based sex work.

4.1.3 Girls being sexually exploited in brothels

The most prevalent form of sexual exploitation affecting children in Bangladesh is child prostitution.²⁷ Sexual abuse and exploitation of children inside the brothel environment is widespread. Despite laws and practices ostensibly meant to prevent the entry of girls into the profession, brothel-based commercial sexual exploitation is extensive.²⁸ Not only are many girls engaged as prostitutes, but also many have been sold and are kept in a highly exploitative bonded labour situation until they earn their release or run away. The age, physical and mental immaturity of the girls puts them at greater risk of abuse and health risks than older sex workers. The girls' families may accept their earnings, but they do not always welcome the girls to their homes. According to a DSS survey report on sex workers and their children in four brothel communities, three-quarters of sex workers are between 15 and 29 years of age.²⁹ According to a recent study supported by Save the Children Sweden, more than 1/3 and 1/2 the sex workers at Daulotdia and Kandapara brothels, respectively are girls under 18 years of age.³⁰ Mothers themselves view their daughters as assets and will introduce their daughters to the business at an early age. Girls' low knowledge of sexually transmitted infections (STIs), HIV/AIDS, physical vulnerability and lack of

²⁷ Government of Bangladesh, "Second Periodic Report of the Government of Bangladesh under the Convention on the Rights of the Child" (December 2000), p. 76. '*Bangladesh Child Rape and Coercion of Girls into Sex Work*', Prepared for the Committee on the Rights of the Child by Human Rights Watch, March 20, 2003

²⁸ In addition to the 15 registered brothels, many residential hotels and rented houses function as 'brothels'. Street-based sex workers may be taken to them by their clients and managers of such hotels and houses may be in collusion with *dalals* to supply their clients with sex workers.

²⁹ Department of Social Services, Ministry of Social Welfare, A Survey Report on the Socially Disadvantaged Women (SDW) and their Children living in the Brothel Communities of Narayanganj, Mymensingh, Jessore and Daulotdia Ghat of Rajbari District Executive Summary (Dhaka: Ministry of Social Welfare, January 2000) p.4.

³⁰ Uddin, Sultana and Mahmud, (January 2001 Draft) p.27. The methodology included a census survey of all the households in the two brothels and structured interviews with the head/leading member of the household; focus group discussions (FGD) with children and mothers; individual (semi-structured) interviews with children, and; discussion groups with children and NGO staff.

empowerment puts them at greater risk of contracting infections and disease.³¹ Moreover, other health risks to the girl are the abuse and possible addition to alcohol, tobacco and various other drugs. The most inexperienced girls are also at greater risk of sexual exploitation from *mastans* and the police, who often do not pay them for their services. Being less physically developed than the women, most find sex painful.

4.2. Child Trafficking for Sexual Purposes in Bangladesh

Child trafficking for sexual purposes, both within and outside of Bangladeshi borders, occurs in various forms. Children from different areas of Bangladesh are trafficked internally within Bangladesh. Many girls are forced into prostitution and must endure mental and physical abuse. Reports indicate that trafficking is very closely linked to migration and changing trends require changing strategies to tackle the problem. As reports of the UN Special Rapporteur on Violence Against Women, Ms Radhika Coomaraswamy,³² attest, many women and children are leaving their home in search of jobs and better prospects elsewhere. According to the Special Rapporteur, the primary goal of traffickers in women and girls into India is forced prostitution. What is also known is that trafficking and migration are often indistinguishable: many children (and women) eager to escape poverty, discrimination and/or abuse at home will leave their villages in search of better prospects elsewhere. They may, in fact, be willing and active participants in their trafficking because they are going with someone who has promised them a better job and/or life either inside Bangladesh or in another country. It is only at the end of the process, when they have reached their destination, that they will find out if they have been deceived. This aspect of migration is very important to bear in mind, particularly as fewer victims are being kidnapped and/or abducted. Rapid and sustained rural-urban migration and overseas labour migration are undisputed features of Bangladesh's economy. As pointed out by the Special Rapporteur, this dimension also makes it extremely difficult to detect and/or control trafficking. Moreover, given that many Bangladeshi families have relatives across the border, in neighbouring India, it is not uncommon that many people come and go across the border, even without papers. What is of concern, however, is that in the aim to prevent trafficking, the rights of women and children to freedom of movement have been drastically curtailed by South Asian countries, including Bangladesh and Nepal. Trafficking of children is also an area of concern of the Government of Bangladesh and is given attention in the *National Plan of Action for Children 1997-2002* which states: particularly in case of girl children, can be related to discriminatory laws and

³¹ Monira Sultana, 'A Passage to the rights of brothel children,' in *Observer Magazine* [Dhaka] 1 September 2000.

