

Gafur vs State: Case analysis

RENEE GERBER

Trafficking in persons the forcible transporting of people in order to exploit them is the most abominable form of human rights abuse, and it disproportionately harms the poorest and most disadvantaged people in the world. In Bangladesh, the demand for cheap labor in urban areas and the growing global sex trade make the poor and especially women and children vulnerable to trafficking. Traffickers exploit them for prostitution, sexual abuse, forced labor, camel jockeying, cheap or bonded labor, domestic servitude, organ sales, or forced marriage. Victims may be trafficked within the country or to foreign destinations such as India, Pakistan, the Gulf States, and Europe. While there are no reliable data on the actual number of persons being trafficked in and from Bangladesh, the Ministry of Home Affairs considers the number to be significant.

Many factors contribute to ensuring a supply of trafficking victims, including poverty, unstable home environments, and social pressures. Widespread lack of education and landlessness reinforce these factors, as do natural events that cause people's displacement, such as Bangladesh's frequent flooding and cyclones.

The legal system alone cannot prevent the abuse of vulnerable members of society. However, laws do provide a mechanism for victims and survivors to assert their rights and for society to punish wrongdoers in order to prevent future wrongs. In the past decade, Bangladesh's courts and legal systems have taken commendable and significant strides in the fight against this modern-day slavery.

Gafur v. Bangladesh, a 1997 Supreme Court case, is one of the most important examples of this progress. In ruling that the government of Bangladesh had a duty to rescue and repatriate Mr. Gafur's daughter who had been trafficked to India, the Supreme Court established that repatriation of trafficking victims is a fundamental right under the Constitution. Relying on the language of the Constitution itself, the Court made it clear that victims' repatriation is not simply desirable, but absolutely required by law. The judgment also provided harsh scrutiny of the government for failing to immediately intervene on behalf of the victim and for ignoring Mr. Gafur's case by not coming to court. This ruling reveals the Court urging the government to take trafficking cases more seriously, and this case signifies a turning point in how Bangladesh's government deals with trafficking victims and their rights.

-Renee Gerber is a student at Harvard Law School in the United States and a summer intern of The Daywalka Foundation in Dhaka.

Repatriation of trafficking victims is a fundamental right

Mr. Abdul Gafur
vs.
Secretary, Ministry of Foreign
Affair, Govt. of Bangladesh and
another
High Court Division
(Special Original Jurisdiction)
Judge
Mozammel Hoque
Md. Hassan Ameen. JJ.
Date of Judgment: The 14th of August, 1997

Petitioner's daughter Hasina Begum aged about 15 years was missing since March, 1992. In November, 1996 it was learnt that she was being lodged a Women's Home at Lilua, West Bengal, India. She was a victim of atrocities and violence perpetrated by women traffickers. Her father approached the Government of Bangladesh for bringing her home but to no avail. The High Court Division directed the Secretary, Ministry of Foreign Affairs to initiate appropriate actions at the state level for effecting repatriation of victim Hasina Begum and to inform the developments to the petitioners from time to time. (Para-7)

Mrs. Seema Zahur, Advocate for the Petitioner.

Mr. Md. Mahbub Ali, A.A.G., for the Respondents

Judgment
Md. Hasan Ameen, J:
...

2. Facts in short necessary for the purpose of disposal of this writ petition may be stated as follows:- That the elder daughter of the petitioner namely Hasina Begum aged 15 years was lost from village Arichpur, Tongi in March, 1992 and her whereabouts could not be known in spite of best effort by the petitioner. However in the month of November, 1996 he met a lady... from India [who] told him that his daughter is in M.M.M. House, situated in No. 8 street, Post Lilua under police Station Bali, District-Howrah, India. The petitioner then wrote a letter to Chairman, Human Right Bureau, Dhaka to bring back his daughter on 21.11.96 (Annexure-A). The further case of the petitioner is

