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Articles

The Role of Election Commission in Strengthening Democracy: Reforms and Constitutional Obligation

Justice under Judicial Review Power of the Court: A Comparative Study on Selected Countries

Different Provisions Relating to Aboriginal People's of the Sub-Continental Constitutional Laws: A Study

Parliamentary Election 1991 under First Caretaker Government: An Evaluation

The Unholy Delay of the Last Caretaker Government: Bangladesh is on the Verge of a Constitutional Crisis

Jurisdiction of the Supreme Court of Bangladesh in Terms of Writ: An Appraisal

Right against Trafficking of Women under the Constitution of Bangladesh

বাংলাদেশের সংবিধানে নির্দেশিত ভাষা এবং উচ্চতর আদালতে এর ব্যবহার : একটি আইনগত পর্যালোচনা

বাংলাদেশ সংবিধানের ৫ম সংশোধনী বাতিলের রায় ও প্রভাব : সংবাদপত্রের আলোকে একটি বিশ্লেষণ

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Right against Trafficking of Women under the Constitution of Bangladesh

Dr. Sayeeda Anju*

Introduction

The right against trafficking is an inalienable human right. Trafficking is at once a social, economic, health and labour problem. Human trafficking mostly of women creates a serious threat to human rights in Bangladesh.¹ There is no clear Article in the Constitution regarding trafficking issue. But trafficking is against other Constitutional guarantees included in Article 27, 28(2), 31, 32, 33, 34, 35. Moreover the High Court Division of the Supreme Court of Bangladesh in *Mr. Abdul Gafur vs. Bangladesh*² established that the repatriation of trafficked victims is a fundamental right under the Constitution of Bangladesh. The aim of this paper is to focus that as a citizen of Bangladesh the trafficked victim is entitled to enjoy the same Constitutional guarantees beyond the State boundary. The exploitation that is created for trafficking not merely confined with prostitution or sex work, there are several sites of exploitation including inadequate housing, shelter, security, and freedom of movement. Traffic victim's Constitutional rights are always hampered. Every citizen in the country is entitled to enjoy right against trafficking and the traffic victim is entitled to claim repatriation as a Constitutional right. The paper discusses the negative impact of trafficking on migration and seeks to focus the judicial approaches in trafficking cases. It

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¹ Sultana Razia, 'Local Level Awareness to Solve Global Crisis', Law & Our rights, *The Daily Star* April 12, 2008 p. 22

² *Mr. Abdul Gafur vs. Secretary, Ministry of the Foreign Affairs, Government of the People's Republic of Bangladesh, and another* 2 MLR HD 1997 p.326 also see in 17 BLD HCD 1997 p. 561

also discusses some provisions of international documents on trafficking and their relation with Bangladesh.

Bangladesh is a poor country with high population and low literacy rate for which it has turned into a natural breeding floor of human trafficking.³ At the same time Bangladesh is a country of source and transit where means of trafficking is changing frequently.⁴ There is no documentary evidence but it is believed that first incident of trafficking in women was traced out in 1979. The incident became a matter of concern in the early 80s.⁵ According to the US State Department report on human rights, there is wide-ranging trafficking in women for prostitution in Bangladesh.⁶

Sexual abuse, Exploitation and Trafficking are among the most traumatic experiences which a girl child and a woman may come across. The majority of our children and women are struck by poverty, deprivation and lack of awareness and women right protection. Moreover, cyclones, flood and river erosion cause a large number of orphaned, homeless and destitute children and women. Hundreds of thousands of Bangladeshi children and women are pushed into streets and a life of hunger, disease, violence, fear and

³ Najma Siddiqi, 'Trafficking in Women and Children : A Violation of Human Rights-Bangladesh Perspective' Salma Khan (ed), *PFA and NAP Implementation in Bangladesh, Role of NGO, Nari, 2003*, NGO Coalition on Beijing Plus Five Bangladesh (NCBP), Women for Women, Dhaka, p. 8

⁴ Sultana Razia, *Op.cit.*, p. 22

⁵ Uttam Kumar Das, 'Human Rights Violation in Women Trafficking: Bangladesh Perspective' *Journal of the Institute of Bangladesh Studies*, Vol. XXVII, 2004 p.13 referring to Mostafiz Shafi, "Pachar Pannya Nari O Shishu" (women and children: An Item for Trafficking), *Ajker Kagoj* (Daily - Dhaka), 12 October, 1997, p. 8

⁶ *Ibid*, p. 13

exploitation. These vulnerable children and women are in danger of being victims of sexual abuse, exploitation and trafficking.⁷

Trafficking in persons is the 'dark side' of migration, which places people in a 'harm' situation. It is a form of modern day slavery. It is a coercive and violent form of movement which must be prevented contrary to safe migration which should be promoted as a right and which could be beneficial for all.