³² See Economic and Social Council, *Report of the Special Rapporteur on Violence Against Women, its causes and consequences*, Ms Radhika Coomaraswamy, in accordance with Commission on Human Rights, Resolution 2000/45 Addendum, Mission to Bangladesh, Nepal and India on the issue of trafficking of women and girls (28 October – 15 November 2000) par. 11, E/CN.4/2001/73/Add.2).

practices such as child marriage, polygamy, dowry, and the low social value accorded to women. CARE Bangladesh has been supporting some research in a trafficking-prone district in South West Bangladesh. The research team interviewed 24 families, of whom 15-16 said that members of their families (including adolescent girls) had temporarily migrated to India to become engaged in prostitution.³³ It is unknown to what extent the girls and women were provided with a choice as to whether or not they would do this for their family's survival. The link between sexual abuse and exploitation of trafficked and migrant girls is important. Cases have been found where girls have migrated and found jobs or trafficked and placed in jobs, been sexually abused in the workplace, then chosen to engage in prostitution where they are able to make more money.

4.3 Child pornography

In Bangladesh child pornography is an uprising issue. The issue is yet to be addressed though the offences are committed very often in our country. Recently, there is a trend to trap girls by their boy friends and record the scenes through hidden camera. Later on, they blackmail the girl and her family or put up the video for sale as pornography. The victims sometimes come to the organizations for legal support, but still are not ready to file any written complaint for privacy purpose and social stigma, and due to lack of cooperation from the victim and victim's family and not having proper information, legal action couldn't be taken against pornography. The easy accessibility to the internet is the major cause behind that. The Government also doesn't have the sophisticated capacity to fight against the crime. The awareness raising programs are maximum focused on trafficking and sexual abuse, but the child pornography issue is completely untouched so far.

5. Laws related with child sexual exploitation

5.1 Child Prostitution

There are no laws directly prohibiting child prostitution in Bangladesh, so cases involving child prostitution are prosecuted using a variety of different national and municipal statutes.

(1) **The Penal Code, 1860 (PC)** defines all criminal offences in Bangladesh, but it is not exhaustive. Some offences, such as trafficking, are defined and stated in separate statutes, such as the Women and Children Repression Prevention Act 2000. For cases of child prostitution, however, three sections of the PC contain applicable provisions: sections 366, 372 and 373. Penal Code section 366 prohibits the procurement of a minor girl. 366A and 366B were added to support the International Convention for the Suppression of Traffic in

³³ CARE research in SW Bangladesh, 20 June 2001.

Women and Children, and to punish the export and import of girls for purposes of prostitution. Penal Code sections 372 and 373 target sellers and buyers of persons under 18 years of age. Section 372 prohibits a person from selling, letting to hire, or otherwise disposing of a person under 18 years of age with the intent that the person will be used for the purpose of prostitution or any unlawful or immoral purpose. Section 373 prohibits a person from buying, hiring, or otherwise obtaining possession of any person under 18 years of age for the same purposes, with the same intent.³⁴

The Women and Children Repression Prevention Act, 2000 (WCRPA) is an omnibus statute designed to address a variety of common offences against women and children, such as trafficking, prostitution and sexual harassment. In many cases, the three offences are dealt with

together. For example, the WCRPA provides the following punishments for offences related to prostitution as a result of child trafficking ;

If any person brings in from abroad or sends out of the country any child, or deals in buying and selling children with any illegal or immoral purpose, or takes possession of, keeps in his/her own custody with the said purpose, he/she shall be liable for the punishment of death sentence or rigorous imprisonment for life and cash fine in addition.³⁵ With respect to child trafficking, the WCRPA prohibits importing, exporting, buying, selling, or taking into possession, *zimma*³⁶ or custody, any child for immoral or unlawful purposes.³⁷ The terms buying and selling a child, immoral purpose, and unlawful purpose are not defined in the statute. The WCRPA also prohibits sexual harassment, which is defined as when a man satisfies his sexual desire by illegally touching or violating the modesty of any woman or child.³⁸

