

National Treatment for Combating Human Trafficking: A Comparative Study between Bangladesh and Malaysian Law

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ABSTRACT

Human trafficking is one of the largest organized crimes and the darkest episode of population mobility around the world which is often known as modern-day slavery. Victims of this crime have completely lost their freedom and dignity under compulsion. Statistics revealed that human trafficking, in the form of forced labor, generates \$150 billion every year and about 30 million people are trapped in such human slavery out of which 14.2 million have exploited for forced labor, and 4.5 million have undergone sexual exploitation. In response to the issue, states of concern throughout the world have adopted possible measures to combat it at a national level in line with global initiatives. In this process, both Bangladesh and Malaysia legislated anti-trafficking law to combat the crime. This paper is mainly a comparative analysis of human trafficking laws between Bangladesh and Malaysia. The researchers have compared the laws of both countries on several issues and identified similarities and differences in terms of defining the crimes, enforcement mechanism, protection of the victims, and trial of the offenders etc. In addition, the study has investigated the situation of this crime in the South Asian region highlighting the context of Bangladesh and Malaysia. Furthermore, the study has brought some recommendations for further enhancement of both instruments. The possible outcome of this study is finding certain gaps in both laws which are requiring to be fulfilled for combating human trafficking effectively. This is a doctrinal research along with comparative approaches. The researchers have followed the descriptive and analytical method of study to achieve the objectives of the paper. The study has critically examined the essential legal issues in both laws according to the international standards. However, the descriptive approach has considered the background and conceptual framework of human trafficking along with the current situation of both countries. The analytical approach, on the other hand, explored the basic mechanism provided by the anti-trafficking laws of the countries with a view to ascertain the lacuna of both laws. Furthermore, the researchers reviewed relevant literature in this regard and a few relevant experts have been interviewed over the technical matters of these laws.

Keywords: Human trafficking, protection, force labor, sexual exploitation, trafficked victim, combating.

INTRODUCTION

Millions of men, women and children are victims of human trafficking for sexual, forced labour and other forms of exploitation worldwide. Report shows that human trafficking afflicts over 30 million women, girls and children every year around the world. The human and economic costs of this crime take an immense toll on individuals and communities. As it is mentioned in the above, the cost of human trafficking is not less than \$150 billion incurred annually by traffickers across the globe who exploits the victims of trafficking, mainly for sexual exploitation.¹The costs to human capital are

probably impossible to quantify. The problem of trafficking cuts across a range of development issues, from poverty to social inclusion, to justice and rule of law issues, and thus has relevance for practitioners throughout the development community. This paper provides a brief overview on the issue of human trafficking considering the relevant law of both Bangladesh and Malaysia. It also scrutinises the definition of human trafficking given in both laws and the scope of the problem, and then summarize the regional trends of trafficking patterns. This paper has been divided into two parts first part focuses on concept and current situation of

¹Victor Ahiuma-Young, Human traffickers earn over \$150bn annually-ILo,(July 1, 2017)

<<https://www.vanguardngr.com/2017/07/human-traffickers-earn-150bn-annually-il>>

human trafficking in south Asia while second part highlighted the differences and lacking of the laws of both countries.

Literature Review

There are a lot of literatures available on human trafficking as it is the global, regional and national problem in the current world. However, the each research focus on a specific issue on trafficking which varies from the perspectives of the author's intention and need. Thus all these scholarly works are not relevant to the current study as it is confined to the comparative study between anti-trafficking law of Bangladesh and Malaysia. Therefore, researchers have reviewed some of the relevant works relating to human trafficking focusing on both countries.

Fahmida (2017), in her study titled "Human Trafficking: Review of the Respective Act and Its Enforcement in Bangladesh", mainly focuses the worse internal and external situation of human trafficking in Bangladesh in different purposes especially for sexual exploitation. Author also discussed the relevant laws of Bangladesh which protects the rights of the citizen of Bangladesh in general. The paper further addresses the Human Trafficking Suppression and Prevention Act 2012 and focuses on the overall prevention, prosecution and protection mechanisms for combating human trafficking offences and providing better protection for the trafficked victims of Bangladesh.²

Suvendu (2015), in his article titled "Human Trafficking in Bangladesh: An Overview", points out that Bangladesh is a one of the source and transit countries for human trafficking. He referred to the Sultana's work "Scenario of Human Trafficking in Bangladesh"³ where mentioned that around four hundred women and children are trafficked out every month from Bangladesh and most of these abducted for force labor or forced prostitution.

The study has focused firstly on global human trafficking scenario and then focused on grave situation of Bangladesh regarding human trafficking. He further, pointed out the major cause of human trafficking in Bangladesh are

²Fahmida Sarwar Eshita, "Human Trafficking: Review of the Respective Act and Its Enforcement In Bangladesh", Proceedings of 50th IASTEM International Conference, Dhaka, Bangladesh, (1st-2nd April 2017) <<http://www.worldresearchlibrary.org/up>> accessed 26 December 2017.

³Nargis Sultana, Scenario of Human Trafficking in Bangladesh. Dhaka, June 6, 2015.

poverty, lack of awareness, illiteracy, poor governance, gender discrimination, social exclusion.⁴

Kumar (2015) on the other hand focuses in his study on "Bangladesh Border Vicinity for Human Trafficking: An Indian Viewpoint" the significance of border security for the people residing in border vicinity especially in the enclaves which are regarded as most vulnerable sites for human trafficking. Such security according to his opinion can provide them protection to being trafficked. The author finally conclude the study by remarking that the existing laws and infrastructures are not adequate in combating the emerging trends of such organized crime.⁵

RuhAfza (2003) in her scholarly work titled "Human Trafficking in Bangladesh: An Overview" investigates the global trafficking industry as it is the fastest growing criminal enterprise, hence, lighted on the global supply and demand. The study addresses national and regional initiatives for combating and protection of human trafficking in person.

Finally, the paper concludes that since this crime is a national and transnational in nature, therefore, the initiatives that are taken by the government do not cause significant change of the situation of human trafficking in Bangladesh in terms of combating, prosecuting and protecting trafficked victims.⁶ Chowdhury (2013) in his article titled "Trafficking in Person in Bangladesh" addresses regarding hidden connection between government officials, corrupt recruiting agencies, village level brokers, and regional gangs and so on with the human traffickers. He points out that lack of adequate mechanism for investigation and prosecution facilitated the human trafficking in Bangladesh.