Human Trafficking

Human trafficking or flesh trade is a crime against humanity. It involves an act of recruiting, transporting, transferring, harbouring or receiving a person through a use of force, coercion or other means, for the purpose of exploiting them. Article 3, paragraph (a) of the *Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children* defines, 'Trafficking in Persons' as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

On the basis of the definition given in the Trafficking in Persons Protocol, trafficking in persons has three constituent elements; the acts of the traffickers, that is recruitment, transportation, transfer, harbouring or receipt of traffic victims. The unlawful means that is, threat or use of force, coercion,

⁷ Salima Sarwar, *International Migration of Women: A Study on Causes and Consequences*, Association for Community Development (ACD) Rajshahi, 1995, p. 23

abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim.

The purpose of exploitation, which includes exploiting as prostitute, sexual exploitation, forced labour, slavery or similar practices and the removal of organs of the victims.

Right against Trafficking under the Constitution

Like the Constitution of India⁸ the Bangladesh Constitution does not have any provision which directly prohibit human trafficking. Women trafficking mostly go on for prostitution and prostitutes are forced into the sex trade or slavery. Women those are trafficked from Bangladesh are forcefully engaged in prostitution or sex trade, or so called white-slavery⁹ sex trade, or so called and the making of pornography.¹⁰ Bangladesh Constitution contains the provision of taking measures against force labour in Article 34(1) and against prostitution in Article 18(2). Moreover trafficking is against other Constitutional guarantees included in Article 27, 28(2). The Constitution of Bangladesh guarantees certain fundamental rights for the citizens, among them, mentionable ones are the equal protection of law (Article 31), right to life and liberty (Article 32), safeguards as to arrest and detention (Article 33), protection in respect of trial and punishment (Article 35), freedom of movement (Article 36), freedom of religion (Article 41) and right to enforcement of these rights (Article 44). A comprehensive approach is required to prevent trafficking which is a prohibited norm under these Articles

⁸ Article 23 (1) of the Constitution of India prohibit traffic in human beings.

⁹ Salma Ali (ed), *Movement Against Flesh Trade be Ware of the Traffickers Protect Women and Children*, Bangladesh National Women Lawyer Association (BNWLA), Dhaka, 1996, p. 9

¹⁰ Shaheen Rahman, Liz Kirk (ed), *CEDAW and Bangladesh Constitution, Law & National Initiatives: A Comparative Study*, Steps Towards Development, Dhaka 2002 p. 47

of the Constitution. Innocent lives are exploited by trafficking. Sometimes traffic victims are cheated into believing better future and sometimes are kidnapped and compelled to do inhuman works. Traffickers exploit them for prostitution, sexual abuse, forced labour, camel jockeying, organ sale etc. The victims of trafficking are at the high risk of being confined therefore their rights to freedom of movement are stuck. Traffic victims may suffer various physical and mental health problems. They may contracts life threatening diseases, such as HIV Aids or tuberculosis.¹¹ They may also face serious legal difficulties, may be detained or deported for immigration violations, and may also face prosecution for other criminal offences that were committed as a direct result of being trafficked.¹² They may also face difficulties for getting access to justice. Hence it seems that those are being trafficked are deprived from exercising the above stated Constitutional guarantees. Thus traffickers must be punished and the victims must be protected and repatriated.

