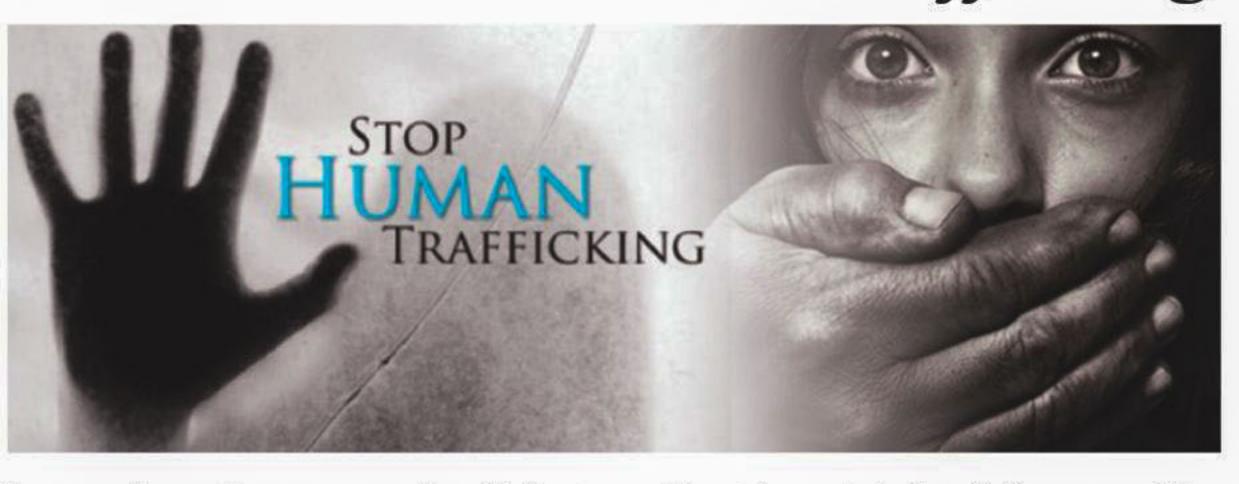


THE HUMAN TRAFFICKING DETERRENCE AND SUPPRESSION ACT 2012

Tool to combat women trafficking



KHANDAKER FARZANA RAHMAN

ANGLADESH is considered as a popular source in South Asia from which women are trafficked to India and other Gulf countries. There have been calls from international and national organisations before the government of Bangladesh to take initiatives to combat against women trafficking and rehabilitate victims.

In response to that, Bangladesh

has legislated The Human Trafficking Deterrence and Suppression Act (HTDSA), 2012 to prosecute perpetrators by different terms of punishment as well as to prevent trafficking through mobilising resources for fund, allowing the victim to access legal aid and right to compensation. However, this Act is not well and widely applied in the ground, though its core features are complementary to prevent women trafficking through prosecuting the accused and rehabilitating the vic-

The HTDSA is a rights-based legislation, placing the concerns for the trafficking victims at the core of its functional fold. It criminalises all forms of human trafficking by covering both internal and transnational trafficking, allows for male victims of trafficking and provides for accountability of the government and non-public organisations. The significant provisions of the

said Act are, section 2(15) of the Act gives a non-exhaustive list of actions that would be considered as 'exploitation'. Section 5 provides for the extra-territorial application of the law when the victims or the perpetrators are Bangladeshi nationals and lists trafficking offences as an extraditable offence. Sections 6 and

7 provide for stern punishment for the trafficking offence (e.g. death penalty when the offence is in the form of organised crime and imprisonment for life in case of other types of the crime) and provides for ancillary offences (to stop demand side of trafficking). This Act in sections 21-22 and 27-30 also provides wide power to the special Tribunals for the prompt trial of trafficking offences. Under section 41, the Government can sign Memorandum of Understanding or Agreements with the other States where the victims of human trafficking, witnesses, money recovered or received out of the offences are present or probable to be present.

The Act itself has some inconsistencies in its text and courts also encounter some problems regarding its implementation. Firstly, Section 47 of the HTDSA has omitted Suppression of Immoral Traffic Act 1933 and sections 5 and 6 of Nari O Sishu Nirjatan Daman Ain 2000. Again Section 47(2) conveyed that despite the omission of the said Acts, any order, decision, direction or any action made under these omitted Acts shall be deemed to be taken and be continued under the HTDSA. This subsection clearly violates the stringent provision of Article 35 of the Constitution which prohibits the ex-post-facto effect of any legislation. Thus Section 47(2), HTDSA is considered as ultra vires and according to 26(1) of the Constitution this section becomes void ab initio.

One of the main challenges of this Act is the absence of limited time period in establishing a special tribunal or making procedural rules. The HTDSA empowers the government to establish special tribunal to

deal with trafficking cases specially. Due to absence of restricted time limitation for such establishment, the cases under the HTDSA are being tried by the Nari O Shishu Nirjatan Daman Tribunal as per the instruction of section 21(2). However, this Tribunal is already overburdened with the cases that are filed under the Nari O Sishu Nirjatan Daman Ain 2000. Additionally, the Act empowers Government to enact rules on ground of guideline for the mutual legal assistance, legal education mechanism for the law enforcers, judicial officers, and public prosecutors, format of extradition treaty, composition to fulfill the purposes of the Act. Unfortunately, there is no specific time limit to make rules.

