



HUMAN TRAFFICKING DETERRENCE AND SUPPRESSION ACT 2012

Legal rights of trafficking victims become stronger

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**S**HAMIMA, with her dark brown eyes gave a blank look, and uttered, "I don't want to be a part of this mockery. Court process is not for us, it is for the powerful. Since my repatriation from India, I faced lot of harassment, in the name of investigation". Residing in a non government shelter home, Shamima is now thinking to withdraw her complain.

Discussing the issue of re-victimising especially in the investigation and court process, with Special Public Prosecutors (Nari-o-Shishu Nirjaton Daman Tribunal) it was found that, most of the tribunals (11/25) do not frequently use camera trial, which is an important provision to keep victim/survivors' confidentiality and protect them from re-victimisation, even in some cases, trial in camera is still a very new concept.

In this situation, recently we enacted Human Trafficking Deterrence and Suppression Act 2012 (HTDS) which brings some new concepts in our legal system and creates provisions to make victim's rights stronger.

HTDS is an instrument of international standard which is drafted keeping in mind grass root reality. This act criminalises all forms of human trafficking. Pioneering in South Asia, this law clearly defines exploitation for the purposes of labor, organ trading and domestic servitude and other forms of exploitations. Keeping a balance between ensuring accountability of government and non government organisations, HTDS gives focused concentration on public private partnership to fight against modern day slavery.

The core essence of this law is deep rooted on the principle of dignity and non-discrimination. This write-up is a modest effort to simplify the protective approaches of HTDS law, which is narrated in Chapter V (section 32-40) of the Act.

To ensure victim/survivors rights and dignity, this new law focuses on few issues: identification of victims, rescue, repatriation, rehabilitation, reintegration, (there are now provisions for measures for the establishment of more protective homes, for reimbursement of the reasonable costs incurred by the victims/witnesses, and for legal aid/court-ordered compensation & strict adherence to privacy and dignity of the victims including protection against re-victimisation & the victim's right to information)

National Plan of Action for Combating Human Trafficking 2012-14 (NPA) recognised the following issues as implementation chal-

lenges: To make these provisions known widely to govt. departments, foreign missions, and NGOs and INGOs, and others, to establish SOPs for these purposes; and establish new protective homes and enforce the conditions of standard in the existing ones.