Beside Constitution in Bangladesh we have different laws for reducing trafficking, such as, the Suppression of Immoral Traffic Act, 1933, the Bangladesh Passport Order, 1973¹³ and the Passport (Offences) Act, 1952,¹⁴ the Emigration Ordinance, 1982,¹⁵ the Children Act, 1974. The Penal Code of 1860¹⁶ incorporated provision for kidnapping, which in general includes trafficking also. Trafficking is included as a crime in almost every law related

¹¹ [www.http/D:/Effects and Consequences of Trafficking in Women.mht](http://D:/Effects and Consequences of Trafficking in Women.mht) accessed on 1.1.2010

¹² *Ibid*

¹³ Sections 3 and 11

¹⁴ Section 3

¹⁵ Sections 20 and 21

¹⁶ See sections 366(a) and 372 of Penal Code, 1860

with women.¹⁷ The Government has identified trafficking as a great problem and has taken up measures to prevent it.¹⁸ One such measure is strengthening of legislation and increasing punishments for trafficking. Women and Child Repression Prevention Act, 2000¹⁹ includes hard punishment for that crime. Special tribunals have been set up with Session Judges or Additional Session Judges in each district. Special tribunals and timely investigations have resulted in some of the successful prosecution of a number of traffickers.²⁰ However the law only penalise trafficking of women and children furthermore it is not clear about the crime of internal trafficking.

Every year, thousands of men, women and children fall into the hands of traffickers, in their own countries and abroad. Every country in the world is affected by trafficking, whether as a country of origin, transit or destination for victims. Trafficking takes place by private connivance and involvement of regional gangs through network spread over whole of South Asia and even, outside. Government of Bangladesh and other South Asian countries are seen concerned at the trafficking of women and children. The issue of trafficking was brought at the South Asian Association for Regional Co-operation (SAARC) Summits. The SAARC Convention on Prevention of Trafficking of

¹⁷ In 1983 the Cruelty to Women (Deterrent Punishment) Ordinance increased the punishment to life imprisonment and death penalty for trafficking of women and children. In 1995 the Woman and Child Repression (Special Provisions) Act 1995 was enacted which replaced 1983 Ordinance. The punishment imposed in this Act for trafficking and related offences was life imprisonment and fine. It refuse the granting of bail to persons accused of terrible offences against women and children. This Act is replaced by 'Prevention of Women and Child Repression Act 2000.'

¹⁸ Ferdous Ara Begum, 'Combating Trafficking : Commitment, Policies and Programs of Bangladesh Government' *Orderly and Humane Migration An Emerging Development Paradigm* edited by Priti Kumar Mitra & Jakir Hossain Institute of Bangladesh Studies, University of Rajshahi & IOM International Organization for Migration, 2004, p. 84

¹⁹ See, section 5 and 6 of Prevention of Women and Child Repression Act, 2000

²⁰ Sultana Razia, *Op.cit.*, p. 22

Women and Children was signed in Kathmandu, Nepal in January 2002.²¹ Bangladesh is a member state of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 1990 (ICRMW).²² The Convention refers equality of treatment between different groups of migrant workers: male and female, documented and undocumented. But the country does not ratify the document. There is a misconception that ratification of the ICRMW might make the labour receiving countries 'unhappy'. This is not the case and also not a justifiable point.²³ Major labour sending countries, like Philippines, have ratified the ICRMW. Concerned experts argue for the immediate ratification of the ICRMW by Bangladesh and adoption of appropriate regulatory regime to enhance the capacity of the State to manage the migration sector.

In 2000 the United Nations General Assembly adopted *United Nations Convention against Transnational Organized Crime* (UNTOC) and the *Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children* which entered into force in 2003, is a significant milestone in international efforts to stop the trade in people. Its objective is to prevent and combat trafficking in persons and to protect and assist the victims of trafficking with full respect of their human rights. The Protocol also promises to promote cooperation among State parties to meet those objectives. United Nations Office of Drug and Crime (UNODC), as guardian of the UNTOC and the Protocols thereto, assist States in their efforts to implement

²¹ Fifth Periodic Report of State Parties, Bangladesh (0276190) Consideration of reports submitted by State parties under article 18 of the Convention on the Elimination of all Forms of Discrimination Against Women, CEDAW/C/BGD/5, 3 January 2003 p. 18

²² Bangladesh signed the document on 7 October 1998, see, <http://treaties.un.org/Pages/ViewDetails.asp>

²³ Uttam Kumar Das, 'Why Bangladesh should ratify the International Convention on Migrants?' Law & Our rights, *The Daily Star* December 20, 2008 p. 22

the Protocol. UNODC offers practical help to party states, not only helping to draft laws and create comprehensive national anti-trafficking strategies but also assisting with resources to implement them. States receive specialized assistance including the development of local capacity and expertise, as well as practical tools to encourage cross-border cooperation in investigations and prosecutions. To date, more than 110 States have signed and ratified the Protocol but Bangladesh is not the party state. For information India has signed the Protocol in 12 December 2002 but however, India does not ratify the instrument. Bangladesh needs to eventually ratify the UNTOC and its Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and be part of this international, standard legal framework to participate in the global fight on Trafficking in Persons