that Bangladesh Jatiyo Mahila Aynjibi Samity somehow managed to meet with his daughter and requested the Additional Secretary under the Respondent No.1 through letters dated 27.1.97 and 25.3.97 about the victim Hasina and some others for their repatriation who had been taken out of Bangladesh by child traffics on false pretext and perpetuated heinous crime upon her vide Annexures-B and C. In the meantime the victim Hasina sent a letter to her maternal grandfather to get her back from the said home where she is passing her days in great distress. The Jatiya Mohila Aynjibi Samity further wrote a letter to "Sanlap", a woman's right centre, a social registered non-government organisation in India for accurate information of the victim Hasina who sent information that Hasina aged 23 years was admitted in Lilua Home on 25.11.92 with reference to Bhagabongola P.S. C/No. 72/92 dated 19.3.92... but the Respondents did not take any step for repatriation of the victim. Hence the petitioner has been forced to file this writ petition for speedy and efficacious relief.

3. The Respondents did not turn up in this court in spite of due service of notice upon them which proves their negative attitude toward the issue.

4. We have heard Mrs. Seema Zahur, the learned Advocate for the petitioner who took us through the writ petition along with the Annexure referred thereto. Mrs. Seema Zahur the learned Advocate for the petitioner submits that the victim Hasina Begum a citizen of Bangladesh having been abducted from Bangladesh and taken to Calcutta detained in custody is legally entitled to get protection of law under Articles 31 and 32 of the Constitution of Bangladesh through the High Commission of Bangladesh in India to provide her legal support. She further submits that the victim girl being a citizen of Bangladesh is entitled to be looked after by the Respondent No. 1 in Calcutta, India, as Article 31 makes an obligation on the part of the government to give protection to its citizen in any 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 in spite of their knowledge

under Article 27 of the Constitution. She finally submits that much time has passed by this time and it is now high time to direct the Respondents for making negotiation in state level for repatriation of the victim who has got no fault of her own in such state of affairs.

5. It may be recalled that the Respondents did not file any affidavit denying the contentions of the petitioner and as such the allegations so brought thereto remained uncontroversial i.e. there is no denial that the victim is not a Bangladeshi and that she crossed the border and entered in to the territory of India at her own will.

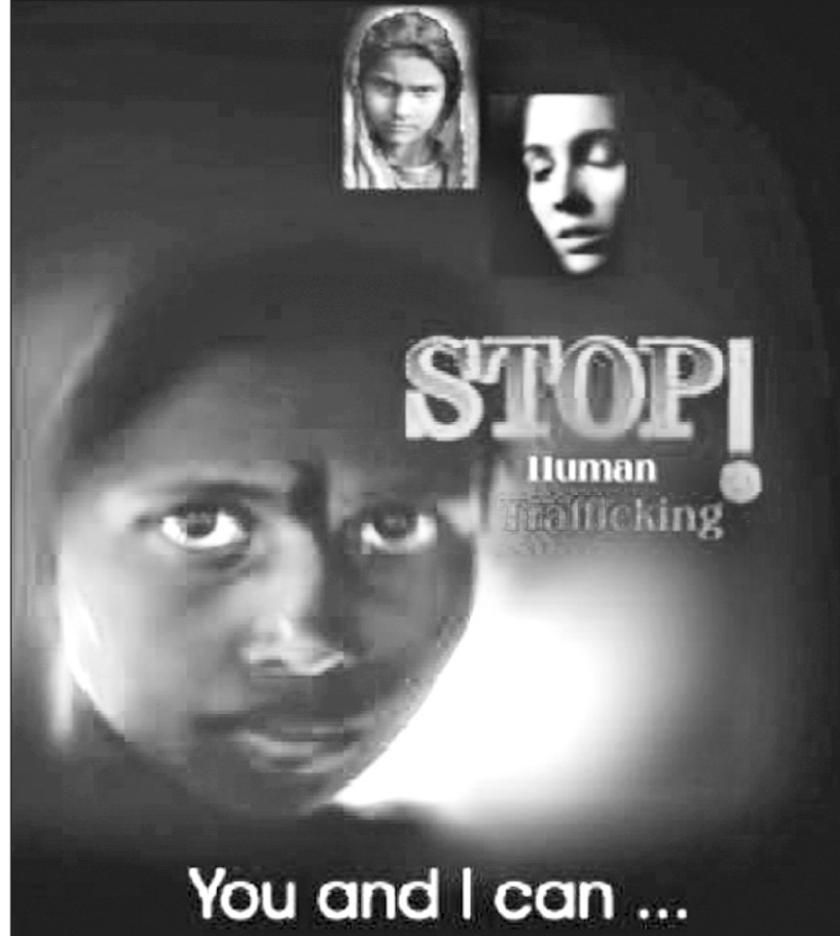
In order to refresh our memory we may be permitted to quote the relevant provision of the Constitution. The Article 27 provides that "all citizens are equal before law and are entitled to equal protection of law"

