



Forced labour: The law of the jungle!

SUSHMITA CHOUDHURY

A disproportionate amount of focus on sex trafficking draws the attention away from the countless male trafficked victims faced forced labour episodes whose we seldom meet as hawkers in the bustling street of a vibrant city selling newspapers or popcorns. They are seen as pulling their all weight over to lure customers with their sarcastic gesture so that they can escape poverty and defy everyday's hellish reality. In disguise, they are just fighting with their physical wounds and grief what they had during their captivity in a foreign land. Somehow, perhaps they might fall prey to the lucrative job offers by the traffickers and were gripped by their malevolent motives.

The twist revolves around the culprits or traffickers who usually plot the vicious cycle of human trafficking. However, the notorious drives of these traffickers mostly have been observed in poverty-stricken regions of rural Bangladesh who are well trained to trap poor folks and fortune seekers. These wicked brokers stay in the bottom of the highly structured international trafficking racket. It is notable that shedding crocodile tears in the struggle of a poor fellow and fuels the person to be economically affluent through taking a trip abroad can't be usual rather fishy from an anonymous guy. Their strange behaviour pops up doubt in the minds of conscious people and in most of the cases they are figured out as traffickers. Moreover, fraudulent conduct has been mentioned in the Human Trafficking Deterrence and Suppression (HTDS) Act 2012 as means while constituting the crime human trafficking.

However, mostly agonising poverty and terrible ambition allow some to grab up this precarious offer. Embracing these

proposals one can only dig his own grave. In this process, unfortunate victims are promised to give attractive salary package and decent place to live in. Nonetheless, eventually they find their passport to be confiscated and discover themselves get confined in the exploitative environment where they are replaced with the machine working dawn to dusk in the industry, brick kilns or

product which comes from the menace of trafficking victims and forced labour. The tensions about the incidents of forced labour have been brewing which now a day makes up 45% of share in the realm of human trafficking occurrences. For instances, men in Cox's Bazar gave \$500 in a loan to the migrant worker, and he was asked to work in the construction company of Malaysia,

them to contribute energy in the abusive environment not only drag them to have some spine-tingling experience but also clip their wings to drive life on their way. The incidents of forced labour along with their consequences contribute to the highest degradation of human dignity although we know the human dignity is the quintessence of human rights. In addition, a subsequent ILO Convention No. 105, adopted in 1957, signifies that forced labour cannot be considered as the part of economic development. Strikingly International Labor Organization (ILO) found that around the world 7.8 million people who have got locked in the death valley of forced labour become the favourite investment of business enterprises run by the corrupt businessmen as these evil tactics lead them to climb up the tower of wealth.

Despite experiencing the catastrophic impact of forced labour in the job market, unfortunately, timidity in responding to these criminal incidents is prominent. But every cloud has a silver lining. The appearance of HTDS Act 2012 as silver lining bridges these gaps in sections 2(4) and 2(3) respectively through the insertion of the notions of forced labour and debt bondage. On the other hand, the legislation should have embedded all the potential scenarios of forced labour mentioned above and the consequences of debt bondage as well.

Forced labor, the terrible form of human trafficking is an ugly sore in the vast fabric of human rights. Confiscation of human dignity and commoditising the human spirit knock down the sophistication of the human rights that attributes and push the powerless fraction of society to get shattered.

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agricultural land for almost no money. Even no one shows empathy to feed them. Hence the modern slavery enterprise is thriving in exchange of the sweat and blood of poor fellows. Our continuous ignorance and denial pave these unscrupulous businessmen's way to turn out as tycoons. In the wave of this consumerist society, we also enjoy the

which loan is deceitfully manipulated to shackle this man and his families for years. In the light of these sporadic stories, it is readily apparent that the awful forms of human trafficking put the ethos of human rights in danger and make lives of vulnerable individuals fragile. Treating migrants in a ruthless way and insisting

YOUR ADVOCATE

This week Your Advocate is **Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh.** He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies.

Query: I work for the rehabilitation of the acid victims with an NGO. I have heard about the acid crime prevention law, but don't have a clear idea. Would you please let me know about this law?
Md. Mahfuzur Rahman
Dhaka

Response: Thank you for your query. To let you know, prior to 2002 there was no separate legal framework to prevent and control acid offences. In 2002, the Parliament enacted two Acts to combat acid violence.

The Acid Control Act 2002 was introduced to control the import, production, transportation, hoarding, sale and use of acid, prevent misuse of acid as corrosive inflammatory substance and to provide treatment to victims of acid violence, rehabilitate them and provide legal assistance. If a person is involved in unlicensed production, import, transport, storage, sale and use of acid and infringes any sections of this Act, he/she will be imprisoned for 3-10 years rigorous imprisonment and additionally liable to pay a fine not exceeding BDT 50,000. According to the Act, the government is the licencing authority for import and production of acid, and the Deputy Commissioner is the licencing authority for transport, storage, sale and use of acid in order to control it. This Act requires the licence holders to keep records in relation to all acid use. In case the acid victim is not financially solvent, she or someone on her behalf can apply to the District Acid Control Committee (DACC) for legal aid.

