

The Prevention and Suppression of Human Trafficking Act, 2012: An Overview



Introduction

Thousands of helpless people fall victim to human trafficking each year. Bangladesh, a third world country, often appears in the world news for heinous trafficking incidents. The worldwide refugee influx has only deepened the crisis. The legal instruments addressing this burning issue in our legal paradigm was insufficient to tackle this panorama. In this backdrop, the government enacted 'The Prevention and Suppression of Human Trafficking Act, 2012' to prevent and suppress human trafficking, to ensure the protection of victims of the offence of human trafficking and their rights, and to ensure safe migration.

For its complex nature, collecting the accurate data on the human trafficking across the world is a complex task. It is estimated that each year, an estimated 600,000 to 800,000 men, women, and children are trafficked across the international borders (some international and non-governmental organizations maintain the number far higher), and the menace is growing.¹ Of the 600,000-800,000 people 70 percent are female and 50 percent are children. The majority of these victims are forced into the commercial sex trade.² Since the war has torn many parts of the world and poverty has forced a larger number of third world countries' people to seek better life in developed world, the problem of human trafficking has been unrestrained over times.

One of the fundamental rights guaranteed under Article 32 of our constitution is the protection of right to life and personal liberty. Notably even a non-citizen of Bangladesh can avail this right. But the offence of human trafficking badly violates a person's right to liberty causing indescribable sufferings. Moreover, Article 34 of the constitution prohibits all forms of forced labour which in most of the time is the inevitable consequence of the human trafficking.

Our penal laws generally addressed this offence earlier. The Penal Code, 1860 defined kidnapping³ but the definition of kidnapping was narrow and its punishment were insufficient and sometimes justice prone to stumble because of some technicalities. For effectively addressing the unbridled menace of human trafficking, both its definition and punishments were required to be reconsidered and redefined. The Legislature, therefore,

¹ (U.S. Department of State. 2004. *Trafficking in Persons Report*. Washington, D.C.: U.S. Department of State.)

² (Ibid.)

³ Section 360 and 361 of the Penal Code, 1860

enacted the Act in 2012 providing expanded definition of trafficking and hence imposed harsher punishments.

Article 3 of the Universal Declaration of Human Rights (UDHR) speaks of the right to life, liberty and the security of person and Article 4 prohibits slavery or servitude; in all their forms. Article 8 of the International Covenant on Civil and Political Rights (ICCPR) has prohibited slavery, slave-trade, servitude and forced or compulsory labour. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime in Article 5 requires States to criminalize trafficking, attempted trafficking, and any other intentional participation or organization in a trafficking scheme.

Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires States Parties to take all appropriate measures, including legislation, to suppress all forms of trafficking women and exploitation of prostitution of women.

Article 35 of the convention on the Rights of Child, 1989 enjoins States Parties to take all appropriate national, bilateral and multilateral measures to prevent the abduction of the sale or trafficking children for any purpose or in any form.

Definition Clause

- a. Slavery- means the reduction of status and position of any person to a condition in which he is controlled or treated as property by another person and shall also include a condition arising from a debt or a contract made by that person. - section 2 (6)
The definition of slavery in this Act more extended than that of the Slavery Convention, 1926.⁴
- b. "Victim of human trafficking" or "victim" means a person against whom the offence of human trafficking has been committed under the Act and shall also include the legal guardians and heirs of the person under section 2 (10)

This newly introduced definition of victim in this Act has expanded the ambit of 'victim's positively and it will comprehensively eradicate unfavorable situation which poses hindrances for victim to get justice. In a complicated crime like human

⁴ Section 1(1)- Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

trafficking, victim cannot go to law enforcement agencies for the very nature of the crime and given this situation, including legal representative or legal heirs of the victim will surely help victim of human trafficking achieve legal redress.

C. "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. - Section 2 (12) The definition of coercion given in the Contract Act, 1872⁵ was narrower and did not include psychological pressure.

- c. "Person" means a natural person including any company firm or association or group of persons, whether incorporated or not. This definition of person is similar to the definition given in section 11 of the Penal Code.⁶
- d. "Consent" - means the consent of a person, which is given freely and consciously and is not influenced by his or her weak position arising out of his or her age, sex and socio-economic backwardness. - section 2 (17)

This definition is extended comparing to that of section 13 of the Contract Act, 1872 where the aspect of the undue influence was not incorporated.⁷

- e. "Servitude" -Servitude means the conditions or the obligations to work or to render services from which the person cannot escape and which he cannot prevent or alter. -section 2 (19)

Definition of Human Trafficking

Apart from the main text, 'explanation' part of the definition clause makes the horizon of human trafficking much wider. It can successfully be used against the malpractice of associations or agencies, which are involved in the illegal human trafficking.