Although Bangladesh has not yet signed the Protocol but it ratifies *Convention on the Elimination of All Forms of Discriminations Against Women (CEDAW)*.²⁴ Article 6 of CEDAW obligates the State parties to take proper measures to combat trafficking of women from the country. For combating human trafficking this article emphasizes to enact legislation. States should immediately formulate effective national programmes including up to date enactment for reducing trafficking. Since trafficking is a matter related with two or more countries, independent legislation is not always sufficient for reducing trafficking. It needs transnational or multinational measures to get effective result. Article 6 of CEDAW obligates the States to take all appropriate measures for combating trafficking. Different matters are inter-related in case of trafficking which may include alleviation of poverty, ensure literacy, ensure work facility, marriage without dowry, awareness about small

²⁴ *Convention on the Elimination of All Forms of Discriminations Against Women (CEDAW)* was adopted by United Nations in 1979 and Bangladesh ratified it on 6 November 1984

family, alertness against false marriage as well as public awareness is needed on trafficking issues and its consequences on the society.²⁵ There are some laws that tend to create a preventive environment against human trafficking are the Child Marriage Restraint Act, 1929, the Muslim Marriage and Divorce Registration Act, 1974, the Dowry Prohibition Act, 1980, the Primary Education Act, 1990, and the Labour Act, 2006. However the legal framework on combating trafficking in Bangladesh needs to focus more on the victim's physical, emotional and psychological injury.

Bangladesh is a source and transit country for men, women, and children trafficked for the purposes of forced labour and commercial sexual mistreatment. A significant share of Bangladesh's trafficking victims are men recruited for work overseas with fraudulent employment offers who are subsequently exploited under conditions of forced labor or debt bondage.²⁶ Children – both boys and girls – are trafficked within Bangladesh for commercial sexual exploitation, bonded labour, camel jockeying and other sports, organ trade, etc.²⁷ There is no general anti trafficking law in the country. The Immoral Traffic Act, 1933, and Women and Child Repression Prevention Act, 2000, are related only with women trafficking. These legislations do not address the trafficking of adult men. The Emigration Ordinance, 1982 describe the punishment for unlawful emigration and fraudulently inducing to emigrate but the ordinance does not have provision to penalise the adult male trafficking in the forms of labour migration. Although

²⁵ See causes and consequences of trafficking in Sayeeda Anju, 'Bangladesh theke Nari O Shishu Pachar: Rajshahi Alakar Porestity Porjalochona' (Women and Children Trafficking from Bangladesh: An investigation of Rajshahi District), *Rajshahi University Law Review* Vol. VI 2005 p. 126

²⁶ U.S. State Dept Trafficking in Persons Report, June 2009, Bangladesh.mht

²⁷ Child Trafficking : South Asia Perspective (source: CWCS & Bangladesh Shishu Adhikar Forum) Law & Our rights, *The Daily Star* September 22, 2007 p. 22

men are trafficked less frequently than women and children²⁸ but since men are subject to traffic for forced labour or other forms of slavery, the law should recognize their status and allow their cases to be brought to trial under an anti-trafficking law.

Impact of Trafficking on Migration

Migration benefits the people who move and their host and destination communities are also benefited through migration.²⁹ Source countries are benefited through remittances, both cash and social. Migration contributes to the livelihoods of the people in Bangladesh. Labour migration is a very important livelihood option for many Bangladeshis including women.³⁰ Short term labour migration is the most common form of population movement from Bangladesh. Every year, a huge number of people migrate from Bangladesh for earning and for a better livelihood.