To ensure the prosecution of perpetrators under HTDSA, improved collaboration between the lawyers, police and judiciary is needed for investigation and examination of the cases. They need to talk and find out the implications of the law by having in-depth knowledge on the provisions of law. Providing better services to address victim needs, specifically emergency shelter/housing and appropriate services are also important to enable effective prosecution of a case. The courts should employ a victim-centered approach to prosecuting trafficking cases. Finally, the Government of Bangladesh needs to be proactive in applying the existing law as well as raising awareness among mass people along with professionals, and building partnership with relevant stakeholders.

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UPHOLD THE RIGHTS OF hermaphrodites

SOHRAB HUSSAIN

T HEN we see hermaphrodites or commonly known as Hijras collecting money from the people for their own maintenance in the streets, our heart skips a little beat with a fear of being harassed. But we never think for a while that what the reason behind they beg for money. Hermaphrodites, who have no

gender, are neglected in our society. Over the past few decades, hermaphrodites have suffered persecution and ostracism from society and their families. Now, they are detached from their family, society, educational institutions which shattered their confidence to struggle for the survival in the world. Moreover, our social stigma is that they were born to be teased everywhere. The responsibility we show towards hermaphrodites is to misbehave with them, or we do not insist on making a good relation with them, these attitudes ignore their legal entity and make their life miserable.

In absence of proper recognition, having no educational qualification, hermaphrodites are not being employed in any private or public company or institution. As an alternative, they are being involved in prostitution for their own maintenance. One of the main culprits behind it is lack of security and awareness. There are some NGOs who are working for hermaphrodites like, Badhon Hijra Shongo, Shocheton Shilpi

as they only aware them of dangerous effect of HIV/ AIDS and gays. Unfortunately, in Bangladesh, where approximately 7 million transgender people live in, no specific law has been made for hermaphrodites to lead a normal life. In 1977-1985, when A.K.M. Nurul

Islam was the Chief Election

Shongho. But only these numbers of

NGO are not sufficient to take care

of Hijra community in Bangladesh

Commissioner, a step was taken to permit hermaphrodites to vote in polls as a male. Then in 2001, when voters' list was in process, government also insisted on arranging a fair and free election, many hermaphrodite communities did contact the election commission to legalise their voting rights. But somehow this issue was never resolved.

Identity crisis is the root of all the discriminations against hermaphrodites. The founder of Badhon Hijra



Shongho, a pioneer of Hijra rights movement in Bangladesh pointed out that, why we are not even mentioned in the constitution as a man or woman.

In various developed countries, hermaphrodites are enjoying their rights as a human being. Germany has become Europe's first country to allow babies with characteristics of both sexes to be registered as neither male nor female. Now, Parents can leave the gender blank on birth certificates. The identity of these hermaphrodites will be written in

their certificate as "indeterminate sex". A majority of countries in Europe give transsexual people the right to change their first name and birth certificates. Several European countries recognise the right of transsexuals to marry in accordance with their post-operative sex. Pakistan granted the rights to vote and run for the office to its transgender, transsexuals, transvestites, eunuchs, and hermaphrodite population. In November 2009, in India, this population

> represent themselves in the state legislative assembly. Article 27 of our Constitution stated that all citizens are equal before law and are entitled to equal protection of law. Article 28 states that No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution. Moreover, International Covenants on Civil and Political Rights recognised the right to life and liberty. Bangladesh is a signatory to

all these international dec-

larations and thus obliged

to honor the right to sexual

minority. So government

special law for hermaphro-

dites to include them into

mainstream of national

can make any separate

already enjoys the right to

As a developing country we should give hermaphrodites their legal identity. So it is high time government made separate laws for the protection of hermaphrodites and exercised its power sparingly and circumspectly to resolve this problem. We should also make separate educational institution where they will, in a friendly environment, prepare themselves to compete with the general students.

progress.

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Progressive interpretation of personal laws



MOHAMMAD GOLAM SARWAR

ANGLADESH being part of the Indian subcontinent has been traditionally following the pluralistic legal system. Under this system there is no unified body of family law that is uniformly applied to every citizen of the land irrespective of his or her ethno-religious background. Rather, there exists a legal order organised as a plural system in which different religious communities follow different laws based on their respective religions. This Plural system of personal status have been historically employed by imperial powers to categorise their colonial subjects according to their racial, religious, sectarian,

ethnic and parochial differences. It may be suggested that States like Bangladesh still continue to compartmentalise their societies into ethnic, religious and racial groupings and oblige the citizens to follow religious laws in family affairs. It is apparent that the laws of the country including personal laws based on religious scriptures carry the colonial legacy even if they, I argue, do not suit to our context. The utmost reliance on religious teachings without considering particular context on the one hand and the extreme imitation of colonial laws on the other hand create a sense of inequality and discrimination in Bangladesh. In most of the cases women

carry this sense of inequality and discrimination who are in general victims of inequality. In the absence of rational interpretation of personal laws, women remain the ultimate

victims of inequality and discrimination which are often justified with the help of orthodox religious teachings. It is difficult to comprehend that while Bangladesh is committed to uphold universal human rights standards and treat their citizens equally before the law, will ignore its constitutional obligations and discriminate among their citizens on the basis of gender, ethnicity and religion by continuing to recognise archaic personal status laws.