The paper further notes that in terms of providing protection for the victims, the protection facilities and arrangements are

⁴Suvendu Biswas, "Human Trafficking in Bangladesh: An Overview," 5th November 2015, *Foreign Affairs Insights and Review (FAIR)*, <<http://fairbd.net>>.

⁵Awkash Kumar, "Bangladesh Border Vicinity for Human Trafficking: An Indian Viewpoint" January 2016 pp.33, 41 <file:///C:/Users/Hp/Downloads/> accessed 2 January 2018.

⁶Ruh Afza Ruhi, "Human Trafficking in Bangladesh: An Overview", 2003 25(4) *Asian Affairs*, 45, 56.

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remain insignificant which on the other hand influence the traffickers in practice.⁷

Rosy (2013) in her M. Phil thesis titled “Trafficking in Women in Bangladesh: Experiences of Survivors and Challenges to Their Reintegration” mainly focuses on the reintegration process maintained by Bangladesh Women Lawyers Association herein referred to BNWLA and difficulties in this regard. The research discusses about the process of rescue, providing shelter and reintegration activities for trafficked victims adopted by BNWLA. The research ultimately finds that there is no clear procedures for peaceful reintegration of the trafficked victims in the law.⁸

Shanjida and Anisuzzaman (2015) in their article “Human Trafficking in South Asia: Application of Anti Trafficking Laws and The States’ Duty to Protect Human Rights of The Victims” explores the alarming growth of human trafficking offences in the region. The study mainly focuses on the state obligations under International and regional conventions as well as domestic laws for protecting and combating⁹ human trafficking in the respective jurisdiction.

Biswas (2015) in her article “Human Trafficking Scenario in Bangladesh: Some Concerns” examines a historical background of human trafficking with post-colonial socio-economic factors of the continent now Bangladesh and India. The author also investigates that efforts made by national and international level in order to reduce the menace of human trafficking.

Therefore, it finds that the situation of Bangladesh demand more improvement in the law in order to provide better protection for the victims of human trafficking.¹⁰ Bangladesh Women Lawyers

⁷Mohammad Barad Hossain Chowdhury, “Trafficking in Person in Bangladesh” March 2013 Resource Materials Series No.89 pp 55, 61 <<http://www.unafei.or.jp/english>> accessed 2 January 2018.

⁸Sabiha Yeasmin Rosy, “Trafficking in Women in Bangladesh: Experiences of Survivors and Challenges to Their Reintegration”, (M. Phil Thesis, University of Bergen Norway, 2013).

⁹Shanjida Israt Jahan Efat, Sheikh Anisuzzaman, “Human Trafficking in South Asia: Application of Anti Trafficking Laws and The States’ Duty to Protect Human Rights of The Victims”, 2015 7(4), *International Journal of Business, Economics and Law*.

¹⁰Amrita Biswas, “Human Trafficking Scenario in Bangladesh: Some Concerns”, January 2015 I(4)

Association (BNWLA) (2013) is a leading non-governmental lawyers organization established in 1979 in Dhaka that to create equal opportunities and equal rights for every woman and child in the country. The organization makes a report on human trafficking titled “Human Trafficking in Bangladesh: Analysis, Challenges and Recommendations” in 2013. The report investigates the existent laws have not broadly defined the human trafficking of men, women and children.¹¹

Amin and Islam (2011) in their article “Trafficking Women and Children in Bangladesh: A Silent Tsunami of Bangladesh” discusses about the major problems, challenges and constraints of human trafficking that hindering the socio-economic development of the country. The paper also addresses about the trafficked victims and their protection of by way of reintegration of the victims in the main stream of population in Bangladesh. The research also highlights that the available mechanisms are woefully inadequate and it is desired that the governmental non-governmental organization should take possible steps under the assistance and guideline of the Government to prevent such violation of human rights.¹²

Sadd and Salman (2014) in their work “Government policy and the challenge of eradicating human trafficking in Malaysia” mainly focuses on the challenges that facing Malaysia for combating and protecting the affected person by referring to the context of Malaysia as destination and patterns of human trafficking. It draws the situation of human trafficking and role of Anti-Trafficking law in Malaysia.¹³

Ismail (2014) in his thesis titled “Human Trafficking Policy Implication: A Case Study of Malaysia” emphasizes mainly on the successful

International Journal of Humanities & Social Science Studies (IJHSSS) 85, 90.

¹¹BNWLA, “Human Trafficking in Bangladesh: Analysis, Challenges and Recommendations”, 2013 Bangladesh National Women Lawyers Association, Dhaka,

¹²Md. Ruhul Amin, Md. Rashidul Islam Sheikh, “Trafficking Women and Children in Bangladesh: A Silent Tsunami of Bangladesh”, 2011 2(4) *Journal of Economics and Sustainable Development*.

¹³Suhana Saad and Ali Salman, “Government policy and the challenge of eradicating human trafficking in Malaysia” 2014 10(6) *Malaysian Journal of Society and Space* 66, 74.

application of the law for securing its ambit to prevent the human trafficking and smuggling offences in Malaysia. He tries to identify the challenges that encountering the country and shows the ways through which the policy of combating human trafficking can be translated into practical action. The research expresses that Malaysia is still lacking in protecting human rights of the trafficking victims.¹⁴

Ramayal (2013) in his report titled “Organized Crime: Governments Initiatives, Laws and Investigation of Human Trafficking in Person and Smuggling of Migrants in Malaysia” talks about the Malaysian perspectives of combating human trafficking and mechanism of protection for the victims. The report does not properly identify the available protections of the victims and what more protections they need in Malaysia.¹⁵

Berowa (2016) in his paper “The Politics of Human Trafficking in India and Malaysia” looks into the human trafficking as irregular human migration for force labour under migration Acts of India and Malaysia. He also points out that there is an indispensable link between human trafficking and force labour and globalization. The law of Malaysia both in theory and practice is not adequately protect and provide services for the human rights of the trafficked victims in both country.¹⁶

Santhiago (2005) similarly explore the discourses of human trafficking with the angle of migration and focuses the legal provisions for protecting the migrants under Malaysian law. The paper addresses this human rights issue in part three of the study and investigate the vulnerability of the victims and mentioned major obstacle toward the human rights of men,

women and children in the process of migration. The paper reveals the oppressive and unjust treatment of the immigration law to the trafficked victims.¹⁷ Therefore, it finds that there is no comprehensive migration policy instrument in Malaysia.