Although the **Suppression of Immoral Traffic Act, 1933 (SITA)** is still in effect in Bangladesh, it is not widely applied. It has not been amended since its enactment in 1933, and many of its offences are addressed by the more recent and comprehensive WCRPA. One significant difference between SITA and the WCRPA is that SITA prohibits the prostitution of girls less than 18 years of age, while the WCRPA prohibits the prostitution of all women and children. Article 18 of Bangladesh Constitution, 1972, states that, 'state shall adopt effective measures to prevent prostitution and gambling.' Unlike the WCRPA, SITA also defines the terms "brothel" and "prostitution". SITA defines brothel to include any place where a girl under 18 years of

³⁴ PC, Section 373, Act no. XLV of 1860, *Matiar Rahman v. State*, 21DLR (Dhaka Law Report), 1969 at 903.

³⁵ WCRPA, Sections 5 and 6.

³⁶ 'Zimma' means to take a person into one's custody.

³⁷ WCRPA, Section 6.

³⁸ WCRPA, Section 10

age is kept with the intent that she shall be employed or used for any immoral purpose,³⁹ and this defined term for brothel is used today under various laws, including the WCRPA. It also defines prostitution as "promiscuous sexual intercourse for hire, whether in money or kind," and a prostitute as "any female available for the purpose of prostitution."⁴⁰ The terms "immoral purpose" and "promiscuous sexual intercourse" are not defined. While SITA prohibits soliciting for prostitution, it also prohibits engaging a girl under 18 years of age for commercial sexual use, or managing a brothel for that purpose.⁴¹ SITA further prohibits causing, encouraging, or abetting the seduction or prostitution of girls, but what constitutes abetting the seduction or prostitution of girls is not defined.⁴²

The Children Act, 1974 (CA) addresses a wide range of issues related to children, including the care of destitute and neglected children and children as juvenile offenders. With respect to offences related to the commercial sexual exploitation of children, the CA contains two relevant provisions: Sections 41 and 42. These articles prohibit: (1) allowing a child over 4 years of age to reside or frequently visit a brothel; and (2) encouraging the seduction or prostitution of a girl under 16 years of age.

Similar to SITA, several **municipal ordinances** prohibit soliciting for prostitution: Dhaka, Chittagong, Khulna, Rajshahi, Barishal and Sylhet.⁴³ These statutes do not define prostitution, but they contain similar provisions that prohibit any person in a public place from attracting attention or soliciting for the purposes of prostitution.

5.1.1 Gaps in Bangladeshi Laws Concerning Child Prostitution

As noted above, under the CRC, a child is a person under 18 years of age, and the Optional Protocol prohibits prostitution of children. Bangladeshi laws prohibiting child prostitution, however, treat children differently. For example, the WCRPA defines a child as a person under 14 years of age, and the CA prohibits the prostitution of girls under 16 years of age, the PC and SITA prohibit prostitution of girls under 18 years of age. These varying age limits at which children are afforded protection under the law from various forms of sexual exploitation undermine protections for children against commercial sexual exploitation. The two statutes that follow the CRC definition of a child, the PC and SITA, have weaker protections for children.

³⁹ SITA, Section 3(1).

⁴⁰ SITA, Section 3(3) and 3(5).

⁴¹ SITA, Section 7 and 11.

⁴² SITA, Section 7 and 11.

⁴³ See, e.g., Dhaka Metropolitan Police Ordinance, 1976; Chittagong Metropolitan Police Ordinance, 1978; Khulna Metropolitan Police Ordinance, 1985; Rajshahi Metropolitan Police Ordinance, 1992; Barishal Metropolitan Police Ordinance; Sylhet Metropolitan Police Ordinance.