The definition of human trafficking given in this Act is much comprehensive to tackle the already-worsen situation. The Act defines 'human trafficking as buying or selling, collecting or accepting, transporting or transferring, trafficking or detaining or concealing

⁵ Section 15- "Coercion" is the committing, or threatening to commit, any act forbidden by the Penal Code or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

⁶ The word "person" includes any Company or Association, or body of persons, whether incorporated or not.

⁷ Two or more persons are said to consent when they agree upon the same thing in the same sense.

or harbouring a person for the purpose of sexual exploitation or harassment or labour exploitation or any other kind of exploitation within or outside of Bangladesh by intimidating or using force or by cheating or using the socio-economic or environmental or any other kind of vulnerability or by taking consent of person who has control over the victim. When the victim is child, then the conditions mention in section 1 do not need to be fulfilled. - (section 3)

Application of the Act

If the offence of human trafficking is committed within the territorial limits of Bangladesh against a national of Bangladesh, even then this Act shall apply. This extraterritorial jurisdiction is catalyst for properly dealing with the crime and punishing the people responsible for heinous crime like human trafficking.⁸

Offences and Punishments

It can easily be comprehended that the legislature has tried to address the growing human trafficking by inflicting harsher punishment compared to the earlier punishments in different penal laws. Every offence except calling a person for prostitution under section 13 has been punished with a minimum term of imprisonment vividly clarifying the intention of the legislature.

The person committing the offence of human trafficking shall be punished with imprisonment for life but shall not be less than five years of rigorous imprisonment and with fine not less than taka fifty thousand⁹. This section imposes harsher punishment for the offence compared to the Penal Code, 1860. Section 363 of the Penal Code, 1860 punishes for kidnapping from Bangladesh or from lawful guardianship with maximum 7 years imprisonment and fine.

Where several members of any organized group for their common intention commits offence under this Act, then each member of the group shall be responsible for the offence and the person committed offence shall be punished with death or an imprisonment for life or a rigorous imprisonment for a term not less than seven years and with fine not less than taka five lac.¹⁰ This provision, which was absent in earlier penal

⁸ Section 5

⁹ Section 6 (2)

¹⁰ Section 7

statutes, has been brought into effect for controlling the unabated practice of human trafficking by notorious organized criminals.

In a bid to eradicate the curse of human trafficking, ancillary offences of human trafficking have been punished harshly. Therefore a person found guilty in instigating, conspiring or attempting to commit the offence under this Act shall be punished with maximum 7 years imprisonment and minimum 3 years imprisonment and fine.¹¹ We do not find such harsher punishments for attempt or abetment of committing this offence in earlier laws. Section 8 (2) of the Act made provision that abettor of offence shall be punished with punishment provided for offence.¹²

If any person unlawfully forces any other person to work against his will or compels to provide labour or service or hold in debt-bondage or to act from the person any work or service by using force or other means of pressure or by threat to do such, he shall be punished with rigorous imprisonment for a term not exceeding twelve years but not less than five years and with fine.¹³ For this offence, punishment in the Penal Code was scanty.¹⁴

If any person kidnaps, conceals or confines any other person with intent to commit the offence of human trafficking or to put that person into a state of sexual or other exploitation or oppression, he shall be punished with rigorous imprisonment for a term not exceeding ten years but not less than five years and with fine.¹⁵ If any person steal or kidnaps a new born baby from hospital, nursing home, maternity clinic, child care centre or the custody of parents for committing the offence of human trafficking, he shall be punished with imprisonment for life or with rigorous imprisonment for a term not less than five years and with fine.¹⁶

Special Provision against Sexual Oppression

According to section 11 of the Act if any person brings any other person in Bangladesh or transfers the inside the territory of Bangladesh with a view to engaging in prostitution or any other form of sexual exploitation or oppression, he shall be punished with rigorous

¹¹ Section 8

¹² Similar section is found in section 109 of the Penal Code, 1860.

¹³ Section 9, Article 34 of the Constitution of Bangladesh prohibits all forms of forced labour.

¹⁴ Section 374, maximum 1 year imprisonment

¹⁵ Section 10

¹⁶ Section 10 (2)

imprisonment for a term not exceeding seven years but not less than five years and with fine of taka not less than fifty thousand¹⁷.