Trafficking is a negative aspect of human migration. If we can ensure safe female migration in turn it will reduce trafficking. According to Bangladesh Manpower Employment and Training Bureau (BMET) the Government has only issued licenses to seven recruiting agencies for sending women workers abroad. But many un-authorised agencies send female workers abroad. The main motivating factor of trafficking is promise of job or better and secured life options.³¹ Many workers take risk to travel to another country without proper working permits just because they heard some success stories of their

²⁸ 'Victim-friendly judiciary' Law & Our rights, *The Daily Star* September 15, 2007 p. 22

²⁹ 'UN report calls for widespread migration reforms' Law & Our rights, *The Daily Star* October 10, 2009 p. 23

³⁰ Sayeeda Islam Mita, 'Skill and awareness needed for safe migration of female workers' Law & our rights *The Daily Star* 1.3.2008 p. 22

³¹ Rina Sen Gupta, 'Migration Trafficking Interface : Implication For Policies and Programs, *Orderly and Humane Migration An Emerging Development Paradigm Op.cit.*, p. 75

friends in foreign countries. Women are migrating overseas for employment. Sometimes they do not have idea what kind of jobs is available for them. They just take a gamble in their lives and often their journey has been perilous, often without food or drink for days together.³² Sometimes people working in private households are excluded from the protection of labour law.³³ Thus those who want to migrate for the lack of proper government facilities they choose the wrong way and fall into trafficking.³⁴ Bangladesh has little legislation to protect the rights of migrant workers. The Emigration Ordinance of 1982 is supposed to regulate migrant workers, but this legislation is not enough to regulate the whole process. The government has failed to enforce the ceiling on recruitment fees. Moreover transaction of money take place through the *dalals* (person engaged migration business) and a section are engaged in committing fraud against the potential migrants.³⁵ There is no upgrade policy in the country to facilitate overall harassment of women, they face in-security, and sometimes they traveled without assured job vacancy.³⁶ Therefore, necessary supporting rules and ordinances and efforts are needed to assist migrants by providing training. Because of lacking of systematic governmental procedure often women are fall in trafficking. Consequently, trafficking of women will persist if we cannot ensure their safe migration.

³² Barrister Harun ur Rashid, 'Legal status of illegal (undocumented) migrants' Law & Our rights, *The Daily Star*, March 19, 2005 p. 18

³³ 'Unified contract to protect domestic migrant workers in Lebanon' Law & Our rights, *The Daily Star*, April 11, 2009 p. 22

³⁴ Tasneem Siddiqui, 'Migration Challenges of Bangladesh : Options and Policy Responses' *Orderly and Humane Migration An Emerging Development Paradigm Op.cit.*, p.66

³⁵ Tasneem Siddiqui, *Beyond the Mage, Streamlining Labour Recruitment Process in Bangladesh*, Refugee and Migratory Movements Research Unit (RMMRU), Dhaka February, 2002 p.10

³⁶ *The Daily Star*, Dhaka, Saturday, June 28, 2008 p. 1

And that trafficking will be the major impediment on the way of migration business.

Trafficking is not a personal problem rather it's a national problem so government should pay more attention. There are some national and international NGOs working in the country for reducing trafficking.³⁷ Media, both print and electronic, are playing increasing role to sensitize people at all levels about trafficking of women and children.³⁸ It is now for implementing counter trafficking initiatives to prevent commercial sexual exploitation of woman and girl child. Primarily it is revealed from the experience that these trafficked women and children are thrown do trafficking by means of fraud and coercion which results in gross violation of human rights. In order to ensure justice to the survivors and reestablish their fundamental rights the proper care and service are a must. The victims who are rescued from the mesh of trafficking for commercial sexual exploitation, the girl child and woman in bad condition without shelter should be given home for providing safe environment. Girl children and women who have been victim of rape, sexual abuse and abandoned from society should be rehabilitated. However, the situation is not always under control and the government of Bangladesh is relentlessly trying to prevent trafficking. The government disseminated anti-trafficking messages in different forms, including announcements, dramas, public discussions and songs on the televisions and radio network. The government however, failed to take measures to prevent fraudulent recruitment that could lead to debt bondage.

³⁷ Sultana Razia, *Op.cit.*, p. 22

³⁸ *Fifth Periodic Report, Op.cit.*, p. 18

Trafficking and the Judiciary of Bangladesh

The statutory law and the judiciary of Bangladesh contain significant provisions curbing of trafficking activities within the country's borders. If any one tries to commit trafficking they can be arrested even before the act takes place under the shadow of doubt. In the case of *Naimuddin and another vs. State*,³⁹ the convicted were arrested along with some persons including women and children by BDR⁴⁰ in the Hilly Border. Thereafter, the law enforcing agency succeeded to establish the charge against the accused, and the court sentenced them to hard punishment.