The PC does not explicitly define or prohibit child prostitution, and SITA, while containing definitions of “prostitution” and “prostitute,” is a statute that is rarely applied. As a result, children below 18 years of age who are forced into prostitution are not well protected by this legislation. Moreover, while the WCRPA more comprehensively prohibits child prostitution, its

protections only apply to children under 14 years of age. Similarly, the CA only prohibits “encouraging” seduction or prostitution of girls, and only applies to girls under 16 years of age. Thus, the WCRPA and CA provide no protections to early teenage children, a particularly vulnerable group, as children in this age range may look older than their true age, making it even easier to falsify documents. Furthermore, Bangladeshi law does not prohibit prostitution of adults over 18 years of age, so children whose ages are falsified do not have legal protection against commercial sexual exploitation. Of the five Bangladeshi laws related to child prostitution discussed above, four of them contain no definition of prostitution. The fifth, SITA, defines prostitution as “promiscuous sexual intercourse for hire, whether in money or kind.”⁴⁴ This definition does not reflect the breadth of the Optional Protocol definition. Although SITA includes the element of remuneration, its limited definition does not apply to many situations where children are commercially sexually exploited by acts that are sexual, but not necessarily sexual intercourse – oral sex, inappropriate touching and fondling, and various forms of child pornography. As a result, many instances of commercial sexual exploitation are not covered under any Bangladeshi law. According to Penal Code 1860, anyone who induces or forces a girl below 18 years of age into illicit intercourse shall be liable to punishment⁴⁵. Although not part of any written law, a practice has emerged in Bangladesh where any woman above 18 years of age may affirm an affidavit before a Notary Public or First Class Magistrate stating her age and that she willingly chooses prostitution because she has no other source of income.

5.2 Child Trafficking

The main Bangladeshi law for prosecuting cases of child trafficking is the WCRPA, discussed above in the section on child prostitution. In addition, the PC contains several provisions that could be used in child trafficking cases, but that are more often used to prosecute other types of trafficking offences.

As discussed above, the WCRPA prohibits importing, exporting, buying, selling, or taking possession, *zimma*, or custody, of a child – defined as a person under 14 years

⁴⁴ SITA, Section 3(3).

⁴⁵ PC, Section-366(A), 366(B), 375

of age – for immoral or unlawful purposes.⁴⁶ This statute also prohibits kidnapping women and children with intent to commit any of the offences enumerated under Section 5 of the WCRPA, including engaging, buying, selling, importing, or delivering any woman and girl into prostitution or other illegal or immoral acts. The WCRPA also prohibits the keeper or manager of a brothel from engaging, buying, or hiring any woman and girl for the purpose of prostitution.⁴⁷ Kidnapping is defined as compelling a person to move from one place to another by applying force, seduction or a false impression.⁴⁸ The terms buying and selling a child, immoral purpose, and unlawful purpose are not defined, however, these terms are defined under the Penal Code and Constitution, and those definitions apply here. Since the Constitution defines prostitution as immoral, the immoral purpose under this statute includes prostitution.

The Penal Code does not specifically define or address trafficking, but it contains provisions similar to trafficking, such as kidnapping and abduction. There are two types of kidnapping offences in Bangladesh: (1) conveying a person, with or without their legal guardian's consent, outside of Bangladesh; and (2) taking or enticing males under 14 years of age and girls under 16 years of age from their lawful guardian without the guardian's consent.⁴⁹ There is also an aggravated form of kidnapping with a greater punishment where a person kidnaps a child under the age of 10 with the intent or likelihood that the child will be enslaved or "subject to the lust" of another person.⁵⁰ Abduction is explained as the offence committed where a person forces, compels, or by any deceitful means induces another person to go from any place.⁵¹

The Emigration Ordinance 1982 (EO) regulates Bangladeshi emigration by prohibiting any person from recruiting or attempting to recruit any citizen for overseas employment unless the person possesses a valid demand, valid travel documents, a letter of appointment or work permit, or has been selected for emigration by a foreign employer through or by a government recognized recruiting agent. Fraudulently inducing a person to emigrate, by means of intoxication, coercion, or fraud, is also prohibited. The government may prohibit the departure of any person based on their occupation, profession, vocation or qualifications, if the government believes that it is not in the public interest. For example, in 1997, the government banned the emigration of unskilled women as a protective measure against trafficking and sexual exploitation.

⁴⁶ WCRPA, Section 6

⁴⁷ WCRPA, Section 7.

⁴⁸ WCRPA, Section 7

⁴⁹ PC, Sections 359, 361

⁵⁰ PC, Section 364A

⁵¹ PC, Section 362

The EO, however, does not define “protective measure,” and provides no redress against the government for actions taken in good faith under this law.