After the above review of the relevant literature that addresses on the human trafficking dynamics as well as challenges for providing adequate protection facilities to the victims of human trafficking under the law of Bangladesh and Malaysia. A very few study was conducted specifically on this significant area of human trafficking. Furthermore, the literatures show that there is no research conducted between Bangladesh and Malaysia within the context of human trafficking. Therefore, researchers find significant scope for research of the Act of Bangladesh and Malaysia regarding proper addressing to the protection of victims of human trafficking, prevention and prosecution against the offendershence, the researcher finds justification for the research.

Definition of Human Trafficking

Human trafficking is generally understood as the process through which individuals are placed in an exploitative situation for economic gain.¹⁸ National and international organizations used various definitions for describing trafficking according to their approaches. The South Asian Association for Regional Cooperation (SAARC) proposed a definition of trafficking, as follows:

“All acts involved in the recruitment, transportation, forced movement and/or selling and buying of women and children within and across borders by fraudulent means, deception, coercion, direct and or indirect threats, abuse of authority, for the purpose of placing a woman and/or child against her will or without her consent in exploitative and abusive situations such as forced prostitution, marriage, bonded labour, begging, organ trade, etc.”¹⁹

¹⁴ Wan NurIbtisam Wan Islamil, “Human Trafficking Policy Implication: A Case Study of Malaysia” (Ph.D. dissertation, University of Malaya, 2014).

¹⁵ Supt. P.R. Gunarajan a/l Ramayal, “Organised Crime: Governments Initiatives, Laws and Investigation of Human Trafficking in Person and Smuggling of Migrants in Malaysia”, Crime Investigation Department Royal Malaysia Polis Contingent Malacca 9th July 2013, <<http://www.pwyp.org.my/wp-content/uploads/2015/08/j>> accessed 2 January 2018.

¹⁶ Ian Ngoasser Elape Berowa, “The Politics of Human Trafficking in India and Malaysia” International Conference on Research in Social Sciences, May 20-21, 2016 Humanities and Education (SSHE-2016) Cebu (Philippines) <<http://uruae.org>> accessed 2 January 2018.

¹⁷ Anni Santhiago, Human Smuggling, Migration and Human Rights: A Malaysian Perspective (Working Paper, *The International Council on Human Rights Policy*, Review Meeting, 25-16 July 2005) 1-28.

¹⁸ Human Rights and Human Trafficking Fact Sheet No. 36 UNITED NATIONS New York and Geneva, 2014, <http://www.ohchr.org/Documents/Publications/FS_36_en.pdf>

¹⁹ Jannatul Rupa, Eradication of Human Trafficking in Bangladesh: Potential Approaches and their integration, Canadian Social Science Vol .6.1: 45-

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However, Article 3 of the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution finally defined the crime as;

“Trafficking” means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking”.²⁰

According to The United Nations Protocol on Trafficking in Persons adopted in November 2000 and came into force in December 2003. This protocol provides the first agreed definition of human trafficking ever as:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, or deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”²¹

The US State Department defines human trafficking as;

“the act of recruiting, harboring, transporting, providing, or obtaining a person for compelled labor or commercial sex acts through the use of force, fraud, or coercion”.

In the context of Bangladesh, Bangladesh National Women’s Lawyer Association (BNWLA) defined trafficking as,

“ all acts involved in the recruitment and or transportation of a women or child within or across national borders for work or service by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion”.²²

Evaluation of Human Trafficking in South Asia

South Asia is one of the main parts of the world where human trafficking becomes visible at large. According to Global Slavery Index 2016 there are more than 40.3 million people are living in modern day slavery where 70 percent are female and 29 percent are male individual. Among the total number of victims half of the trapped populations are from five Asian countries such as India, China, Pakistan, Bangladesh and Uzbekistan.²³ It is estimated that over 150,000 people are being trafficked in South Asia annually and many of them are women and children exploited for labor and sexual slavery.

Human traffickers utilize a plethora of tactics to coerce people into being trafficked. Among others one of the major means trafficking is to offer lucrative job offer in a good destination. As a result every year many people from India, Bangladesh, Pakistan and the other South Asian Nations travel abroad to seek work and eventually become the subject of human trafficking.²⁴

Global Index further shows that India has the highest number of people in the world trapped in modern slavery with 18.35 million victims among its 1.3 billion populations. India is followed by China (3.38 million), Pakistan (2.13 million) and Bangladesh (1.53 million). The Asia is accounted for two third of the total victims where Indonesia has highest number of victims of modern slavery although other Asian countries are equally widespread for modern slavery.

58. ii

www.changemakers.net/library/temp/nytimes042902cfm iii

www.usembassy.it/file2002_05/alia/a2051002.htm
iv United Nations. 2000.21a

²⁰ SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, Article 3.

²¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 3
<https://www.osce.org/odihr/19223?download=true>

²² Md. Ruhul Amin, and Md. Rashidul Islam Sheikh, Trafficking Women and Children in Bangladesh: A Silent Tsunami of Bangladesh, Journal of Economics and Sustainable Development, Vol.2, No.4, 2011, pp. 202-211.

²³ Infographics: Bangladesh ranks 10th in Global Slavery Index 2016, August 10, 2017
< <https://www.thedailystar.net> >(Accessed September 05 2018)

²⁴ Joseph Florino, "Human Trafficking in South Asia", South Asia Program , April 3, 2018
<<http://www.southasiaathudson.org>> accessed 5th September 2018

For instance, massive discrimination against minorities in Myanmar makes them more vulnerable while Thailand is unable to protect migrant workers on fishing trawlers from starvation and murder, with trafficking and forced labour. In Philippines, women and girls continue to migrate for jobs and being trapped in many destinations across the globe. Surprisingly, Japan, the world's third largest economy is also on a rise for human trafficking and in its neighbouring country South Korea slavery is thriving on rural islands. The same situation also poses in Malaysia and in Singapore.²⁵ North Korea on the other hand still does not criminalised form of modern slavery. The country has the highest per capita level of modern slavery, at 4.37 percent of the population.

Context and Position of Bangladesh

Bangladesh is not only a country of origin for trafficking in women, and children but also a significant number of boys and men are also trafficked internally and internationally for sexual exploitation.²⁶ The easy preys of human trafficking are those striving to poverty, lack of employment opportunities, lack of social security, economic inequality, weakness in the enforcement of human trafficking related laws, corruption of government officials, natural disasters, etc. According to the report of the UN High Commission for Refugees, about 750 people were thrown into the sea in 2014 and about 25,000 people were the victims of human trafficking from Bangladesh in the first three months of 2015.

