



## HUMAN RIGHTS ADVOCACY

# Endless cry of Bangladeshi migrants

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As budgets tighten, we are seeing austerity measures that discriminate against migrant workers, xenophobic rhetoric that encourages violence against irregular migrants, and proposed immigration laws that allow the police to profile migrants with impunity. During economic downturns, it is worth remembering that whole sectors of the economy depend on migrant workers and migrant entrepreneurs help to create jobs" Message given by Ban Ki-moon, the Secretary General of the United Nations, for International Migrants Day, 2012.

18th December has been observed as the International Migrants Day taking into account benefit and dignity of the large number of migrants in the world. Observation of the day goes to 18th December of 1990 when the General Assembly adopted the international convention on the protection of the rights of migrant workers and members of their families by Resolution no-45/158.

This day is observed in all over the world by almost all countries, intergovernmental and non-governmental organizations through the dissemination of information on human rights and fundamental political freedoms of migrants. This year, we observed the day with a slogan "Ain mene jabo bides, Artho ane gorbo shodesh" ( we will go in abroad by abiding law and build our homeland with that money). But a crucial question arises how far has Bangladesh being able to protect and respect for the basic human rights of those migrant workers.

All migrant workers have both human rights and some special rights as migrants, and it is the responsibility of hosting and receiving states to ensure some fundamental human rights and basic labor protections specifically linked to their vulnerable status.

There are a number of international legal documents as to the obligation of both hosting and receiving countries to ensure minimum standard of human rights for migrant workers. Such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political

Rights, the Convention on the Rights of the Child, the ILO Forced Labour Convention, the ILO Equal Remuneration Convention, the ILO Discrimination (Employment and Occupation) Convention, and the ILO Minimum Age Convention and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides that "States Parties undertake ... to respect and to ensure to all migrant workers and ... their families within their territory ... rights ... without distinction of any kind such



as sex, race, colour, language, religion..., national, ethnic or social origin, nationality ... or other status.... Migrant workers and members of their families shall be free to leave any State, including their State of origin... No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The Universal Declaration of Human Rights provides that "No one shall be held in slavery or servitude. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work.

Article 1 of the ILO Forced Labour Convention provides that "Each Member... undertakes to suppress the use of forced or compulsory labour in all its forms...."

However, there are many forms of abuse and exploitation suffered by Bangladeshi migrant workers in abroad specially in the countries of Middle East. They suffered by a gross violation of human rights. The Human Rights Watch made a field survey to bring out the real vulnerability scenario of migrant worker in the Middle East. Bangladeshi migrant workers are in the worst of position. Their harassment starts from the first initiative to the last destination. They mostly suffered for the lack and loopholes of effective emigration rules by Bangladesh government. Lawyers told Human Rights Watch that courts often issue worker-friendly judgments, but that cases take between six months and a year to resolve and are subject to appeals. Migrant workers are legally unable to work and have no income during this time, and say they typically feel they have little choice but to accept an unfavorable out-of-court settlement. Moreover, they are scarcely entitled to protection by Bangladeshi embassy or Labour ministry. Workers consistently told the Human Rights Watch that unpaid wages topped their list of grievances. Half of the workers interviewed said that their employers withheld their wages for between three to ten months. Nazrul, a Bangladeshi working in construction along with others said they had not been paid for ten months and living miserably.

Most of the Bangladeshi workers allege that low wages, excessive working hours, physical and psychological abuse are common matter for them. Many migrants settle for plane tickets home and return of their passports, forgoing a sizable portion, sometimes all, of their back wages. Some workers said they had even paid former employers to return their passports and cancel their visas, allowing them to leave the country. Some on going emigration policy taken by Bangladesh government is well but not enough to ensure the core enjoyment of basic human rights of migrant worker in abroad. Government should be more active in collaborating with other countries to bring a minimum level of exploitation for Bangladeshi migrant workers.

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## LAW OPINION

# Quest for 'What is Law in South Asia'

MOHAMMAD RUBAIYAT RAHMAN

GLANVILLE Williams in 'Learning the Law' opines that law is the cement of society which synchronises all the parts of society in a harmonious way. The debate over the meaning of law has been going on over a long period of time. It has become a constant source of contention in the orb of study of law. Many different societies conceive their own legal as well as justice traditions. When we wade across the realm of 'Hindu Philosophy of Law' we would see the approaches pertaining to issues of law and justice are quite different from that of Common and Roman Law families. However, law and society are entwined to each other. Furthermore, the legal science is stitched to some core 'social facts' which can be listed as the political system in tandem with the level of the democratic conscience of the people and the level of sense of civic responsibility. Hence, if we trace back the relationship between law and human society, it would be very obvious to us that 'Law' is the indefeasible part of human society. Anarchy begets where there is downward spiral of law and order. Therefore, law is a means of protecting and making a viaduct of social safety and peace. Law can be used as a means of protecting the weaker ones by enabling the latter to compete in a protected condition.