Article 31 runs as follows:

"To enjoy the protection of law, and to be treated in accordance with law and only in accordance with law, is the inalienable right of every citizen, wherever he may be and of every other person for the time being within Bangladesh and in particulars no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law".

This particular provision of the Constitution is in aid of the petitioner and in the action of the Respondents is a clear proof of denial of any assistance to the petitioner by the Government agency who (victim) is languishing in foreign soil in connection with a case.

6. The absence of the respondents justifies the claim of the petitioner that they (respondents) did not take any step in the matter through state agency, which proves in equal treatment towards its citizen. The principle of fairness in government acting requires the government functionaries must act according to law and must perform their duties on good faith, public accountability and acceptable demand that government action must correspond to good conscience and fair play. In the instant case, we are constrained to hold the concept of fairness, fair play and legitimate expectation have been found by the Respondents and minimum fairness was not exhibited in dealing with the case which is unfortunate no doubt. The common expectation is that the Respondents would take up the matter in state level in order to bring back



the victim, a citizen of this country who is languishing in foreign territory for no fault of her own for more than 5 years. The respondents ought to have taken steps long ago and kept the petitioner informed about its result. In the circumstances we find no word to console the petitioner save and except to disapprove the actions and behaviour of the Respondents.

7. In the premises of the above facts and circumstances the Rule is made absolute. Let the Respondents be directed to initiate action in the matter through state level for repatriation of the victim Hasina Begum and inform the result to the petitioner from time to time.

Considering the facts of the case we make no order as to cost.

8. Let the Respondent No. 1 be directed to take steps to repatriate the victim Hasina Begum after taking upon the matter with their counter part in India within 60 days from receipt of copy of this judgment with compliance to the Registrar of the Supreme Court of Bangladesh. High Court Division who will report the matter to this Bench in due course.

This is the abridged version of the judgement.

LAW vision



FACT file



UN-African Union will jointly send force to Darfur

The Security Council today approved the creation of a hybrid United Nations-African Union peacekeeping force to quell the violence and instability plaguing the Darfur region of Sudan, where hundreds of thousands of people have been killed and two million others forced to flee their homes.

In what Secretary-General Ban Ki-moon called a "historic and unprecedented resolution," Council members unanimously backed the establishment of a force of nearly 20,000 military personnel and more than 6,000 police officers. The hybrid operation -- to be known as UNAMID -- has an initial mandate of 12 months and will incorporate the existing AU Mission in Sudan (AMIS), which has been deployed across Darfur since 2004. It will become the largest peacekeeping force in the world. By October UNAMID is scheduled to have its management, command and control structures in place, and then by the end of the year it is expected to be ready to take over operations from AMIS.

Since fighting erupted between rebel groups, Government forces and allied Janjaweed militias in 2003, UN officials have repeatedly described Darfur as the scene of one of the world's worst humanitarian crises. More than 200,000 people have been killed and the conflict has spilled into neighbouring Chad and the Central African Republic (CAR).

"You are sending a clear and powerful signal of your commitment to improve the lives of the people of the region, and close this tragic chapter in Sudan's history," Mr. Ban told the Council after it voted for the resolution authorizing the force.