Human rights groups in Bangladesh estimate that between 10,000 and 20,000 women and girls are trafficked annually to India, Pakistan, Bahrain, Kuwait, and the United Arab Emirates.²⁷ Traffickers have earned approximately 100 million US dollars every year

²⁵ Infographics: Bangladesh ranks 10th in Global Slavery Index 2016, August 10, 2017
<<https://www.thedailystar.net>> (Accessed September 05 2018)

²⁶ A.K.M. Masud Ali & Ratan Sarker, ECPAT International & INCIDIN Bangladesh, The Boys and the Bullies: A Situational Analysis Report on Prostitution of Boys in Bangladesh (2006), <http://www.humantrafficking.org/uploads/publications/Bangladesh_Part1.pdf>

²⁷ S. Huda, Sex Trafficking in South Asia 2006, Int'l Journal of Gynecology and Obstetrics <<http://www.figo.org>> (Accessed September 5 2018).

from trafficking of Bangladeshis to Malaysia via Thailand.²⁸ Another statistic shows that there are 150 thousand Bangladeshis have been the victim of illegal trafficking through Bay of Bengal routes since 2007 and through this desperate journey at least 1500 victims died in the sea and over 200 dead bodies recovered from the mass graves of Malaysia and Thailand.²⁹ According to Global Slavery Index 2016 approximately 1,531,300 people are living in modern slavery in Bangladesh. It has ranked 10th among countries where more than 45 million people globally are living in modern slavery.³⁰

The US Human Trafficking Report 2017 also highlighted that the situation of human trafficking in Bangladesh got worse due to failure to set up its effort to eliminate this crime. As a result Bangladesh has downgraded to the Tire 2 Watch List. Report further finds that the government's investigations, prosecutions, and convictions of trafficking crimes decreased. In addition, official complicity in trafficking crimes remained a serious problem for which government did not make efforts to investigate, prosecute, and convict allegedly complicit law enforcement, border, and manpower officials. The number of victims identified by the government also decreased.

Furthermore, there is no formal mechanism to refer trafficking victims to protective services and, protection services.³¹ According to the police headquarters, since the Prevention and Suppression of Human Trafficking Act, 2012 was passed there are 4863 human trafficking crime were committed and around 3500 cases were filed. But the victims complain that most of these cases are seriously delayed.³² However,

²⁸ A. K. M. Atiqur Rahman, Human Trafficking: Bangladesh Perspective, 24th October, 2017, The Daily Sun, <https://www.daily-sun.com> (accessed September 7 2018).

²⁹ Situation analysis of human trafficking and irregular migration, 29 July 2017, Brac, <<http://www.brac.net>> (Accessed September 05 2018).

³⁰ Infographics: Bangladesh ranks 10th in Global Slavery Index 2016, August 10, 2017
<<https://www.thedailystar.net>> (Accessed September 05 2018).

³¹ Bangladesh: 2017 Trafficking in Persons Report, office to monitor and combat trafficking in persons, U.S. Department of State, <<https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271142.htm>> (Accessed September 07 2018).

³² Situation analysis of human trafficking and irregular migration, 29 July 2017, Brac, <<http://www.brac.net>> (Accessed September 07 2018)

out of the total victims government able to returned 2,183 Bangladeshis, of whom 183 are children during the time. In Bangladesh, Rohingya refugee camps become the major source of human trafficking. They are desperately seeking income in order to improve their conditions within the refugee camps. Human traffickers often come to the camps and offer work to women, children, or their families only to force them into sexual slavery or slave labor in India, Bangladesh and other countries.³³

Position of Malaysia

Malaysia is a destination, and to a lesser extent, a source and transit country for women and children subjected to trafficking in persons.³⁴ The majority of trafficking victims are foreign workers who migrated willingly to Malaysia from other Asian countries including Bangladesh in search of greater economic opportunities and some of whom subsequently encountered forced labour, debt bondage and other sort of exploitation at the hands of their employers, employment agents, or informal labour recruiters.

A significant number of young women are recruited for work in Malaysian restaurants and hotels, some of whom migrate through the use of "Guest Relations Officer" visas, but subsequently are coerced into Malaysia's commercial sex trade. Such women from China are nicknamed "China Dolls".³⁵

In curbing human trafficking, Malaysia improved significantly over the decade. It has enacted the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007. However, since then it was classified as Tier 2 Watch List nine times. Now the country upgraded its status to Tier 2 from the Tier 2 Watch List in TIP report by the US State Departmental report.³⁶

³³ Joseph Florino, "Human Trafficking in South Asia", South Asia Program , April 3, 2018 <<http://www.southasiathudson.org>> accessed 5th September 2018

³⁴"Malaysia, 2014 Trafficking in Humans Report" U.S. Dept of State. Office to Monitor and Combat Trafficking in Humans. Retrieved 10 September 2014.

³⁵ Chan Li Leen "Even non-Chinese are falling for the charms of China Dolls". The Star, Malaysia (21 January 2011). Archived from the original on 23 January 2011

³⁶ Farik Zolkepli, Muhyiddin: Malaysia has slipped in 2018 human trafficking rating, 30 June 2018, The

According to the statistic provided by the Ministry of Home Affairs of Malaysia from 2008 to 2012 three are 591 cases have filed against 797 offenders while the number of victims was 3363.³⁷ In 2015, the government identified 1,386 potential trafficking victims, of which it confirmed 305 as trafficking victims, on par with 303 identified victims in 2014. The victims were mainly Vietnamese and Indonesian, followed by Filipino and Thai nationals.³⁸ The government conducted 556 trafficking and trafficking-related investigations in 2017, compared to 581 investigations in 2016 and 158 in 2015. The government initiated prosecutions against 80 alleged traffickers, compared to 175 initiated in 2016 and 38 in 2015. In March 2018, the government established an anti-trafficking court beginning in the state of Selangor, which historically had the highest number of trafficking cases.³⁹

In 2017, the government identified 2,224 potential trafficking victims nationwide and confirmed 721 victims, compared to 3,411 potential trafficking victims and 1,558 confirmed victims in 2016. Both years represented a marked increase over the 305 victims confirmed in 2015.

Comparative Study of the Laws

In Malaysia most of the victims are foreign workers migrated either willingly or forcefully. But in Bangladesh most of the victims are under poverty line and looking for work to survive themselves along with their family members. In addition most of them are uneducated and illiterate people, often tried to migrate from lower income area to higher even in abroad.

This mentality and trend of migration among the poor people creates vulnerable conditions for man, women and children, and provides

Star Online, <https://www.thestar.com>.> (Accsed September 07 2018).