Different jurists comprehend law from different angles. Hence, the meaning of law varies. Salmond illustrates law as body of principles recognised and applied by the state in the administration of justice. Austin defines law in a 'majestic way' by saying that law is the command of sovereign, where the command obliges a person or persons to a course of conduct. Roscoe Pound sketches the meaning of law as body of principles recognizes or enforced by public and regular tribunals in the administration of justice. On

the other hand, the Vedas explains law as the king of kings, far more robust and rigid by whose aid even the weak may prevail over the strong. These pedantic outlooks envisage that law creates harmony in the society, from uphill to down dale, by mopping the dragging line between the strong and the weak. Law smoothes the ruffled feathers of human society. It means it always endeavors to make the



society a just place.

However, it is evident that in the western as well as the eastern jurisprudence, the meaning of law is not all the same. Though both have deficit of some important facts that veer round the meaning of law to illusion, it is much acute in the western jurisprudence. Prof. Dr. Yubaraj Sangroula in his 'Jurisprudence: The Philosophy of Law' casts the opinion that all these propositions of Austin, Ihring and Pound are erroneous. He makes his opinion gilt-edged by analyzing the definition of law provided by Austin that, 'He (Austin) drew his analogy from the early Roman history in which the dictates of the emperor had been followed by citizens as binding law. Law for Austin represents the will of the sovereign which is typically political in nature. Hence, his (Austin's) theory fails to reflect on the true nature of law.'

Enforcement of law in Western societies is

secured largely by the preparedness of citizens to uphold the sanctity of law. They take law not as 'fiend' but as a friend protecting their rights. Ironically, citizens of South Asia deem law from a different perspective which is very much negative in nature. Here in South Asia, law is an apprehensive instrument to subdue common people. Thus, the perception of common people as to law, in South Asia, is negative. Rather than notion of obedience, the legal rules are deemed as an (Austinian) imperative system of rules. The moral force in rule of law has not yet reached at a very stout level in this South Asian region to consider the image of legal regime as notion of obedience up to the hilt. The entrenching gap between the expectations of the common people and the performance of the mechanisms of the legal system depicting the scenario that rule of law is deficit of moral force here in South Asia.

Delving into the root to chug out the reasons would visualize that in the societies of South Asia, law, due to its ineffective rule of law, fails to flourish common and needy peoples' aspirations; promotion of their creativity; free choice of selecting values and ways of leading life. The participation of common people in producing new norms is tacitly discarded. In the preceding decades, in the name of law making, the institutions of South Asian States happened to impose their opinions on the shoulder of common people. The blind copying of laws from the developed societies and strategically unplanned observance of principles of law and justice from societies having institutionally structurally different set up - all of these are pivotal reasons behind the fragile edifice of the image of law in this South Asian region. Though latterly there has been a voice to change to swerve from these symptoms, the thrombosis still occurs.

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## LAW INTERVIEW



# Child trafficking seems to be increasing

## 2012 Global Report on Trafficking in Persons

LAST week the United Nations Office on Drugs and Crime (UNODC) released the 2012 Global Report on Trafficking in Persons, one of the most comprehensive reviews of the state of human trafficking around the world. UN.GIFT sat down with Kristiina Kangaspunta (KK), Chief of the UNODC's Global Report on Trafficking in Persons Unit, to discuss the challenges of in preparing the biennial report, some of the key findings, and how the report contributes to efforts to combat human trafficking.

UN.GIFT: UNODC's Global Report on Trafficking in Person 2012 is the most comprehensive and data-rich report on human trafficking that the organization has released to date. Past UNODC reports on human trafficking highlighted the difficulty of collecting data on the crime. What has changed over the past few years that enabled the publication of this report?

KK: This report has an approach that is global and local at the same time. It is global because we cover a large part of the world and we aim to depict patterns and flows globally. It is local as the information is collected and supplied by local institutions. The data availability and collection at the national level has also improved during the last years. There are more than 80 countries around the world with an established National Rapporteur or equivalent mechanism. Also, local authorities are currently better equipped to collect data. This makes it easier for the Member States to send information about their trafficking in persons situation to UNODC.

UN.GIFT: What were the most challenging aspects of data collection and analysis in the preparation of the 2012 Global Report?