Moreover, if any person keeps or manages or assists or participates actively in the keeping or management of a brothel, he shall be punished with rigorous imprisonment for a term not exceeding five years but not less than three year and with fine.¹⁸

According to section 13, if any person in any street or public place or from with any house or building, by words, gestures, or indecent personal exposure attracts the attention of any other person for the purpose of prostitution, he shall be punished with rigorous imprisonment for a term not exceeding three years or with fine not exceeding taka twenty thousand or with both. In Penal Code, this offence was confined to commit against woman and was dealt with more leniently with a punishment of 1 year or fine or both.¹⁹

It is important to note that the legislature wisely made sexual offence under this Act gender-neutral for successfully encountering the peculiar nature of crime.

Punishment for Threat to Victim or Witness

If any person threatens, intimidates, or uses force against the victims of trafficking or witnesses of any proceedings or any member of him family and thereby obstructs the investigation or trial of any case initiated under this Act, he shall be punished with rigorous imprisonment for a term not exceeding seven years but not less than three years and with fine.²⁰

The Law Commission has submitted two reports to the Law Ministry on the protection of witness and victim issue. In 2006 the first one was submitted namely 'Final Report on a proposed law relating to protection of victims and witnesses of crimes involving grave offences' and the second one was submitted in 2011 but no Act was enacted pursuant to those reports. Given this situation, this is a significant provision which can be proved epoch-making by keeping victim and witnesses of the case free from anxiety of harassment and torture.

¹⁷ Relevant provisions of the Penal Code are section 366A where induces a minor girl of under 18 years to go any place where she may face sexual offence has been punished with maximum 10 years imprisonment and section 366B importing a girl of under 21 years old from outside of Bangladesh who may face sexual offence has been punished with maximum 10 years imprisonment and fine.

¹⁸ Section 12 (1)

¹⁹ Section 509 of the Penal Code

²⁰ Section 14

Punishment for Vexatious Proceeding

Section 15 (1) of the Act mandates that if any person files any false or frivolous case or complaint to harm any other person under this Act or abuses the legal process or compels any other person to do so, he shall be punished with rigorous imprisonment for a term not exceeding five years but not less than two years and with fine.²¹ It is interesting to note that punishment for vexatious proceeding has been increased significantly comparing to the similar provision of Penal Code where punishment for false charge of offence is 2 years or fine or both and if false charge of the punishable with death or life imprisonment or 7 years or upwards, then he will be punished with maximum 7 years of imprisonment and fine.²²

Nature of the Offence

Offences under this Act is cognizable, non-bailable and non-compoundable.²³

Procedure of Trial

Subject to the provisions of this Act, the provisions of the Code of Criminal Procedure, 1898 and the Evidence Act 1972 will be applicable. In a number of provisions, this Act has elaborately provided procedure regarding lodging FIR and making complaint, investigation, trial, acceptance of evidence, protection of witness and duration of concluding trial. The Act, therefore, mandates that the Code of Criminal Procedure, 1898 and the Evidence Act 1972 shall be applicable in addition to these special provisions provided here.²⁴

Commencement of the Proceeding

Any person may file a complaint regarding the offence to the police or to the Tribunal if offence is committed under this Act.²⁵ Pragmatically, this section has given the right to take legal proceeding to any person which significantly facilitated the way to take legal action and in earlier penal laws the narrow locus standi proved to be bar for getting legal

²¹ Section 15 (2)

²² Section 211 of the Penal Code.

²³ Section 16

²⁴ Section 4(2)

²⁵ Section 17(1)

redress by the victim. The Government if thinks fit may appoint special prosecutors for conducting cases before the Tribunal.²⁶

Investigation

Where an offence committed under this Act is reported to the police, or upon a reference of Investigation by the Tribunal, a police officer, not below the rank of Sub-Inspector shall investigate the case²⁷ and even before the filing of FIR, the police may conduct proactive inquiry if there is possibility of commission of crime under this Act.²⁸

Subject to the provision of section 20, the police shall conclude investigation within 90 working days from the date on which the case is filed or the reference from the Tribunal is received²⁹ and 30 days can be extended subject to the approval of controlling officer of the investigation officer or Tribunal if the investigation officer apply in writing for extension of time at least 3 days prior to the end of time limit. It is not clear what will be the next time limit to submit investigation report and it could have been addressed more specifically providing consequence of failure to submit investigation report in a specific time.