³⁷ Ministry of Home Affairs, Statistic Cases of Trafficking in Persons and Smuggling of Migrants 2012, <<http://www.moha.gov.my/index.php/en/sekretariat-statistik>> (Accessed September 07 2018).

³⁸ Malaysia: 2016 Trafficking in Persons Report, office to monitor and combat trafficking in persons, U.S. Department of State, <<https://www.state.gov>> (Accsed September 07 2018).

³⁹ Malaysia: 2017 Trafficking in Persons Report, office to monitor and combat trafficking in persons, U.S. Department of State, <<https://www.state.gov>> (Accsed September 07 2018).

opportunities to the traffickers to exploit women and children. However, it is Bangladesh or Malaysia, both the country is against such organized human trafficking and having their own laws to combat this crime.

In Malaysia, in order to prevent human trafficking, was enacted Anti-Trafficking Act in 26 July 2007 which has been amended by the Parliament of Malaysia in 2015 and cited as the Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2015. In Bangladesh, The Prevention and Suppression of human trafficking Act (Act no 3 of 2012) has legislated in 20 February, 2012, with the notification in the official gazette on 4 August 2013.

The Act contains VII chapters with 48 sections. Both Acts are aimed to prevent human trafficking, protect and to shelter the victims and the witnesses, for rehabilitation and of course to provide legal aid. A comparative overview has been given below.

Definition of the Terms

As regards the definition of human trafficking both laws have defined the term almost similar. In Malaysian Act human trafficking named as “Trafficking in Person” defined as “all actions involved in acquiring or maintaining the labour or services of a person through coercion, and includes the act of recruiting, conveying, transferring, harbouring, providing or receiving a person for the purposes of this Act”.⁴⁰ Trafficked person are those who is the victim or subject of an act of trafficking in person.

The section further explained the meaning of **coercion** as “threat of serious harm to or physical restraint against any person, any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process”.⁴¹

Again a child under this Act is under the age of 18 years old. In contrast, The Prevention and Suppression of human trafficking Act 2012 of Bangladesh defined human trafficking as “Human trafficking means the selling or buying, recruiting or receiving, deporting or transferring, sending or confining either inside or outside of

⁴⁰ Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Section 2

⁴¹ Ibid.

the territory of Bangladesh by means of threat or deception or abuse or by giving or receiving money for getting control to the person being trafficked. When the victim is a child it shall be immaterial whether any means of committing the offence mentioned in the section either in used or not”.⁴²

The Act further explained the definition as if any person induces or assists any other person through deception and for bad intention to move, migrate or immigrate for work or service, either inside or outside of the territory of Bangladesh having knowledge that such other person would be put into exploitative labour conditions similar to practices of servitude or force labour or into any other form of exploitation or oppression as mentioned in sub-section (15) of Section (2) such act of the person shall be included as an act within the meaning of “human Trafficking” as defined in sub-section (1).⁴³

Sab-section 15 of section 2 further defined the term “exploitation” or “oppression” as the term includes but not limited to the following action against any person with or without consent for the purpose of exploitation and oppression. These are oppression through prostitution and sexual exploitation, taking benefits from any person engaged with prostitution, or production or distribution of pornographic materials, receiving force labour or service, debt-bondage, slavery, or servitude, practices similar to slavery, or servitude in household, oppression through fraudulent marriage, forcible engagement any person in the amusement trade, forcible engaging any person in begging, maiming any person or the removal of organs for the purpose of trade.⁴⁴

Furthermore, the Act defined the term coercion more extensively in comparison with Malaysian Act as “Coercion means the use of force or intimidation or psychological pressure and shall also include the threat of doing harm or of physical confinement, torture or any threat or psychological pressure of using the official or legal status of a person against another person.”

In respect of definition Bangladeshi Act includes smuggling in way of act of “buying and

⁴² The Prevention and Suppression of human trafficking Act 2012, (Act no 3 of 2012) of Bangladesh, Section 3

⁴³ Ibid.

⁴⁴ Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Section 2(15)

“selling” which is found in the Malaysian Act in separate part of the Act. Malaysian Act in generally state that “all actions” which has not been explained what constitute “all action” whereas Bangladeshi Act provide an explanatory note for further clarification of the definition and include the term exploitation and oppression which also been clarified in Sub-section 15 of section 2 of the Act whereas Malaysian Act discussed the term in section 13 of the Act. Malaysian Act does not include the child as a victim of human trafficking in the definition clause while Bangladeshi Act includes it and put strong emphasis on it.

In the definition of coercion Malaysian Act does not cover the psychological harm as a consequent of threat rather than it mention only psychical harm.

Offences of Human Trafficking

Section 6 and section 12 of both Acts criminalized the human trafficking and provide punishments for different type of crime within the realm of human trafficking. Section 12 stated that “Any person, who traffics in persons not being a child, for the purpose of exploitation, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years, and shall also be liable to fine”.⁴⁵

On the other hand section 6 mentioned that “if any person commits any act mentioned in section 3, such act shall be deemed to be the offence of human trafficking. Person committing the offence of human trafficking shall be punished with an imprisonment not exceeding imprisonment for life but not less than 5 years of rigorous imprisonment and with fine of TK 50 fifty thousand”.⁴⁶

Under Bangladeshi law penalty for organized offence of human trafficking, where each of the criminal took part in the offence, shall be punished with death or an imprisonment for life or a rigorous imprisonment for a term not less than 7 years and with fine of TK 5 lac.⁴⁷

Penalty for instigating, conspiracy, or attempting to commit an offence shall be liable

for rigorous imprisonment for a term not exceeding 7 years but not less than 3 years and fine not less than 20 thousand.⁴⁸

Penalty for force labor shall be rigorous imprisonment not exceeding 12 years but not less than 5 years and fifty thousand.⁴⁹ for kidnapping, stealing and confining with intent to commit the offence of human trafficking shall be punishable with rigorous imprisonment for term not exceeding 10 years but not less than 5 years and with fine of talk 20 thousand,⁵⁰ penalty for importing or transferring for prostitution or any other form of sexual exploitation or oppression shall be punishable with rigorous imprisonment for a term not exceeding 7 years but not less than 5 years and with fine of taka 50 thousand,⁵¹ for keeping a brothel or allowing any place to be as a brothel penalty shall be gregarious imprisonment for a term not exceeding 5 years but not less than 3 years and with fine not less than 20 thousand,⁵² for soliciting for the purpose of prostitution shall be punishable with rigorous imprisonment for a term not exceeding 3 years or fine not exceeding 20 thousand or with both,⁵³ for threatening the victim or witnesses shall be rigorous imprisonment for a term not exceeding 7 years but not less than 3 years and with fine not less than taka 20 thousand,⁵⁴ filing false case or complaint shall be punished with rigorous imprisonment for term not exceeding 5 years but not less than 2 years and with fine not less than taka 20 thousand.⁵⁵