A remarkable number of trafficking related cases are filed in the lower court, especially in border areas, but in the higher court the number of such cases is few. However, those which come up to the High Court have been attended seriously by the judges. The parties tend to compromise. In the *State vs Delwar Hossain*⁴¹ case, the accused petitioner filed an application for recalling victims for further cross examination on the question of compromise done out of Court. The short fact of the case is- an FIR (First information report) was lodged against the accused petitioner that he took away two minors from the informant's lawful possession for trafficking. After this specific allegation the police found prima-facie case in the investigation thus issued a charge sheet against the accused and the co-accused. The case was tried and witnesses were examined and at that moment the accused petitioner filed an application for recalling the witnesses, the minors, who are the victims, on the plea that there was a compromise. The learned Judge rejected

³⁹ *Naimuddin and another vs. State* 59 DLR 2007 HD p. 314 also see in 27 BLD HD 2007 p. 232

⁴⁰ Bangladesh Rifles

⁴¹ *State vs Delwar Hossain*, The Supreme Court, Judgment on 27.7.2005 criminal revision no. 1147 of 2004

the prayer stating that trafficking is a social problem wherever and whenever it is committed, there is no scope for compromise. As soon as the offence gets detected on investigation, the police can submit a report finding a prima - facie case against the accused; a compromise will not exonerate the accused from the offence which he has already committed. The High Court Division of the Supreme Court found that the learned judge committed no illegality in rejecting the said application. Thus, it is proved that both the courts have treated trafficking as a grave crime against humanity.

The courts do not exonerate the accused on the ground to compromise and further it is established that the repatriation of trafficked victims is a fundamental right under the Constitution. In *Abdul Gafur vs. Secretary, Ministry of the Foreign Affairs, Government of the People's Republic of Bangladesh, and another*,⁴² it is established that the repatriation of trafficked victims is a fundamental right under the Constitution. The petitioner's daughter, *Hasina Begum*, who is about fifteen years old, was missing since 1992. In 1996, it was learnt that she was being lodged in a Women's home at *Lilua*, West Bengal, India. She was a victim of atrocities and violence perpetrated by women traffickers. Her father appealed to the Government of Bangladesh for bringing her back home but to no effect. The Court alleged that the common expectation is that the respondents would take up the matter in the state level in order to bring back the victim. The Court urged that she was a citizen of this country who was languishing in a foreign territory for no fault of her own for more than five years. The Court also alleged that the respondent ought to have taken steps long ago and kept the petitioner informed about the result. However in the circumstances the court directed to the respondents to initiate action in the matter through state level for

⁴² *Abdul Gafur vs. Secretary, Ministry of the Foreign Affairs, Government of the People's Republic of Bangladesh, and another, Op.cit.*

repatriation of victim *Hasina Begum* and inform the result to the petitioner from time to time. The respondents are directed to take action within 60 days from receipt of copy of the judgment. Thus this case proves that the right against trafficking is also one of the essential rights strongly fought for and supported by the court. The petitioner filed writ petition under article 102 of the Constitution for seeking protection under Article 27, 31 and 32 of the Constitution. The learned advocate of the petitioner raised the point that as article 31 makes an obligation on the part of the government to give protection to its citizen in any part of the world and that she has been denied her right to get equal protection of law by the respondents inspite of their knowledge under article 27 of the Constitution, "all citizens are equal before law and are entitled to equal protection of law". And the learned court refers that article 31 is in aid of the petitioner and announced the judgment.

In a research oriented book discussing ten cases on trafficking,⁴³ it is seen that the courts generally had a good policy regarding testimony and evidence. The victim's statements were trusted without requiring other evidence, which shifted the burden onto the defendant to prove his innocence. The Supreme Court also protected the victim's right to testify against the accused, refusing to accept the validity of an agreement to the contrary between the accused and the prosecution lawyers.

