

Star LAW ANALYSIS

Anti-trafficking Law: A hallmark in the fight against human trade

RIDWANUL HOQUE

IN the recent times, the phenomenon of 'human trafficking' has crossed the state of denial. The Human Trafficking Deterrence and Suppression Act 2012 (w.e.f. 22 February) has been the most spectacular achievement of the ongoing anti-trafficking actions by the government and civil society organizations.

These days, Bangladesh has turned out to an increasingly fertile site for trafficking in persons for sexual and other forms of exploitation, and sometimes under the shadow of migration of workers for overseas work. Interestingly, Bangladesh has recently witnessed trafficking in human beings domestically. Ironically, however, there have not been enough arrests and convictions for the barbaric offence of human trafficking. There are reasons, though, behind this unsatisfactory state of actions.

Not that before the enactment of the HTDS Act there were no laws against human trafficking. Instead of a comprehensive law, a series of laws such as the Penal Code or the Nari O Shishu Nirjaton Daman Ain 2000 constituted the gamut of legal tools against human trafficking. These laws, however, largely failed to enact an effective anti-trafficking legal framework and skillfully avoided defining 'trafficking' in clear terms. The pre-2012 legal framework lacked a broader definition of human trafficking encompassing trafficking in men, women and children as well as trafficking for any purpose beyond merely sexual exploitation/'prostitution'. Another notable loophole was that, under no law human trafficking was seen as an 'organized crime'. Also, the victims of trafficking were not adequately treated and protected.

In the context of this deficient scenario of anti-human trafficking legal regime, the demand for comprehensive legislation to effectively prevent and suppress human trafficking in Bangladesh gathered momentum. As a result, in mid-2010, the Ministry of Home Affairs undertook the initiative of drafting a comprehensive law through a participatory way, a process that ultimately resulted in enactment of the Human Trafficking Deterrence and Suppression Act 2012 (HTDS Act).

This comprehensive anti-trafficking law has ushered in a new dawn in the existing legal framework against human trafficking in that it criminalises all forms of human trafficking, both internal and transnational. It has repealed certain old laws, namely the Suppression of Immoral Traffic Act 1933 and sections 5 and 6 of the Nari O Shishu Nirjaton Daman Ain 2000.

It provides for the deterrence of the heinous crime of trafficking mainly through providing for effective prosecution of the offence and a protective regime for safeguarding and rehabilitating the victims. This is the first law in Bangladesh and, to some extent, also in South Asia, to include labour trafficking, i.e., trafficking in human beings for the purpose of exploitation through labour. A special feature of the new statute is that it does not retard, but rather promotes migration of people for overseas employment. The law indeed strikes the balance between the need for fostering migration for development and the need for controlling trafficking under the guise of migration. It is not out of place to mention that, the first case of 'trafficking in men' for the purpose labour exploitation overseas has been filed under this Act in May 2012 in Naogaon.

For the convenience of the readers, the salient features of the HTDS Act may now be summarized. In the words of trafficking literature, it may be said that the new law is premised on five Ps: Prevention, Prosecution, Protection, Partnership, and Principles. The Act provides for an inclusive definition of human-trafficking (sec. 3), which is of international standard, and provides for severe but rational punishment for the offence. When human trafficking is committed individually, the maximum punishment is an imprisonment for life (s. 6). When it is committed as an 'organized crime' the maximum punishment is the death penalty (s. 7). In either case, there are alternative punishments, but the criminal fine of varying amounts is compulsory. Trafficking offences are extraditable offences, and the Act applies extra-territorially. When trafficking has been committed abroad by or against a citizen of Bangladesh, the offence can be prosecuted under this Act.

The HTDS Act has provided for the establishment

of an Anti-Human-Trafficking Offence Tribunal for the speedy trial of the trafficking offence. The prescribed timeline for trial is 180 days from the date of framing a charge. The Tribunal has been accorded wide powers such the powers to record evidence beyond the court premises as well by using electronic devices such as video-conferencing, to admit as evidence any proof, record or statement held electronically, to require any person to provide documents, to award civil compensation against the

offenders (in addition to the fine to be imposed upon the convict), to attach control orders with the granting of bail, to attach and croak property of the convict gained through the commission of the offence, and, most importantly, to issue any suitable protective order for the protection of victims and witnesses even before any case is formally instituted.