On the other hand in Malaysian Act Offences of trafficking in persons by means of threat, force, etc. shall be punishable with imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine.⁵⁶

For the offence of trafficking in children as punishable with imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine.⁵⁷

⁴⁵ Ibid, Section 8

⁴⁹ Ibid, Section 9

⁵⁰ Ibid, Section 10

⁵¹ Ibid, Section 11

⁵² Ibid, Section 12

⁵³ Ibid, Section 13

⁵⁴ Ibid, Section 14

⁵⁵ Ibid, Section 15

⁵⁶ Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Section 13

⁵⁷ Ibid, Section 14

⁴⁵ Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Section 12

⁴⁶ The Prevention and Suppression of Human Trafficking Act 2012, (Act no 3 of 2012) of Bangladesh, Section 6

⁴⁷ Ibid, Section 7

For offence of profiting from exploitation of a trafficked person shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years, and shall also be liable to a fine of not less than five hundred thousand ringgit but not exceeding one million ringgit and shall also be liable to forfeiture of the profits from the offence.⁵⁸ As regards the punishment Bangladeshi Act identified and categorized into nine category of offence relating to human trafficking and provides punishment maximum life imprisonment and minimum 2 years and maximum fine 5 lac (25 thousand ringgit) and minimum 20 thousand taka. Whereas in Malaysian law maximum fine is one million ringgit and maximum 15 years of imprisonment for human trafficking. The law does not categorize the offences like as Bangladeshi law has done. ATPSM

Enforcement Mechanism

Regarding institution of case in Bangladesh any person can complaint to the police or to the tribunal. Government may appoint one or more public prosecutor for conducting the case if it thinks fit⁵⁹ while in Malaysia any proceedings relating to the human trafficking shall be approved by the public prosecutor before institution of prosecution.⁶⁰

As far as investigation is concern, a Sub-Inspector of the concern police station shall conclude the Investigation of the offence when a commission of an offence is reported to the police or requested from the tribunal under PSHT Act of Bangladesh. If there is likelihood or possibility of offence found police may make a proactive inquire before filing first information report. The investigation process shall be concluded within three months from the date of receiving complaint from public or tribunal. Investigation period may be extended on satisfactory ground to another one month.

However, in case of transnational issue the tribunal may extend the period of investigation a reasonable time by its own discretion. In case of transnational investigation if it is required to travel foreign country to examine evidences, police authority shall constitute a special investigation team for the purpose and with the

approval of the tribunal shall go and perform. In addition government shall establish a central monitoring cell at the police headquarters.⁶¹ 19 (1-6)

By contrast, in Malaysia the ATPSM Act prescribed different enforcement officer for administer the relevant human trafficking offences unlike police in Bangladesh under the Act. The Act mentioned following officer such as (a) any police officer, (b) any immigration officer, (c) any Officer of customs,(d) any officer of the Malaysian Maritime Enforcement Agency, and (e) any Labor Officer. This investigation officer has given all power necessary to carry out an investigation of any offences under this Act.⁶²

The enforcement officer (EO) may arrest any person without warrant who found committing or attempting to commit or abetting the commission of an offence under this Act or to whom the enforcement officer reasonably suspects of being engaged in committing or attempting to commit or abetting the commission of an offence under this Act. After arrest the person shall be brought nearest police station without reasonable delay.⁶³

As for search and seizer with or without warrant, ATPSM prescribed that when Magistrate consider necessary that there is reasonable cause to believe that-any premises or conveyance has been used or is about to be used for or there is in any premises or conveyance evidence necessary to the conduct of an investigation into, the commission of an offence under this Act, the Magistrate may issue a warrant authorizing any enforcement officer named therein, at any reasonable time, by day or by night, to enter the premises or conveyance.

Such warrant authorized the EO to search the premises or conveyance for, and to seize or remove from the premises or conveyance, any moveable property, book, record, report or document, or any human organ that is reasonably believed to furnish evidence of the commission of such offence; and make copies of, or take extracts from any book, record, report or document found in the premises or conveyance.

Moreover, if necessary the EO break open any outer or inner door of the premises or

⁵⁸ Ibid, Section 15

⁵⁹ The Prevention and Suppression of Human Trafficking Act 2012, (Act no 3 of 2012) of Bangladesh, Section 17

⁶⁰ Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, Section 41

⁶¹ PSHT 2012, Section 19 (1-6)

⁶² ATPSM 2007, Section 27, 28

⁶³ ATPSM 2007, Section 29

conveyance or any obstruction to the premises or conveyance in order to effect entry into the premises or conveyance, remove by force any obstruction to entry, search, seizure or removal as he is empowered to effect under this section; and c. detain any person found in the premises or conveyance until the search has been completed. In the case where the property is immovable and not practical to remove it then EO shall seal such property, book, record, or document or any human organ in the premises or conveyance in which it is found.⁶⁴

In the case when EO believed that the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, he may, without warrant, with such assistance and force as is necessary enter and search any premises, stop and search any conveyance or person, seize and detain such conveyance, moveable property, book, record, report or document or human organ or inspect, make copies of or take extract from any book, record, report or document found in the premises or conveyance.⁶⁵

Under PSHT a sub-Inspector, who is being directed or authorized by his superior officer, shall have power to conduct preventive search and seizure to enter into any premises and to seize and equipment or proof or document used or likely to use in the commission of any offences under this Act. This search may be undertaken by the police officer **without warrant** if there is a reasonable ground to believe that there are equipment or materials for the commission of any offence under this Act with any person or at any place and that the delay in obtaining the warrant would lead to the actual commission of such an offence or to the loss of evidence.

During the search the police shall ask two or more respectable person of the locality before which the search has been made and make them witness thereto. Finally, he shall prepare a list whatever he found in the premises as a seizer list and shall obtain the signature from the respectable witnesses.

However, search shall be conducted in accordance with the section 103 of the Code of Criminal Procedure 1898 and with due respect being paid to human rights and dignity of the

person body or property in being searched and in case of a female to be searched female police officer shall do that. At the end the officer within 72 hours make a report stating the reason and result of the search to the Magistrate and tribunal having jurisdiction try the relevant case through electronic or other means and a copy also send to the person against whom the search has been made.⁶⁶ Basic distinction between the two laws are first, in Malaysia prosecutor's office shall be approved to institute any case in this regard whereas in Bangladesh any one can institute the case and thereafter government appoint public prosecutor to run the case. Second in case of investigation in Bangladesh PSHT Act authorized only the police officer to conduct the investigation whereas in Malaysia authorized different categories of officer for dealing different type of human trafficking which seemed more organized and effective to deal with particular type of human trafficking offence.