It is worrying to note that in some courts the judges look more favorably on cases in which a man files the First Information Report, rather than a woman. In the *State vs Sadhu Bala*⁴⁴ case, the judge noted that the victim's mother filed the report, nor her father, and used this fact as an example of the

⁴³ Sultana Razia and Renee Gerber, Edited by Shah Alam, Mizanur Rahman and Ms. Rosy Hossain, *Judgments on Trafficking in Persons* Published by Daywalka Foundation with assistance of IOM (International Organization for Migration) Dhaka, Bangladesh, 2008

⁴⁴ *State vs Sadhu Bala* Gopalganj, 21.11.2005 (un reported)

weaknesses of the case. That case had many other weaknesses that could have justified the court's decision by themselves, and focusing on the identity of the FIR reporter was unnecessary and revealed the biases against women that still can influence courts.⁴⁵

The length of time between the filing of a case and the judgment also causes concern. Long trials harm the victims by prolonging justice, making evidence and testimony harder to obtain and preserving and accentuating the victim's status as a victim and thereby keeping them vulnerable to social stigma and pressure.

As there is no specified guideline in the *Women and Child Repression Prevention Act 2000* the punishment depends on the Judge's discretion. Thus, some traffickers were sentenced to death and others received a ten years imprisonment and a fine. While the High Court Division automatically reviews the appropriateness of a death sentence, there is little recourse for a convicted person to argue that he should have gotten 20 years instead of life imprisonment. Convicted persons with children typically get lesser sentences and women rarely are sentenced to death.⁴⁶

Conclusion

Human trafficking is a violation of Constitutional guarantees affirmed in several articles. For combating trafficking States need mass awareness programme regarding consequences of trafficking as opposed to safe migration. Trafficking is a coercive and violent form of movement which must be prevented, on the other hand safe migration should be promoted. In modern time along with male, female workers also plan to work abroad. They need correct support and information as well as proper training.

⁴⁵ Sultana Razia and Renee Gerber, *Op.cit.*,

⁴⁶ *Ibid*

The Bangladesh Constitution does not have any provision which openly forbid human trafficking. There are certain provisions in the Constitution which could be translated for the protection of the victims of human trafficking. However, there are legislations for combating trafficking. But all of them basically related with women and children's external trafficking. Trafficking inside the border and adult male trafficking issues are not covered by those legislations. Therefore there is a dire need to approve a comprehensive legal instrument covering all possible aspects and dimensions of human trafficking including trafficking of labour. We also need to have effective implementation of the existing laws for reducing trafficking.

Trafficking leading to sexual exploitation mainly evolved from some clandestine manners leaving all rights of human being into serious vulnerability especially for the girl children and women. Trafficking creates negative impact on women migration. Thus policies addressing trafficking should have provisions for safe migration as well.⁴⁷ The United Nations Principles and Guidelines on Human Rights have recommended that States should adopt labour migration agreements which may include provisions for minimum work standards, model contracts, modes of repatriation. It further suggested that States should effectively enforce agreements to help eliminate trafficking and related exploitations.⁴⁸

Bangladesh has signed the *ICRMW* on 7 October 1998. But it is yet to ratify the instrument. As a citizen of Bangladesh, a migrant worker is entitled to enjoy the same rights beyond the State boundary. State has a role here in

⁴⁷ Shahidul Haque 'Ambiguities and Confusions in Migration-Trafficking Nexus: A Challenge for Development Practitioners' Mizanur Rahman (ed), *Human Rights and Development* ELCOP, Dhaka, 2002 p.168

⁴⁸ *Ibid*, p. 169

ensuring and facilitating the enjoyment of those rights. Therefore, in the context of Bangladesh, it is a crying need to get access to the *ICRMW*.

Bangladesh is not a state party of the *Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children* which is a significant goal in international level to stop the traffic in people. If the government thinks positively about the Protocol it may be a big triumph for the country.

The law enforcing authorities of the country need to be better mobilized about the issues relating to trafficking and stronger action is needed against their negligence about trafficking. Although trafficking most directly affects individual victims, it also has broader consequences. Trafficking directly affects the families from which victims are removed; it creates cultural and economic losses, and threatening the society. Thus it should be consider as a crime against the society.

The victims of trafficking must be protected and repatriated as it is a Constitutional right of them. The Higher Court of the country is found to move strictly on crime of human trafficking. No compromise is accepted since it is a crime against society. The High Court Division of the Supreme Court ruled that repatriation of victims is a fundamental right under the Constitution so Government should take effective measures and should formulate policies in this regard. However those who had an opportunity to move the court get justice but a lot of cases would be found that never reach to the court. Thus strong preventive measures are needed to combat trafficking. We should continue fight against trafficking to establish our fundamental rights under the Constitution.