Special provision has been made respecting inter-state investigation wherein Tribunal may extend the period of investigation reasonably applying its discretion.³⁰ A central monitoring cell is required to be established in Police Headquarters for coordinating and monitoring the investigation, preventive functions and duties of the police under this Act.³¹ With the human trafficking being rampant in the recent time, a proper procedure has been enacted by inserting the provision of preventive search and detention. Article 20 (1) enunciates that police after getting sanction or order of his controlling officer can search any place and seize any instrument which are likely to be used in trafficking.

Presumption of Offence under this Act

Where any victim of trafficking or any material used for the commission of the offence of trafficking is rescued or recovered from the custody or a place under the direct control of any person and if such person reasonably doubts to be, or is identified by the victim to be the trafficker, the person may be presumed to have committed the offence of human

²⁶ Section 17 (2)

²⁷ Section 19 (1)

²⁸ Section 19 (2)

²⁹ Section 19 (3)

³⁰ Section 19 (4)

³¹ Section 19 (6)

trafficking under this Act unless the contrary is proved³². This section may be misused by making presumption against the accused person and therefore should be used with reasonable caution. This is not clear what the words ‘unless otherwise is proved’ mean exactly and upon whom the burden of proof lies.

Trail of Offence

Section 21 of the Act mandates that Government may, by notification in the official gazette, establish an Anti-Human Trafficking Offence Tribunal in any district consisting of a judge of the rank of a Sessions Judge or Additional Sessions Judge³³ and until the tribunal is established Nari-O-Shishu Nirjatan Daman Tribunal of the respective district can be assigned as prevention of human trafficking tribunal.³⁴

Despite Bangladesh being a route of human trafficking, the Government did not establish the prevention of human trafficking tribunal till 2020. Recently in 03.03.2020, the Ministry of Law by a notification established seven tribunals in seven divisions³⁵ and on 08.03.2020, by another notification, 07 District Judges were appointed in those tribunals. But till now, the tribunal has not started trying offence under the Act. Since the Nari-O-Shishu Nirjatan Daman Tribunals of the country are already over-burdened with cases,³⁶ those cannot try the offence committed under this Act satisfactorily.

Jurisdiction

TERRITORIAL

Section 21 (4) clarifies that the Tribunal under whose territorial jurisdiction any offence or any part thereof is committed or the victim of the offence of human trafficking rescued will have the jurisdiction to try the offence.

EXTRATERRITORIAL JURISDICTION

If any offence under this Act is committed outside the territory of Bangladesh by any Bangladeshi citizen or company or by a habitually resident in Bangladesh, the Tribunal,

³² Section 18

³³ Section 21 (1)

³⁴ Section 21 (2)

³⁵ Seven divisions are- Dhaka, Chattogram, Khulna, Rajshahi, sylhet, Barishal and Rangpur

³⁶ দেশে বর্তমানে ১০১ টি নারী ও শিশু নির্যাতন দমন ট্রাইব্যুনাল এর অধিন প্রায় ১ লক্ষ ৭০ হাজার মামলার কার্যক্রম চলমান আছে। যেহেতু নারী ও শিশু নির্যাতন দমন ট্রাইব্যুনালে মামলার সংখ্যা অত্যধিক এবং উক্ত ট্রাইব্যুনাল সমূহ অতিরিক্ত দায়িত্ব হিসাবে শিশু আদালতের প্রায় ৩০,০০০ মামলার দায়িত্বে আছে, তাই স্বাভাবিকভাবে উক্ত ট্রাইব্যুনাল সমূহ মানব পাচার মামলায় অধিকতর মনোযোগ দিতে পারে না, - দৈনিক সমকাল, ১০ জুন ২০২০

under whose territorial jurisdiction he was a resident or, in case of a company, its registered office was located, may try the offence.³⁷ It is very conducive for the purpose of justice that the Tribunal can take the deposition of any witness or examine him in any place by itself or through by commission for the purpose of speedy trial or for the security of the victim or witness.³⁸ This is an extraordinary and pragmatic approach which will immensely be proved to be advantageous for bringing the offenders to book.

POWER OF THE TRIBUNAL

The Tribunal shall have all the powers of Sessions Court and may issue any protective order for the interest of justice.³⁹ It upon application of any person or of its own motion may direct further investigation of a case and to submit report in the specified time.⁴⁰

The Tribunal shall conclude trial of the offence committed under this Act within 180 working days⁴¹ and in case of failure it shall send a report to the High Court Division of the Supreme Court within 10 days explaining the reason of such failure.⁴² The Act, however, is silent as to the next time limit of conclusion of trial leaving room of delaying the completion of trial.