5.2.1 Gaps in Bangladeshi Laws Concerning Child Trafficking

Though the government of Bangladesh is apparently making the maintenance of law and order its “top priority” and has passed, among other things, the Women and Children Repression Prevention Act, in reality it has been reported that only a “few traffickers” have been arrested. The law metes out harsh penalties, like capital punishment, for those who are convicted of committing violent crimes, including trafficking. Capital punishment depends on the proof of the offence beyond reasonable doubt but due to the lack of proper protection of witnesses most of the time prosecutors fail to prove their case to this high standard. As a result, there has been a reduction in incarceration rates for traffickers. It has also been noted that in cases of Commercial Sexual Exploitation of Children (CSEC) that may result in capital punishment, family members are less likely to report for fear that a relative may be put to death for the crime.⁵²

5.3 Child Pornography

There are no laws in Bangladesh specifically prohibiting the creation, possession, or distribution of child pornography. The Penal Code, however, contains provisions related to obscene matter and objects that potentially could be used to prosecute child pornography cases.

The Penal Code prohibits the possession, sale, distribution, exhibition, or circulation of obscene books, pamphlets, papers, drawings, paintings, figures or other objects, and provides enhanced penalties for those who sell, distribute, exhibit or circulate obscene objects to any person under 21 years of age.⁵³ Case law interprets obscenity as “publishing or exhibiting such matter or object which has the tendency to corrupt the minds of those who are open to immoral influence by exciting in them sexuality and carnal desire.”⁵⁴

5.3.1 Gaps in Bangladeshi Laws Concerning Child Pornography

The Optional Protocol defines child pornography as “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.”⁵⁵ Despite

⁵² Remarks concerning the link between severity of the punishment and the rate of reporting were offered by the participants of the SSEAL Reform Project’s Orientation and Validation Seminar held in Dhaka on 14-15 December 2003.

⁵³ PC, Sections 292, 293

⁵⁴ *Yakub beg v. State*, 12 DLR, 45 WP

⁵⁵ Optional Protocol on the Sale of Children, Child Prostitution and child Pornography, Article_-2©_

signing and ratifying the Optional Protocol, Bangladeshi law contains no specific laws defining and prohibiting child pornography.

6. Suggestion for the prevention of child sexual exploitation

Child sexual exploitation of Bangladesh are in the increase for reason of lack of appropriate sex education for children (life skills), availability of sex-sites on the internet, denial/ignorance by adults about Child Sexual Abuse (CSA), parenting: low participation of children in families (parents do not listen to their children), adults' attitudes towards children, social taboos e.g. blaming the child, inappropriate laws and ineffective implementation, sexualisation of children in the media, poverty, ignorance and low levels of education, lack of children's participation in society at large, Patriarchal society: masculinity, roles of men, unequal power relations (gender, age, class, disability, caste, religion, etc), overall violence in society, including violence against children, unequal sexual relations between male and females, boys and girls. To protect and prevent this crime, some recommendations have been identified. These are;

6.1 Government should take necessary steps to combat Sexual Exploitation of Children

There is, however, *limited protection* for children in Bangladesh, directly and indirectly applied through a variety of statutes that protect children against sexual exploitation. The Penal Code, 1860 (PC) and the Women and Children Repression and Prevention Act, 2000 (WCRPA) can both be used in cases involving sexual exploitation of a child. These two statutes are supported by the Code of Criminal Procedure, 1898 (Cr. PC) and the Evidence Act. The Constitution, as the supreme law of the land, also guarantees the civil right of all citizens, including Bangladeshi children, although the Constitution is infrequently invoked in cases involving the sexual exploitation of a child. The WCRPA and the PC both prohibit prostitution under the age of 18. The Constitution also gives the State the power to prevent prostitution in all its forms.⁵⁶ There appears to be some conflict regarding whether prostitution is legal or illegal in Bangladesh, although certain landmark decisions provide judicial interpretation based upon the provisions in question. These cases show that adult prostitution is accepted under the law in some jurisdictions. The courts, however, consistently hold that the prostitution of a child is illegal, but only where a child's age is undisputedly below the statutory requirement. The WCRPA prohibits "trafficking for prostitution and other illegal purposes"⁵⁷ and provides strict punishments for trafficking, kidnapping, raping and sexually abusing a child. In this respect, the

⁵⁶ Bangladesh Constitution, Article 18.

⁵⁷ WCRPA, Section 5.