The Acid Offence Prevention Act 2002 is enacted to control acid crimes. There are various punishments



depending on the parts of the body affected by acid. If any person causes death of any other person by acid or causes hurt to any other person in such a way that her/his eyesight or hearing power is lost fully or partially or face, breast or sexual organ is defaced or destroyed, such person will be punished with death or rigorous imprisonment for life and in addition shall also be liable to fine not exceeding BDT 1,00,000. Damage or disfigurement of any other organ, ligament or part of the body will result in 7-14 years of rigorous imprisonment and also with a fine not exceeding BDT 50,000.

Punishment for attempt to throw acid may extend from 3 to 7 years of rigorous imprisonment and also with a fine not exceeding BDT 50,000 even if no damage or injury is caused. Furthermore, if someone assists to commit the offence of acid throwing, he/she will receive the same punishment as the perpetrators.

The offences under the Acid Offence Prevention Act 2002 are non-bailable. As per the said Act, if any person lodges any false case or complaint, he/she will be punished with rigorous imprisonment for not more than 7 years and in addition also be liable to fine. The offences under this Act will be tried in the Acid Offence Control Tribunal.

I hope the aforesaid elaboration shall help you to understand the relevant laws.

FOR DETAILED QUERY CONTACT: OMAR@LEGALCOUNSELBD.COM.

Revisit draft citizenship law

ORGANISED by Refugee and Migratory Movements Research Unit (RMMRU), a workshop for the journalists was held in The Daily Star Centre on 19 November 2016 to discuss about the proposed citizenship law which is under consideration of the Bangladesh government to enact very soon. The executive director of RMMRU Professor C R Abrar chaired the workshop, while Dr. James Gomez, the pro-vice chancellor of Canadian University of Bangladesh and Barrister Rashna Imam presented two papers respectively on the concept of nationality vis-a-vis citizenship rights, and the draft citizenship law under international human rights law. Highlighting his Singaporean experiences, Dr. Gomez commented that citizenship law is basically used as a political tool to suppress State's ethnic population on different pretending reasons and ideally the positive aspect of citizenship law is that it can also be used as a policy instrument to keep pace with the mode and flow of national development. With the emergence of growing radicalisation and Islamophobia around the world, the Internal Security Law in Singapore is increasingly used by the government to revoke anyone's Singaporean nationality. According to him, Singaporean court has very limited authority to invalidate any governmental action if taken as regards the revocation of a person's citizenship.

Drawing references from the 1948 Universal Declaration of Human Rights, the 1951 Refugee Convention and the Bangladesh Constitution, Barrister Rashna Imam critically evaluated the proposed citizenship law. She questioned the



reasonableness of this law. She commented that the government of Bangladesh has no satisfactory reason to enact such an important law without sufficient public consultation, as Bangladesh does not have the problem of influx of foreigners in recent times unlike Singapore, Malaysia and Hong Kong. She particularly emphasised that the draft law has failed to consider the vulnerable condition of the foundlings and/or children born out of non-Bangladeshi parents and of the woman married to a non-Bangladeshi man when the interest of these groups come into conflict with State's citizenship law. Being a member party of many international human rights law, as Barrister Imam believed, Bangladesh has an obligation to guarantee citizen rights and protect people from becoming stateless.

In his concluding speech, Professor C R Abrar said that the government must ensure that the proposed citizenship law would create a mutual relationship between the State and its citizens, by which the citizens would have a tangible sense of belongingness to the State. In this regard as the law has already been approved by the cabinet, according to Professor Abrar, more public assessments of the draft law are yet to take place before the law gets passed in the parliament. Since one of the UN Sustainable Development Goals (SDGS) is to ensure 'legal identity for all' by 2030, Bangladesh cannot deny its international responsibility towards the protection of the stateless population and citizens.

BY LAW DESK.

Trademark dilution: The blurry arena



SOURCE: SMARTBUSINESSREVOLUTION.COM

SYMBOLS or words are traditionally trademarks when individuals or corporations use them for the purpose of identifying or differentiating their goods or services. In modern times, however, slogans, colours, smells, shapes, sounds, gestures, and even taste may be trademarked. By giving exclusive right to a mark's owner to use the mark for identifying products or services, trademark acts as protection towards the owner of the mark. While laws have been passed for the protection of trademarks considering marketable value, trademark doctrine has significantly developed for the prevention of trademark infringement worldwide. However, remedies for trademark dilution have lacked importance.