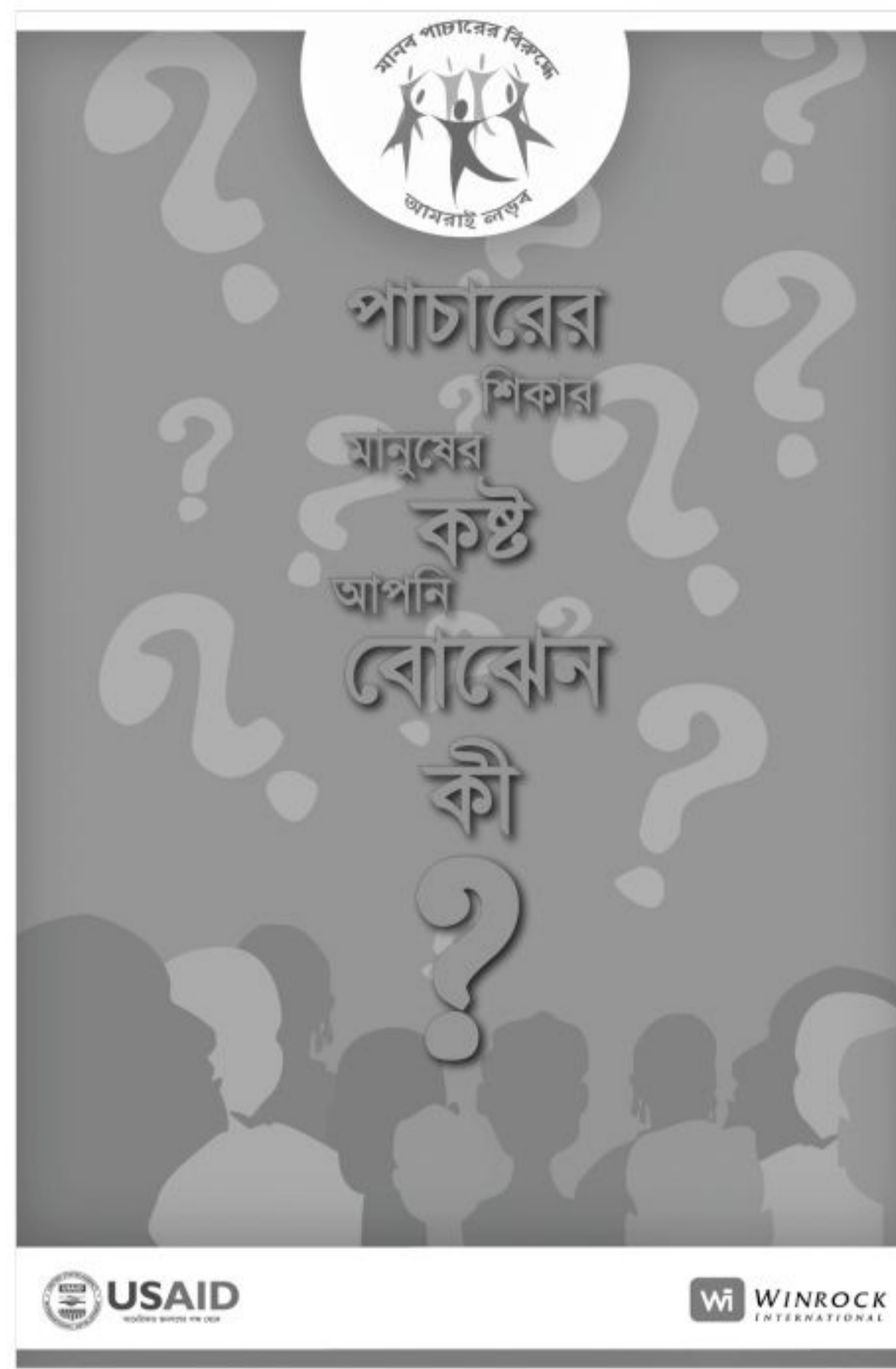
**Sections and contemplating issues**

**Identification and rescue of victims of human trafficking:** For identification, rescue, repatriation and rehabilitation of victims of trafficking with the help of other concerned stakeholders, Government shall establish operating procedures.

Before drafting this operating procedures different domestic and international instruments need to consult, otherwise different mechanism in different countries may frustrate victim's interest. HTDS stressed on victims-friendly manner, with special regard being paid to the welfare and special needs of the child and women.

**Repatriation and return of victims of trafficking:** Establishing victim's repatriation right was opened a new era. *Gafur v. Bangladesh*, the Supreme Court established that repatriation of trafficking victims is a fundamental right (14.08.1997) With HTDS act, when a Bangladeshi national in Bangladesh has been identified as a victim of trafficking in a foreign country, the Government in collaboration with the concerned accredited Bangladesh Embassy in that country and, if needed, with the Ministry of Foreign Affairs or the Ministry of Expatriates' Welfare and Overseas Employment shall initiate the process to have such person return to Bangladesh. When any Bangladesh Mission in a foreign country comes to know that a trafficking victim being a citizen of Bangladesh is detained in that country, that Mission shall initiate the process to rescue, release and send the victim back to Bangladesh; Provided that when that victim has to stay back in that foreign country, the concerned Bangladesh Embassy shall adopt measures to provide him/her with legal assistance or counseling.

**Information to victims and to the public generally:** At least once in a month, the victim has the right to know the updates of the case by the government or police or concerned non-government organization. S/he is entitled to be informed by the Government or Police or, as the case may be of actions against the traffickers and of the stages of the concerned criminal case at least once in a month. S/he also has a right to be informed about rights to compensa-



tion and legal aid.

Government shall develop a comprehensive data-base and information. Necessary information from the database shall be disseminated with due regard being paid to the victim's right to privacy.

**Establishment of protective homes and rehabilitation centres:** Government shall establish adequate number of protective homes and rehabilitation centres throughout the country. For ensuring quality and a minimum standard, licence or temporary permission is needed from the Government for all protective homes and rehabilitation centres. Those who are already maintaining any such home or rehabilitation centre shall have to obtain such a licence within six months of this Act's coming into force.

This act is enforced in February 2012 and more than six months have passed by, still there is no clue about the procedure of licensing. The existing homes are now committing a continuous breach of legal duty. As such, they should come forward and address this issue immediately.