WCRPA is consistent with the CRC, but the WCRPA does not specifically define the commercial sexual exploitation of children. Further, the WCRPA fails to characterize the offences that it prohibits; for example, it does not define "prostitution" or "illegal purpose," yet it punishes trafficking for the purpose of prostitution and other illegal purposes. Like the WCRPA, the PC contains some sections related to prohibiting the sexual exploitation of children. The Penal Code defines all crimes such as rape, procurement of minor girls, importation of girls from a foreign country, selling and buying of minor girls for the purpose of prostitution, kidnapping, abduction, etc. Child pornography is not specifically addressed, but the Penal Code prohibits selling obscene material to "young persons" below 20 years of age.⁵⁸ "Obscene material" is not defined in the Penal Code and therefore infers some judicial discretion. Other laws in Bangladesh counter sexual offences against children but they are less readily used. The Suppression of Immoral Traffic Act, 1933 (SITA) protects the right of women and girls against trafficking and provides for the elimination of brothels. This legislation is a positive contribution to CSEC, to the extent that it provides for the suppression of brothels. It also has repercussions for children, since Bangladeshi law allows for the limited prostitution of persons over 18 years of age, and it is frequently difficult to conclusively ascertain a girl's age. SITA seems to be dormant at the moment and is not widely used, but it has never been repealed. The CA provides for the protection of child witnesses and prohibits all prostitution of young people below 16 years of age. Since the adoption of the WCRPA, cases involving child prostitution are not often tried under this Act. The absence or misplacing of specific legislation against the sexual exploitation of children in Bangladesh often results in the misuse of other laws and thereby creates serious obstacles for prosecuting commercial sexual offences against children. Of particular concern is that Bangladeshi laws do not provide uniform ages for children. Different laws stipulate different ages. For example, the PC defines an individual under the age of 18 as a minor, but the WCRPA treats all persons under 16 years of age as children. Certain labour laws stipulate that a child is a person who is 12 years of age and under.⁵⁹ With the exception of the PC, the age of a child in the other Bangladeshi laws contradict the CRC, which defines a child to be a person 18 years of age or under. These differing treatments of children hinder a consistent approach of laws that favour the elimination of the commercial sexual exploitation of children. In addition, the absence of a birth registration system facilitates the falsification of children's ages. For example, there is a practice of using false affidavits to represent a girl child's age as above 18 years. This makes it easier for these girls to be prostituted, since Bangladeshi law does not prohibit the prostitution of persons

⁵⁸ PC, Section-293

⁵⁹ Shops and Establishment Act, 1965.

above 18 years of age. It is important to note that some legislation in Bangladesh directly opposes the concept of children's rights. The Vagrancy Act, 1943, for example, provides for the arrest of vagrant children, who are sent to vagrant homes. Gaps and discrepancies in definitions and procedures under that Act often result in the arrest of innocent children without proper identification. The arrests can expose them to older children and adults in conflict with the law, which increases their risk of sexual exploitation. So, in order to ensure the children rights Government should---

- Draft and enact a law that defines and prohibits the commercial sexual exploitation of children, including a law that clearly defines and prohibits child prostitution, in accordance with international law.
- Draft and enact a law that prohibits trafficking of children for sexual purposes.
- Draft and enact a law that prohibits producing, possessing, and distributing child pornography.
- Amend the birth registration law to make the practice mandatory
- Conduct an inventory of current laws related to the commercial sexual exploitation of children, with a goal of harmonizing the domestic legislation already in existence
- Treat a "child" as any person below 18 years of age in all Bangladeshi laws involving children, in accordance with international law
- Develop awareness among the public about existing laws protecting children from commercial sexual exploitation and on the protocols for reporting sexual crimes against children • Establish a special, private section within the police station where children can safely and confidentially report about sexual crimes
- Develop a referral system which can be uniformly applied by law enforcement, lawyers, judges, and social service providers to provide legal and social services to children who report sexual crimes, and train these professionals to identify and refer child victims to appropriate services
- Develop a national system for law enforcement to record and monitor the location of offenders convicted of committing sexual crimes against children
- Develop standards of care and guidelines for and training social service providers to assist child victims of sexual crimes. The standard of care includes, but is not limited to: psycho-social counseling; provision of shelter, rehabilitation and recovery programs, assistance for children wishing to contact their families, where appropriate; guarantees that children are referred to and represented by competent legal counsel; assurance that children are accompanied by a family member, guardian, or other adult throughout legal proceedings