Hence to create symmetry between the laws, reformation of personal laws is frequently suggested. However the issue involves lot of challenges. It is undeniable truth that amidst of the socio-political reality, any reformative attempt to the personal laws might cause profound ideological divisions and unprecedented resistance from religious clerics and their followers. The incumbent government with a view to maintaining their regimes is likely to abstain to face the upheaval. In the same wavelength it may be cited that the constitutional incorporation of state religion and secularism in a single document is the glaring example.

The government felt compelling pressure to insert the provision with a harmonious combination of religiosity and secularity considering the dwindling political culture. This insertion of state religion, according to few, can accommodate religious pluralism for achieving new common goals. It is also argued that it should be a caravan of modernisation of state and reform of social and legal culture. In

this situation unification of personal laws by way of normative reform not being substantive reform for a common code that will be applicable for all citizens is practically impossible since it will upsurge social opposition.

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On the one hand orthodox religious teachings without being reformed completely disregards the human rights norms particularity equality and non-discrimination and on the other hand though the government is committed for protecting human rights values, but refrain itself from the interference in the personal laws even if those are discriminatory. Here we find a complete paradox. The government apprehends the fierce resistance of ethno-religious communities whose norms and institutions have been targeted by reforms.

The intensity and severity of that resistance seem to be directly correlated with the type of reform in question. For example, a close scrutiny of the experiences of postcolonial nations shows that normative reform has instigated the greatest amount of resistance from social forces while opposition mounted against substantive reforms has been less and rela-

tively easier for governments to overcome. Amidst of the social, political and practical problems, it is submitted that to ensure the harmonious application of personal laws ensuring equality and non-discrimination, following recommendations can be taken into account. Firstly, judicial activism by the arm of progressive interpretation can guarantee harmonious application of personal laws ensuring equality and non-discrimination. In this regard it is essential to mobilise the tools of judiciary with a view to changing the orthodox mindset of judges and lawyers.

Secondly, while people at large in Bangladesh are very much prone to religious teachings and unwilling to comply with progressive interpretation, it may be submitted that human rights education can make a qualitative shift to comply with the progressive application of religious teachings.

Thirdly, while the perception of inequality and discrimination often borne by women who are in general victims of inequality derived from the application of orthodox religious teachings and reservations, it is indeed necessary to ensure humanistic interpretation of Islamic law to eliminate discrimination.

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centre of development THE senior United Nations officials on February 5, 2015 addressed the Commission for Social Development as it marked the 20th anniversary of the

Putting people at the

Copenhagen Declaration regarding 'the need to put people at the centre of development' with Secretary-General Ban Ki-moon. He said that, the world's current generation is the first who is able to wipe out extreme poverty and the last that could address the worst impacts of climate change. "There is one word above all that must guide us on this roadmap to ending poverty,

transforming lives and protecting the planet," he told the Commission, and added: "That word is: dignity."

Mr. Ban said, policymakers in the past had focused too much on economic growth, without taking into account social concerns or environmental factors. He described how the 1995 World Summit, which has become informally known as the 'Social Summit', has emphasised the integrated nature of social, economic and environmental pursuits and had emphasised the need to put people "at the centre" of develop-

Joining Mr. Ban at the event was Denis G. Antoine, Acting President of the General Assembly, on behalf of Assembly President Sam Kutesa, who also noted the "particular relevance" of the Copenhagen Declaration and Programme of Action to efforts to formulate the world's

agenda. "The three main focal points of the Copenhagen Declaration; poverty eradication, full and productive employment and decent work for all,

and social integration

priorities in the new

should still remain key

new development

development framework," said Mr. Antoine. He also noted that

despite significant progress on poverty eradication, nearly 1.2 billion people remained in extreme poverty and inequality was on the rise in many countries.

The commemoration, therefore, should serve as a reaffirmation and reminder of the need to strengthen the role of social development for sustainability. The Secretary-General went on to emphasise the importance of social development

to making the planet just, safe and healthy for everyone and he said that all development should be built on a foundation of policies centred on peoples' needs and aspirations. Noting the year's importance to global development, with the target date of the MDGs approaching and negotiations ongoing for a new sustainable development agenda under way, Mr. Ban underlined the importance of the Commission's continuing work following-up and implementing the Copenhagen Declaration and Programme of Action.

On this 20th anniversary of the World Social Summit, let us reaffirm our commitment to promoting social development and social justice, and building a better and more sustainable world for all.