Stressing the need to move rapidly to ensure UNAMID can deploy on time, he called on Member States to contribute troops and police officers and urged the Sudanese Government and the rebel groups to immediately end hostilities and give their "unequivocal and continuous support" to the force.

UNAMID is tasked with acting under Chapter VII of the UN Charter to support the "early and effective implementation" of last year's Darfur Peace Agreement between the Government and the rebels, and it is also mandated to protect civilians, prevent armed attacks and ensure the security of aid workers and its own personnel and facilities.

Command and control structures and backstopping for UNAMID will be provided by the UN, today's resolution added, and the operation will also have a single chain of command.

Under-Secretary-General for Peacekeeping Operations Jean-Marie Guéhenno told reporters that "enormous work" would be required between now and the end of the year to make sure that UNAMID can start operations on time.

The resolution has been adopted just days before the UN and AU Special Envoy for Darfur, Jan Eliasson and Salim Ahmed Salim, host "pre-negotiation talks" in Arusha, Tanzania, with those rebel groups and militias that have not signed the Darfur Peace Agreement.

Mr. Ban said it was critical that the three-day meeting starting on Friday "yield positive results so as to pave the way for negotiations and, ultimately, a peace agreement. Only in this way can we end the violence and destruction that have afflicted Darfur for more than three years."

Source: UN News Service.

National occupational safety and health policy: A need assessment

BIKASH KUMAR BASAK



short and concise manner. Policy no.6 (4) of the national labour policy, 1980 specifically emphasizes on establishment of the necessary hospital or dispensary and supply of necessary medicines in the industrial areas. But doesn't say anything if such steps are not taken. So it is quite necessary to draft a precise and distinct policy with a wider perspective for the occupational safety and health.

Occupational death and injury in May-June 2007

The Bangladesh Labour Law, 2006

The health and safety issues have been provided in the provisions of chapter

Sector / Industry	Occupational "Accident"		Occupational		Total Victims "Violence"
	Death	Injury	Death	Injury	
Road transport	87	24	10	16	137
Daylabour	31	10	3	0	44
Rickshaw / van puller	31	5	6	2	44
Garments worker	12	64	9	107	192
Building construction	14	4	1	0	19
Domestic workers	5	1	4	5	15
Other factory worker	16	54	5	35	110
Salesman	4	0	3	0	7
Electrocute	0	4	3	0	7
Others	100	25	12	7	575

fifth, sixth and seventh of the Bangladesh Labour Law, 2006, and the proper and effective implementation of these provisions will remain a mere dream for us unless an occupational safety and health oriented policy is drafted immediately. Furthermore, mere the Labour Law, 2006 is not enough to cover the vast ambit of the occupational safety and health vis-a-vis the total number of industries of our country.

The World Health Report 2002 of WHO reveals that occupational risk factors account globally for a number of morbid conditions, including 37% back pain, 16% hearing loss, 13% chronic obstructive lung disease, 11% asthma, 10% injuries, 9% cancer and 2% leukemia. As the rate of occupational health casualties is very alarming and the numbers of casualties are increasing day by day, there is no alternative to formulating a precise and effective national occupational health and safety policy for the better advancement of the whole industrial sector of our country which will definitely pave the way for achieving the millennium development goals (MDGs).

The writer is an assistant programme officer, Bangladesh Occupational Safety, Health and Environment Foundation (OSHE).

The National Policy of Maternal Health

The National Policy of Maternal Health is basically a general issue while the treatment or care is alike for all. But the vital factor here is that the necessary facilities required for pregnant women remain out of reach of the female pregnant workers as the adverse employment environment (working environment) compels them to be deprived of those opportunities. For this, it is urgent to draft a special and effective policy particularly for those engaged in certain occupations to recap all of these loopholes.

The National Nutrition Policy

Basically the main factor for drafting this policy was to ensure the optimal nutrition requirements of the rural women, more specifically during the maternity period, and a project of the government in this regard is undergoing throughout the country. A leading question here arises that does it (the national nutrition policy) comply with the nutritional requirements of a woman working