The Act has empowered police with wide power of investigation and facilitates cross-country investigation. It provides for proactive inquiry and pre-emptive searches

including provisions for 'regulated' searches without warrant. The timeframe for investigation is 90 working days, with the possibility of a limited extension.

The most striking feature of this Act is that, it has provided an integrated pack of protective measures for the victim of trafficking, enacting provisions for identification and rescue of the victims and for their repatriation, return, and rehabilitation and social-integration including medical treatment, legal-psychological counseling, and so on. In terms of overall protection of the victims of trafficking, the new statute provides for accountability of the government, government officials and non-government organizations. It lays down for private public partnership for

its implementation and sets out a number of principles such as the principle of non-discrimination and the respect for human rights and dignity of victims.

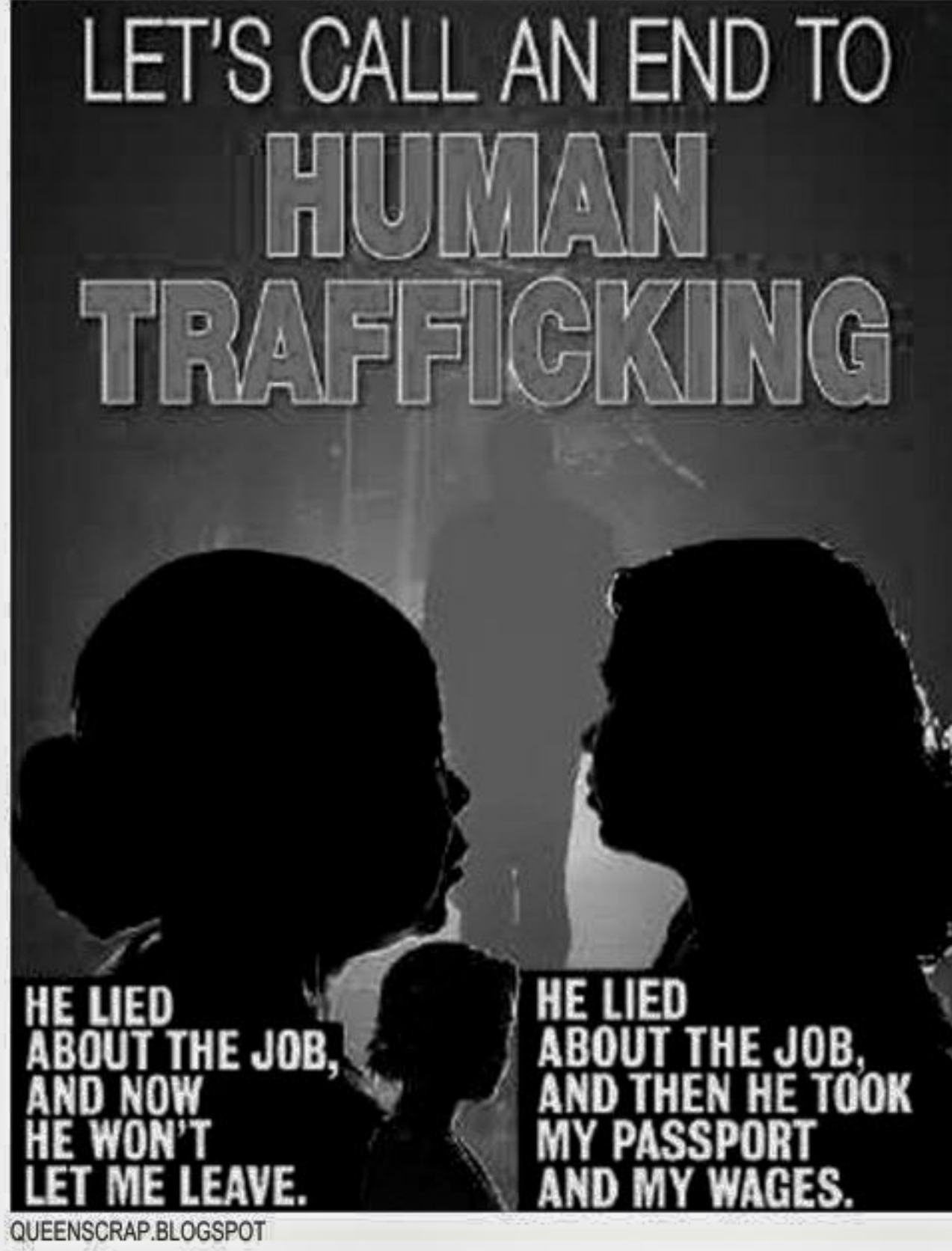
The Act also seeks to protect the victims and witnesses within the criminal justice processes. It criminalizes, for example, the publicity/disclosure of the name, photograph or any other information/identity of the victim/witness and of any member of his or family without the permission of the Tribunal. Also, threatening the victims or witnesses is a punishable offence. Witnesses and victims of trafficking are entitled to claim security and other types of protection from the police and the concerned agency during, specially, when they live in the rehabilitation centres or travel to and from courts/police stations. Reasonable costs incurred by the victims and witnesses may now be realised under this law.