This Act do neither mention any police involvement in this process nor does it clearly exclude them. Under only police officer is empowered to do the investigation while under ATPSM all authorized officer are empowered by the Act. In the investigation process there is no provision for arrest in PSHT Act while ATPSM specifically mention the power of arrest under section 29 of the Act. In the matter of search and seizer ATPSM provided the EO to search with or without warrant while PSHT only talked about the possibility to search without warrant. During the investigation into a premise PSHT put condition to make witness of local respectable person whereas this is not prescribed in ATPSM.

Trial of Anti-Human Trafficking offences in Courts and Tribunals

Under PSHT Act in order to speedy trial of such offence government may established Anti-Human Trafficking Tribunal consisting a session or additional session judge of any district. Whoever, until establishment of such tribunal all offence relating to human trafficking assigned to the Nari O Shishu Nirjaton Damon Tribunal (Women and Children Suppression Tribunal) as anti-human trafficking offence tribunal of the district. In case where any offence committed under this Act outside the territory of Bangladesh by Bangladeshi citizen

⁶⁴ Ibid, Section 30

⁶⁵ Ibid, Section 31

⁶⁶ PSHT 2012, Section 20

or accompany or a habitually resident in Bangladesh the tribunal will try the case in whose jurisdiction he reside or where the company was registered.⁶⁷

As regard the power the Tribunal shall have all power of a Court of Sessions and for the sake of justice it may issue any protective order or direct any person or institution to submit ant report, document or register to the Tribunal under the control or disposal of the person or institution. In order to make speedy trial and protection of witness and victims the tribunal may by itself or through any commission, record the statement of any witness or examine him at any place directly or through any electronic means, and the tribunal may accept an official statement or report of any public officer or employee as evidence under this Act exempting him to depose before the Tribunal. Tribunal may take opinion of the victim either by application of any person or by its own motion under the custody of any person, competent organization.⁶⁸

Tribunal may grant a bail application of the accused considering the gravity of the offence committed, the security and injury of the victim and witness, and the previous record of criminality of the accused. It has power to direct any further investigation of any case to submit report within such time as it may think fit either on request by any person or by its own motion.⁶⁹

In addition, Tribunal shall conclude its trial within 180 working days from the date of framing a charge and in case of failure to complete within stated time tribunal within 10 days sent a report to the High Court Division of the Supreme explaining their reasons for failure.⁷⁰ In further, it has power to make trial in camera for the interest of the justice and to protect the child and woman victim where only concern party and advocates or other representation will be present before Tribunal.⁷¹

Tribunal may at any stage of the trial pass an order to seize, freeze, or confiscate any movable or immovable property which has been acquired by the accused person through the commission of an offence under the Act.⁷²

It may further order to attach, land or vehicle if it has reason to believe that such house, land or vehicle has been or is being used for the offence. If any person convicted under this Act, Tribunal may confiscate the property and deposit to the Human Trafficking Prevention Fund. It may issue an order to freeze and attach to the body of a foreign country where the accused acquire the property through the Embassy of Bangladesh in that foreign country.

Where the accused is convicted under this Act the tribunal may pass an order to the accused to pay the victim of the offence of human trafficking a reasonable amount of compensation in addition to fine imposed by it.²⁸ however the amount of compensation determine at the description of the tribunal it shall consider the physical and mental treatment cost, cost of necessary transportation or temporary housing, lost income, sufferance, the actual or emotional injury and gravity of the distress.

In contrast in Malaysia there is no idea of above tribunal in the Act therefore, does not deal with trial procedure under the same Act. However it has established a council for this purpose known as “Council for Anti-Trafficking in Person and Anti-Smuggling of Migrants”. It consists a list of members from various ministry and immigration department. The major functions of the council are enlisted in section 7 of the Act.

The functions are: (a) coordinating the implementation of this Act (b) formulating policies and programmes to prevent and combat trafficking in persons and smuggling of migrants (c) formulating protective programmes for trafficked persons (d) initiating education programmes to increase public awareness of the causes and consequences of the act of trafficking in persons and smuggling of migrants, (e) monitoring the immigration and emigration patterns in Malaysia for evidence of trafficking in persons and smuggling of migrants and to secure the prompt response of the relevant government agencies and non-governmental organizations to problems on trafficking in persons and smuggling of migrants brought to its attention (f) advising the Government on the issues of trafficking in persons and smuggling of migrants including developments at the international level against trafficking in persons and smuggling of migrants (g) making recommendations to the Minister on all aspects of the prevention and combating of trafficking in persons and smuggling of migrants (h) coordinating the formulation of policies and

⁶⁷ PSHT 2012, Section 21

⁶⁸ Ibid.

⁶⁹ Ibid, Section 23

⁷⁰ Ibid, Section 24

⁷¹ Ibid, Section 25

⁷² Ibid, Section 27

monitoring the implementation of such policies on issues of trafficking in persons and smuggling of migrants with relevant government agencies and non-governmental organizations (i) cooperating and coordinating with governments and international organizations on trafficking in persons and smuggling of migrants (j) collecting and collating data and information, and authorizing research, in relation to the prevention and combating of trafficking in persons and smuggling of migrants (ja) paying any allowance, subject to the availability of funds, to a trafficked person as the Council may determine; and (k) performing any other functions for the proper implementation of this Act. This council has power to form different committee to assist the council for ends of this Act.

The main comparison with these two laws in this regard is in Bangladeshi law there is a clear mechanism for application of the Act through tribunal. The Act clearly expressed the procedure and power to try the case in human trafficking offence though tribunal and given full judicial power to discharge the act. Although the tribunal is not yet to be established but the offences are now under the administration of Nari Shishu Tribunal having full judicial authority in Bangladesh. It has also given the power to serve the order to a foreign jurisdiction through its embassy. In contrast, in Malaysian law the council has not given judicial or quasi-judicial authority for trial of such offence. It is a body without power but to assist the regular court in dealing these type of human trafficking offences.