Taking into consideration the *Zinn v Seruga* case (2009) in the USA, diminishing the capacity of a famous mark for the purpose of identifying and distinguishing goods or services is known as trademark dilution. Lessening the uniqueness of such a mark occurs in two possible circumstances - (1) when there is presence or even absence of competitiveness between the one owning the well-known mark (original or senior user) and the one using it later (junior user), (2) when there is absence or presence of the likelihood of mistake, confusion or deception.

Thomas McCarthy believes that a trademark dilution can be said to occur at instances when any company or individual uses a mark that is either the same or significantly similar to a mark that has already been in existence, activating minds of the consumers to somehow relate between both the marks. Thus, the strength of the original mark wears out. In the case of the 'Kodak bicycle' for instance, irrespective of the fact that most consumers are unlikely to think that the famous company now has a branch or got involved with the bicycle business, and although customers are well aware that the source of Kodak bicycle is different, it would lessen the image of Kodak being solely associated with film.

Therefore, it is eroding the strength of the Kodak film company, since customers may think of Kodak film when they see Kodak, or may think of the bicycles. Moreover, in the recent past, selling of "perfumebay", "perfume-bay" or "PerfumeBay" over the internet has been mentioned to dilute the famous shopping site "eBay". Not just the consumers are protected from confusion (as in infringement matters); the

theory of dilution protects the worth of the trademark to the holder of such.

Dilution by "tarnishment" mentions an unsanctioned usage of a particular mark that exposes the mark in an objectionable manner, likely to put forward uncomplimentary thoughts regarding the product of the owner, thereby tarnishing goodwill investment made in the owner's mark. Distributors of a well-known counterculture poster were sued by Coca-Cola Company when a poster wrote "Enjoy Cocaine" in the same font as Coca-Cola, making it look like a coke ad. While Bangladesh's Trademark Act, 2009 is capable enough to protect tarnished marks, however, dilution by "blurring" remains a problem.

Professor Frank I. Schechter, the introducer of dilution law, defines the harm done by "blurring" as the "gradual whittling away or dispersion of the identity and hold upon the public mind of the mark or name". The consumers' strong association of a particular mark is blurred since the mark's association is now being shared between two goods. Whenever the unique identity of a particular mark is weakened over its use on goods that are not similar, dilution by blurring occurs. Meaning that, the usage of a mark on a competing product dilutes that mark as much as usage of such mark on a non-competing product. It is anticipated that the original trademark holder, specially in the case of dilution by blurring, suffers "death by a thousand cuts" over time. As in Kodak's example above, blurring would occur provided the trademark "Square" is used for shoes, "Bata" used for aspirin and so on. Scholar Barton Beebe mentions that in order to discover that a mark blurs another, it is upon the judge to find out that the other user's mark is truly making customers to "think for a moment" prior to recognising that the original mark refers to the products of the owner of original mark.

While it is not uncommon for small entrepreneurs to sell "BMW" undergarments at the streets of Dhaka, as little an impact it may be on the car company, businesses with names such as "United" or "Unique" keep rising. Thus, even upon an attempt in addressing dilution by blurring through an amendment in the Trademark Act, 2009, efficient management of the complexity would perhaps be difficult, yet worth a shot.

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Need for ADR in RMG sector

ATTENDING a roundtable discussion organised by USAID's Workers' Empowerment Programme on 17 November 2016, experts opined that Alternative Dispute Resolution (ADR) mechanisms can successfully and efficiently resolve labor disputes by mutual agreement.

Participants, who included representatives of government, employer representatives, trade unions and other NGOs, pointed out that the current mechanism to resolve dispute through the labour court is time-consuming and expensive. Cases can take years to resolve, making it imperative to introduce ADR system that enables workers and employers to resolve their disputes effectively and harmoniously in the shortest time possible.

During the discussion, the Bangladesh Shrimp and Fish Foundation (BSFF) and Bangladesh Garment Manufacturers and Exporters Association (BGMEA) outlined how they are utilising the dispute resolution mechanisms. Participants also described the prevailing dispute resolution mechanism in Cambodia under the Ministry of Labour and Vocational Training.

Ministry of Labour and Employment (MOLE) Secretary Mr. Mikail Shipar attended the discussion as Chief Guest, while Kevin Gash, Acting Director of the Office of Democracy and Governance, USAID/Bangladesh, and Mr. Alonzo Suson, Country Program Director for the Solidarity Center, joined as special guests. In addition to representatives from BSFF and BGMEA, attendees included the International Labour Organization (ILO), the European Union, Solidarity Center trade union federation allies, NGOs and lawyers from the Labour Court Bar Association.

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