Another noteworthy feature is that, the Act sets out provisions regarding state to state mutual legal assistance. This will hopefully go a long way in suppressing organised crime of cross-border human trafficking. Until recently, there were no bilateral assistance agreement on the issue of human trafficking, nor did any statute mandate the conclusion of such inter-country or regional pacts. Following this Act, the government has already made progress on the issue of mutual legal assistance between Bangladesh and India regarding human trafficking offences.

The HTDS Act provides for the installation of a Fund to support fund anti-human trafficking activities of government agencies and possibly of any non-government organisation or civic activists. The Fund is soon expected to be created in the Ministry of Home Affairs.

Undoubtedly, the justice-focused HTDS Act is a landmark achievement in the long-running fight against human trafficking in Bangladesh, and there are grounds for celebrating it. However, if any meaningful and durable justice has to be done to the hundreds of victims of human trafficking, everyone concerned now has to undertake the challenge of implementing the goals of this Act. The Government has already laid down a solid step towards that end, by adopting the National Plan of Action 2012 to Combat Human Trafficking. Now, the preventive and protective functions under the new law are to be discharged by all duty-bearers and stakeholders in a spirit of commitment and partnership in accordance with the strategies and procedures contemplated in the NPA 2012.

The writer is Associate Professor Law, University of Dhaka.



LAW OPINION



Right to Information: Right revisited

MAHDY HASSAN

THE modern world is now booming with the call for meaningful democracy needing transparency and accountability in the statecraft and in that view of the matter the subject of people's right of access to information has gained importance. There appears to have been a universal recognition of the claim and inevitability for the establishment of people's right of access to information. The signal of the demand has also touched our shores. In the preamble of our Constitution, there is the pledge that it shall be fundamental aim of the state to realize through democratic process a socialist society, freedom from exploitation a society in which the rule of law, fundamental

incitement to an offence. It has been said that the notion of freedom of thought and conscience and of speech and also the notion of rule of law become nugatory if the public, for the sake of which the state exists, is deprived of access to information. It would be profitable to have a look at the international covenants, documents etc. respecting the right to information. Article 19 of the Universal Declaration of Human Rights, 1948 reads: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" Article 19 (2) of the Covenant on Civil and Political Rights, 1966 reads: "Everyone shall have the right to freedom of expression;

this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print in the form of art, or through any other media of his choice". The exercise of the above-mentioned right carries with it special duties and responsibilities. It may, therefore, be subject to certain restrictions but this shall only be such as provided by law and necessity: a) for respect of rights and reputation of others, b) for protection of national security or public order.