KK: A great part of the work does not appear in the Report when we tried to understand what is behind the numbers. The report actually presents the analysis of the metadata, a fancy statistical word for the information about the data: What does the data represent? Is it biased and in which way? Is the data source reliable? And many other questions. We needed to gain a deep understanding of the trafficking situation and the institutional framework in each country through previous studies and listening to local experts.

UN.GIFT: The report highlights an increase in the number of child victims of human trafficking. Are children being trafficked with greater frequency, or has detection of child victims improved?

KK: More precisely, between 2007-2010 we register a reduction of the average age of the detected victims compared to 2003-2006. The reason for this age reduction might be the better detection of child victims. However, there are also indications that this trend is reflecting a real pattern related to the profile of the victims. Increasing child victimization trend is recorded in more than 20 countries around the world and it is confirmed by the majority of the European countries which are historically best equipped to detect and report human trafficking crimes. It is hard to believe that all these countries simultaneously decided to focus more on child trafficking during the last 4 years. We would need more research to understand why child trafficking seems to be increasing.

UN.GIFT: Can you highlight a few of the most unexpected findings of the 2012 Global Report?

KK: For me, one of the most striking results is the diffusions of the trafficking flows around the world. There are 135 nationalities detected in 118 countries, and at least 460 trafficking flows officially detected between 2007 and 2010. If we think what this really means, we can see that human trafficking flows are extraordinary complex, which also explains the difficulties in observing this phenomenon.

UN.GIFT: How do you expect this report to be used?

KK: The best thing that can be done with a report is to read it in full. Too often we go

through this type of studies by having a quick look at the summary or at the summary of the summary presented by the media. These brief summaries necessarily leave out many different aspects, insights, details and nuances of the Global Report which would help the reader to better understand the complexities of trafficking in persons in different parts of the world.

UN.GIFT: How does a robust body of data contribute to efforts to combat human trafficking?

KK: Global and regional data are helpful to better understand different patterns and flows of human trafficking in the world. This kind of data can also raise several

questions about different aspects of trafficking. For example, if we know that detected cases of child trafficking or labour exploitation are increasing, policy makers and practitioners should ask why this is happening and what should be done about it.

UN.GIFT: Earlier this year the ILO released its Global Estimate on Forced Labour, putting the number of victims of forced labour at around 21 million. Does that UNODC Global Report complement ILO's Global Estimate, or how are these two reports related?

KK: While the ILO report is targeting forced labour according to the Forced Labour convention, UNODC is studying trafficking in persons following the UN Trafficking in Persons Protocol. This means that the phenomena that we are studying are defined differently in two different international treaties. Forced labour and trafficking in persons are related and overlapping to an unknown extent. Many victims of forced labour are in this situation as a result of trafficking; but we also have victims of trafficking that are not covered by the ILO convention, and victims of forced labour that are not trafficked. ILO aims at estimating the size of forced labour at regional and international levels, while UNODC is mandated to analyze patterns and flows - not the severity - of trafficking. We also collect our data differently and use different methodologies in our analyses. Despite of these differences, some of our results complement each other's: as UNODC, also ILO arrives to the conclusions that the number of child victims ranges around 25% of the total number of victims.

UN.GIFT: Out of the 132 countries covered in the 2012 Global Report, 16 per cent did not record a single conviction for trafficking in persons between 2007 and 2010. Why are human trafficking prosecutions and convictions so rare compared with other crimes?

KK: Currently, only 9 per cent of countries do not have a specific legislation against trafficking in persons. In 2003, 65 per cent and in 2008 20 per cent of countries did not have such a legislation. So, the criminalization of trafficking has happened relatively recently. This might partly explain the low prosecution and conviction rates. However, the overall low rate is disappointing and shows that there is a great need to increase both the capacity and awareness of the law enforcement to better respond to trafficking crimes.

UN.GIFT: The next report will be published in 2014. Are there any areas that need to be covered that were not able to be included in the 2012 Report?

KK: We are planning to strengthen our data collection for the next report. Our aim is to cover all our Member States and we will try to deepen our understanding of national situations by collecting more qualitative information. This time we focused on the criminal justice responses, which is an important part of trafficking. However, it would be interesting to collect data also on prevention and protection following the articles of the Trafficking in Persons Protocol. This would allow us to better assess the real implementation of the Protocol.

Source: The United Nations Global Initiative to Fight Human Trafficking (UN.GIFT)  
<http://www.ungift.org/knowledgehub/en/stories/December2012/un.gift-qa-2012-global-report-on-trafficking-in-persons.html>