Protection of Trafficked Victims and Rehabilitation

As far as victim rehabilitation is concerned Malaysian Act discussed in detail from section 41 to 57 of the Act. First of all the Act declared any place can be the place of refuge for the victim of human trafficking stated that “The Minister may declare any house, building or place, or any part thereof, to be a place of refuge for the care and protection of trafficked persons and may, in like manner, declare that such place of refuge ceases to be a place of refuge”.⁷³

Secondly, the Act appoint a Protection officer with some responsibilities such as “The Minister, after consultation with the Minister charged with the responsibility for women, family and community development may

appoint such number of Social Welfare Officers or any other public officers to exercise the powers and perform the duties of a Protection Officer under this Act subject to any condition as may be specified”.⁷⁴ The main function of the officers are to have a control over and responsibility for the care and protection of the trafficked person at the place of refuge, carry out an enquiry and cause to be prepared a report of the trafficked person as required under this Act, to have the power to supervise the trafficked person upon order by the Magistrate or direction by the Minister and have such other powers, duties and functions as the Minister may prescribe. Thirdly, the Act provide a temporary custody and produce him before a Magistrate within twenty-four hours who is found or rescued is a trafficked person. The Magistrate shall make an interim protection order for the person to be placed at a place of refuge for a period of twenty-one days for the purpose of carrying out an investigation and enquiry under section 51.⁷⁵ Fourthly, the Act prescribed proper medical examination and care. During medical care the medical officer shall conduct or cause to be conducted an examination of the person, may examining the person and if so authorized by an enforcement officer, administer or cause to be administered such procedures and tests as may be necessary to diagnose the person’s condition; or may provide or cause to be provided such treatment as he considers necessary as a result of the diagnosis.

On the other hand, in the law of Bangladesh it provided the scope for enacting laws and procedure for identification, rescue the victims of human trafficking or the victims by partnership basis with the governmental and non-governmental organization. The Act provides the repatriation and return of the victim of human trafficking such as facilitation for rescue the victim if he or she found in the foreign jurisdiction by the embassy of Bangladesh. It further extended its sympathy to the victim that every month they have to inform about the action taken by the government against the traffickers. The law empowers the government to establish adequate protective home and rehabilitation center. The Act also influences the non-governmental organization to establish such home subject to the permission or

⁷⁴ ATPSM 2007, Section 43

⁷⁵ ATPSM 2007, Section 44

⁷³ ATPSM 2007, Section 42

license from the government. Moreover, the law provided guideline for rehabilitation and social reintegration of the victim if they agree to go back or if their family agree to accept them. In addition, the Act maintained the principle of welfare and the best interest of the child. Finally, government may provide financial assistance to the victim of human trafficking or to the victim from the fund established under this Act. In comparison with Bangladeshi law there both the laws have a scope for rehabilitation and treatment of the victim of human trafficking. In Malaysian law it has given detail provision for rehabilitation for the victims. It also provide adequate medical care to the victim appoint medical officer for complete examination and care. In further the Magistrate also provide necessary order for the victim to produce him before the Court during the medical treatment. In Bangladeshi law medical guideline has been less addressed rather than Malaysian law towards the trafficking victims.

Regional Cooperation in Legal Aid

As regards the joint or mutual legal assistance to suppress and prevent human trafficking, the Bangladeshi Act stated that in order to facilitate the joint and mutual legal assistance in respect of investigation, trial and judicial proceedings regarding offences under this Act, government shall conclude memorandum of understanding or agreement with other states in which the victims, witnesses, proceeds, instrumentalities, evidence or defendants or abettor of offences under this Act are located or are likely to be located. Government may make memorandum of understanding with a State concerning following matters such as a. investigation of the offence of human trafficking, conducting of searches and seizures and the matters regarding legal assistance to the victims of human trafficking. b. examination of the offences of the witness under oaths, and exchange of the statement of the witness, government report and evidence submitted in the Court, c. mutual exchange of the victim of human trafficking or the persons sentenced for committing such offences, d. necessary legal, diplomatic and administrative assistance for the purpose of enforcing court orders relating to confiscation of proceeds of crime or property or fines or attachment, e. sustainable rehabilitation of the victims and their social reintegration in home countries.

By contrast, in terms of bilateral mutual sharing and cooperation in preventing and suppressing

the human trafficking offences Malaysian Act does not provide any direction whereas as we mention above Bangladesh has incorporated this section for enhancing effective prevention and control of transnational human trafficking offences through mutual cooperation among the states having this heinous crime. However Malaysian law approved different type of evidences as a proof of human trafficking offences.

RECOMMENDATIONS

In this section we would like make some recommendations such as:

- The definition of human trafficking should be clearer in the Malaysian Act and the related terms should be defined and explained clearly. In further, definition does not cover psychological harm has not been covered, therefore should be incorporated.
- Regarding child victim Malaysian law should specifically mention in the Act with utmost priority.
- As regards the offence and punishment Malaysian law should categorize the offences and hence prescribe the punishment which is easier than a general statement.
- In terms of imprisonment of the accused Malaysian law does not talked about rigorous imprisonment therefore should be incorporated the rigorous imprisonment.
- Malaysian law should incorporate the Special Tribunal for this offence rather than regular court and should be given adequate power to function properly.
- In terms of transnational cooperation Malaysian law should have clear provision for that as because this offences are transnational in nature.
- As regards the enforcement mechanism Bangladeshi Act should be incorporated the enforcement officer for various type of human trafficking and should not depend only the police force for this critical job.
- Power of arrest should be also be given in the hand of enforcement officer should also be incorporated in Bangladeshi law.
- In terms of rehabilitation of the victim Bangladeshi law should put more emphasis on medical treatment and care of the victim
- As regards the human smuggling Bangladeshi law should incorporate the offences in a separate part of the Act.

CONCLUSION

In concluding remark we may say that the human trafficking is the international as well as a serious regional problem where every south Asian nation are facing problem toward this offence. Although the organized criminal syndicates are sometime more powerful and use diverse tactic to do their multi-million business by human trafficking and human smuggling through using forced labor, sexual exploitation and sometime organ trafficking. However, proper will of the state and meaning full cooperation in terms of unification of human trafficking laws, rules and policies among the regional countries can combat and reduce

considerable amount of human trafficking. Joint initiative to create massive public awareness, fairness of the labor export rules and regular publicity of theses reclus in rural areas, established local information center for providing ongoing labor market information in a foreign jurisdiction where most of the people are usually wanted to go for better opportunity. Facilitate the people like this about the peacefully getting foreign job without any media man. These are few suggestions for combating and controlling human trafficking offence for trafficked prone countries. The concerned laws are in a sense good and effective if it is apply in effective way with the will of the existing government of country.

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