**Protection, rehabilitation and social integration:** If a victim of trafficking offences needs to be referred to a protective home, in case of such referral, all relevant information shall be immediately sent to the government or its appropriate agency.

Every victim of human trafficking residing

in a protective home or rehabilitation centre shall have the right to participate in the making of concerned decisions, and to rehabilitation and social-integration facilities including medical treatment and legal-psychological counseling.

**Protection of victims and witnesses, especially in criminal justice processes:** Any person or agency dealing with this issue shall endeavour to ensure that a victim of trafficking offences is not subjected to criminalisation and penalization. Without permission of the Tribunal, none can publish or broadcast the name, photograph or any information or identity of a victim of human trafficking or of any member of his or her family. Breaching this confidentiality is a punishable offence of a term of not more than six months imprisonment or with fine which shall not be more than taka one hundred thousand or with both.

Every victim or witness has a right to receive police security and other protective benefits extended by the Government if there is an existing or potential threat. These include the security being provided to the victim or witness during travel to and from court or other prosecutorial institutions or the stay of the witness in any protective home or even the cost can be incurred under this law.

**Protection of the rights of child victims and witnesses:** In all cases best interest of a child will be the main determining factor. In particular, everyone concerned acting under this Act shall take measures to ensure that child victims are neither criminalised nor penalised, and to avoid their stigmatisation and social marginalisation.

No child coming in contact or conflict with this Act shall be dealt with by the police, the Government or any person dealing with the subject matters of this Act otherwise than through the intervention of a child-friendly officer and processes. Specially, no child victim of trafficking shall be placed in any development centers or in a position of detention.

**Right to initiate civil action for compensation:** Without forgoing the right to have criminal proceedings initiated and alongside such a criminal proceeding, a victim of trafficking shall have the right to sue for damages for his or her actual sufferance and legal injury resulting from acts that have been made criminal offences under this Act or for the breach of any contract predicative of the concerned offence.

**Financial assistance for victims of traf-**

**ficking:** If a victim under this act is compensated by the tribunal that will not limit him/her to access to financial legal assistance under the Legal Aid Act 2000 or from any non-governmental organisation.

**Implementing challenges**

Al Amin Nayan, working with SHISUK, a non government Organisation shared his experience. He informed that law enforcement agencies are not aware of this new law and still male victim of labor exploitations are not addressed properly. Referring a recent case, he added, "Our challenge is to often educate police about this new law and then take protections under it". But still victims are threatened and no protections are available for them.

In the condition of anonymity, an Inspector from Cox's Bazaar region informed that, filling a case under HTDS gives us opportunities to file cases of labor trafficking but at the same time, safeguards which is provided in this act is difficult to accomplish, especially the protective measures and police security. Inadequate protective homes are also a challenge.

This new law stressed on active participation of victims on every stages of decision making and his/her right to be updated about the concerned case which includes victims' choice to stay at protection home, taking services or other issues. Non discrimination and dignity must be ensured in all stages otherwise it frustrates the core values.

Binoy Krishna Mallick ED of Rights Jessore, informed, "victims are not treated with dignity and after rescue kept in 'cage' like room with the accused before producing to the court. Stereotyped attitude of the law enforcers stigmatized the victim again. And unfortunately, most of the time, families are not event ready to accept them, in fear of stigmatisation" He also shared from his long experience that, "victims and her/his family always get intimidated by the accused traffickers"

"Gafur Vs. Bangladesh created a philosophical ground and established repatriation as a fundamental right but the HTDS Act enacts rescue, repatriation and rehabilitation as an entrenched legal right of the victims, creating obligations for state officials and other actors to that effect." Ridwanul Hoque, Associate Professor of Law at Dhaka University shared this view in an interview with this writer. He also stressed that besides providing different measures, it is always possible to have a protective order from tribunal or the concerned magistrate's court, if there is no clear indication in the law as to what to do with regard to any victim.

The writer works with Law Desk.

LAW NEWS



Stronger actions needed to prevent sexual violence

**T**HE United Nations and its partners on September 25 stressed that stronger actions and commitment are needed from world leaders to prevent conflict-related sexual violence and to secure justice for survivors of gender-based crimes.

"In conflict zones, women are disproportionately affected by sexual and gender-based violence, forced displacement, the destruction of civilian infrastructure and rights violations," said the Executive Director of the UN Entity for Gender Equality and Empowerment of Women (UN Women), Michelle Bachelet.