Thus under the aforesaid two international instruments the state parties are obliged to make available to their citizens all kinds of information except those that

are necessary to protect national security and avoid interference with the privacy of citizen. Incidentally, Bangladesh has signed the International Covenant on Civil and Political Rights of 1966 on September 6, 2000. The Vienna Convention, Limburg Declaration and Bangalore Colloquium exhorted those human rights as pronounced in the International Bill of Human Rights must be reflected in the domestic laws of the state parties.

The Republic of Bangladesh, a party to the above-mentioned international covenants and documents, therefore, has both moral and legal obligation to conform to the international norm respecting public access to information resting with the state machinery, public functionaries and non-government organizations registered with the government. For the sake of transparency in the democratic process and good governance in our country, public access to information appears essential. Again, freedom of information is indispensable for a citizen to bring his grievances before the administrative authority or the Court of law for redress. If the general public remain ignorant about the affairs of the state touching on their fate and welfare it will amount to travesty of democracy.

For this reason for ensuring right to information an Act named Totto Odhikar Ain 2009 (The Right to information act, 2009) has been enacted by the government of the People's Republic of Bangladesh. This Act was enacted for ensuring free flow of people's right to information. The right to information is needed for empowerment of the people. Free flow of information is required for ensuring transparency and accountability in all the state organs. It is one of the most important tools to make a country free from corruption and to establish good governance as well. The definition of information is very wide-ranging under the Act. Any memo, book, design, map, contract, data, log book, order, notification, document, sample, letter, report, accounts, project proposal, photograph, audio, video, drawing, painting, film, any instrument done through electronic process, machine readable record, and any other documentary material regardless of its physical form or characteristics, and any copy thereof in relation to the constitution, structure and official activities of any authority is included within the scope of this Act. So, there is little scale to escape the information seeker on any excuse by the information provider.

Section 4 of the RTI Act provides that every citizen shall have the right to information from the authority, and the authority shall, on demand from a citizen, be bound to provide him with the information. So, the right is more or less absolute in nature. Though there are some reasonable restrictions exists in this regard. The meaning of authority is also comprehensive to almost any body or organization. And the right to

information is defined as the right to obtain any information from any authority. The procedure for seeking and providing information to and from any authority is described in section 8 of the Act. Most creditable part of the Act is the establishment of the Information Commission, which reflected the earnestness and sincerity of the government to the acknowledgement of people's right to know. By establishing this institution, the government has proved due diligence to implement the law. As per Chapter 4 of this Act, the Information Commission is established to give effect to provisions of the Act. The powers and functions of the commission are reactive in nature. Therefore, if any complaint is filed to the commission alleging any authority to deny providing information sought for or any purpose of the Act is not being fulfilled by any authority as mentioned in the Act, the commission intervened into the process and take measures as it deem appropriate. In doing so, the commission enquires into the complaint and information brought to its notice. If any office does not appoint any officer-in-charge to deal with the matter, it is within the jurisdiction of the commission to take action against such office. The commission deals any issues related to the information or any issues that is covered under the Act. The information commission was empowered with the powers of the civil court as per Civil Procedure Code of 1908 (Act V of 1908).

But this act is not followed everywhere. We are so astonished after reading the report published by Prothom Alo on 15 May 2012 where it is said that the information commission has been giving false information since one year. And even it is seen in its report that most of the time the particular form given by information commission is not used at the time of giving information. The chairman of the National Human Rights Commission, Dr. Mizanur Rahman is quoted to have said that the information has no freedom. The information is in chain in the hand of money, politics and influential persons of the society. He also said that the free flow of the information must be ensured but the government does not want to inform the information to the people because if the people know the information, they do not obey the government. (Prothom Alo, 15 May 2012).

The writer is a student of law, University of Dhaka.



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human rights and freedom, equality and justice, political, economic and social will be secured for all the citizens. Article 39 of the Constitution guarantees freedom of speech and expression to every citizen, subject to certain reasonable restrictions imposed by law in the interest of the security of the state, relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or