6.2 Creating Alternate Opportunities

Poverty is an important factor in heightening the risk of children being abused through sexual exploitation. Recognising this demands a re-evaluation of preventive strategies, that explores how all children can be offered real choices through the development of vocational training, and education opportunities to develop skills that are needed and offer prospects of long term economic self sufficiency. Efforts to prevent more children becoming involved have employed a range of strategies; including looking longer term to develop education and skills that create new income generation opportunities. This has included expanding access to education, through targeted scholarships or education support for the families considered at highest risk. Poverty is not just a lack of access to resources; it is also an absence of choice.⁶⁰

6.3 Television programs for Children

Children in Resource Bangladesh's drop-in centre said they enjoy television, especially cartoons and for those who do not have televisions, they watch the one at the centre. They said there is no Meena episode on sexual abuse or trafficking, but thought it would be good idea for one to be developed. While many of the children interviewed said they themselves did not have televisions in their homes, they do have opportunities to watch television at NGO drop-in centres. ETV's *Mukto Khobor* programme which is supported by Save the Children Sweden and UNICEF Bangladesh trains and builds up child journalists. It is a potential means by which children, using television as a medium, can inform other children about sexual abuse and exploitation, how they can protect themselves and to whom they should go if it happens to them.

6.4 Combating the entry of girls into brothel and street-based prostitution

What is striking in most efforts to stop the entry of girls into brothel-based and street based prostitution is the absence of a link to the role of police and other law enforcement officials, *sardarnis* and *dalals*, and Notary Public in maintaining the *status quo*. As is known from documents of brothel-based sex workers, many of the 'women' possessing affidavits certifying that they are above 18 years and have entered prostitution willingly are in fact girls who were sold and/or brought to the brothel and not permitted to leave. This is strictly against the law, however, with few exceptions, the practice continues with impunity. Given that there are now a number of membership organisations of sex workers, including; Ulka; Durjoy (including street-based prostitutes in Dhaka); Nari Mukti Sangho (in Tangail), Mukti Mohila Samita (MMS in Daulotdia); Akshoy (consisting of evicted Tanbazar and Nimtoli prostitutes), and; Shonghoti (consisting of 86 human rights NGOs, including 4 sex workers'

⁶⁰ SE MA Life Development project, Ministry of Education, Thailand. Summary available on <http://www.asem.org/documents/thailand/goodpractice.htm>

organisations), it may be worth exploring how they can help stop children from being sexually exploited and/or help increase the age of girls becoming involved in brothel and street-based exploitation.

7. Conclusion

Sexual exploitation on children is an attack against humanity. Respect towards children has to come from all. But existing social norms and values in Bangladesh do not usually allow people to think this way. However, there is no overnight solution to this problem. Unless and until the broader sections of people are aware of the human rights of the children with a view to producing efficient citizen, social reformer, politician the children of this day should be provided with adequate environment, habitation and other essentials appropriately. With this end in view, the government should take more steps and initiatives in all its sectors including executive, legislative and judicial sectors. The absence or misplacing of specific legislation against the sexual exploitation of children in Bangladesh often results in the misuse of other laws and thereby creates serious obstacles for prosecuting commercial sexual offences against children. Laws and policies should be justified in the Bangladeshi socio-economic context. Much more must be done to address the root causes of gender discrimination, which puts girls at greater risk of sexual abuse and exploitation, early marriage and other forms of violence. This requires advocacy for behavior change and capacity-building of law enforcement officials for improved implementation of the laws. Lack of law enforcement, including impunity, contributes to the persistence of such violations of girls' rights. Less is known about the situation of sexually abused and exploited boys and the impact of their psychological well-being. Not only may they be reluctant to speak about such abuse, especially when the abuser is a man or older boy, but for those who are questioning their sexuality, there are few people and/or organizations with whom they can speak freely and without judgment. The tendency to blame the victim of sexual abuse and exploitation, particularly girls, rather than the abuser, also creates an unwelcoming environment for the victim: once the incident is known in the community, the sexually abused girl is at risk to be cast out of her family and it might only be a matter of time before she is again abused or exploited. Unless coordinated efforts are put in place to address the discrimination and stigma experienced by sexually abused and exploited children and children of sex workers, it will be difficult for them to ever enjoy the rights to which they are entitled. Besides social awareness should be strengthened to protect and nurture our children from all kinds of sexual abuse and exploitation. Otherwise the nation will be unable to reach its goal.