"Access to justice means more than punishing the perpetrators. It means redress and reparations that enable women to recover losses, alleviate poverty and become full and equal members of society," Ms. Bachelet told attendees at a high-level panel on sexual violence prevention held on the margins of the 67th session of the General Assembly in New York.

The event was jointly organized by UN Women, the United Kingdom, Special Representative of the Secretary-General on Sexual Violence in Conflict Zainab Bangura, and the International Campaign to Stop Rape & Gender Violence in Conflict.

"For too long, conflict-related sexual violence has been largely 'cost-free' for those who rape women, children and men, whereas the cost and stigma have been borne by the victims," said Ms. Bangura, stressing that even as survivors receive the care and services they require, countries must emphasize that sexual violence is not inevitable, but that the consequences for the perpetrators are. "This scourge can and must be eradicated."

Source: UN News Service.

LAW EVENT



'Income-tax Law Information Clinic' by NBR

An innovative project conducted by law students



hundred law students from BRAC University and other private and public universities had participated in this program. As a part of this new initiative, the selected law students had undertaken a week long training workshop at the BRAC University campus on income-tax laws and high officials from NBR conducted the sessions. On 15 September, fifty Income-tax Law Clinics were set up in various important locations in the Capital including among others; National Press Club, National Museum, Baily Road Viqarunnisa School, IDB Bhaban, Mirpur 10 circle, Uttara and Banani.

At the individual clinics, law students volunteered by sharing basic information on income-tax law with general people who visited the booths and answered their queries related to common issues of income-tax laws. The students had also distributed leaflets containing basic income-tax law related information written in an easily understandable language.

The initiative received an excellent response from the general taxpayers and the clinics were visited by citizens from different professional groups. This was a new addition to this year's celebration of Income-tax Day by NBR which was followed by the Income-tax Fair from 16 to 22 September, held in the Officers Club at Baily Road. Dr. Nasiruddin Ahmed, Chairman of NBR and the Secretary of Ministry of Information, Hedayetullah Al Mamoon; visited a number of clinics and exchanged views with the law students regarding their experience and public responses.

-From Law Desk.

LAW WEEK

HC to remove illegal structures from Segunbagicha

The High Court (HC) on September 26 directed the government to remove or demolish all illegal structures from the footpaths in Matsya Bhaban and Segunbagicha areas in the capital in 24 hours. Replying to a writ petition, the court also directed the authorities concerned to submit a report to this court in two weeks after complying with the directive. The HC bench of Justice Salma Masud Chowdhury and Justice Quazi Rezaul Hoque passed the order after hearing the writ petition filed by advocate Manzill Murshid on behalf of Human Rights and Peace for Bangladesh.-The Daily Star online edition September 26 2012.

Defamation case filed against CCCI president

A defamation case was filed against Chittagong Chamber of Commerce and Industries (CCCI) President Murshed Murad Ibrahim accusing him of making defamatory remarks about AL Chittagong city unit President ABM Mohiuddin Chowdhury. Md Taslim Uddin, a lawyer and member of Awami Swechhasebak League Chittagong city unit, filed the case with the court of Chittagong Metropolitan Magistrate Lutful Majid Nayon demanding Tk 10 crore as compensation. Taking the case into cognisance, the court ordered the Detective Branch of Chittagong Metropolitan Police (CMP) to investigate and submit a report to it within a month, said Advocate Habibur Rahman, lawyer of the plaintiff. The alleged defamatory remarks made by Murad was that Mohiuddin has become owner of large properties and several posh houses although he has no business or any other source of income. -The Daily Star September 26 2012.

HC throws out charge against Orion Group chairman

The High Court on September 25 quashed the proceedings against Orion Group Chairman Obaidul Karim in a bribery case. On June 5, 2007, Dhanmondi police filed the case against Obaidul Karim on charge of giving a car worth Tk 50 lakh as bribe to Harris Chowdhury, political secretary to former Prime Minister Khaleda Zia, to get the construction work order of the Gulistan-Jatrabari flyover. ACC lawyer Khurshid Alam Khan said his client will move an appeal to the Supreme Court against the HC verdict. Although police filed the First Information Report (FIR), later the ACC took over the case for its dealing, he said. The HC bench of Justice MR Hasan and Justice Mahmudul Hoque delivered the verdict. - The Daily Star September 26

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