For the interest of justice and protection of woman or child victim, the Tribunal may direct the trial to be conducted in camera. In that case the Tribunal shall explain the reason for trial in camera where parties of the case, their appointed lawyers or subject to the permission of the Tribunal, other representative of the parties shall be present.⁴³ During trial, victim of trafficking or witness may apply to the tribunal for appointing translator or interpreter and the Tribunal may pass appropriate order on such application.⁴⁴

At any stage of trial, the Tribunal, upon application of any person or of its own motion, may pass order to seize, freeze or confiscate the property which the accused person has acquired by committing offence under this Act⁴⁵ and it may pass an order to attach any house, land or vehicle if they are reasonably believed to have been used in committing

³⁷ Section 21 (5)

³⁸ Section 22 (5)

³⁹ Section 22 (1)

⁴⁰ Section 23

⁴¹ Section 24 (1)

⁴² Section 24 (20)

⁴³ Section 25

⁴⁴ Section 26

⁴⁵ Section 27 (1)

or attempt to committing offence under the Act⁴⁶ and even if the property situates in foreign country and any subsequently acquired property by means of that property can be frozen and attached.⁴⁷

According to section 27 (3) of the Act, a Tribunal can confiscate the property of the convicted person, which he acquired by committing offence under this Act and the confiscated property shall be deposited to the Human Trafficking Prevention Fund. These proceedings of seizure, confiscation and freezing are undoubtedly conducive to try this offence and punish the offenders, as they will hinder the unwanted exercise of the offender to manipulate the trail and pressurize the victims.

Compensation

The Tribunal may pass order to convicted person to pay the victim of human trafficking a reasonable amount of compensation in addition to the fine and that compensation shall be recovered by the Tribunal directly or following the procedure of the Public Demands Recovery Act, 1913⁴⁸ or the Tribunal may pass order that fine imposed on the convict be provided to the victim⁴⁹.

In determining the amount of compensation, the Tribunal shall apply its discretion and consider costs of victim's physical and mental treatment, cost of transportation or temporary housing, lost income, sufferance, the actual or emotional injury and the gravity of the distress.⁵⁰ These provisions of compensation are newly introduced in this country where law of tort is not developed well. If implemented aptly, these provisions of compensation will encourage more victims to approach to the Court of Law and thereby may control the menace of human trafficking.

Admissibility of foreign documents

According to section 29 (1) of the Act any foreign document, judgment and order of foreign court, investigation report or government notification shall be admissible if duly sent, signed and authenticated by a competent authority upon attestation by the concerned country's Embassy in Bangladesh.

⁴⁶ Section 27 (2)

⁴⁷ Section 27 (4)

⁴⁸ Section 28 (1)

⁴⁹ Section 28 (2)

⁵⁰ Section 28 (3)

Admissibility of Digital Evidence

Subject to the satisfaction of the Tribunal, any evidence held in audio-visual instruments or through any electronic communication shall be admissible in the trial under this Act.⁵¹ According to section 22 (2) of the Act, a witness may be examined through electronic means. These provisions will introduce new horizon in the judicial system of the country since the traditional restrictive view on digital evidence is still prevalent among some lawyers and judges. But it has to ensure that the defence can properly cross-examine the witness and in no way gets prejudiced.

Appeal

Appeal may be preferred against any order, judgment or sentence of the Tribunal to High Court Division of the Supreme Court. within 30 days from the date of the order passed or the judgment or sentence.⁵²

Provision of Bail

Section 22 (5) empowers the Tribunal to enlarge an accused under this Act in bail after hearing the prosecution and while applying the discretion to grant bail under this sub-section, the Tribunal shall consider the gravity of the offence, the security and injury of the victim and witness and, previous record of criminality of accused along with other things. Going beyond the conditions of bail in the Code of Criminal Procedure, 1898, this section has imposed some other criteria to grant bail and tried to formulate a guideline in this spectrum. Some jurists argue that this section has made the scope of granting bail narrower.

Assistance to the Victim of Human Trafficking and Witness and their Protection and Rehabilitation

One of Salient features of this Act is that it has tactfully dealt with post-trafficking period for helping the victim by rehabilitating him and making a number of provisions for the protection of witness of this offence. In this regard, the government has been obligated to take action to identify, rescue and rehabilitate the victim of human trafficking after procuring action-plan by making Rule and acting by partnership with concerned

⁵¹ Section 30

⁵² Section 31

government and non-government organizations.⁵³ The procedure has to be victim friendly keeping eye on the special needs of women and children.⁵⁴ The government shall establish necessary numbers of rehabilitation centres across the country for physical and mental treatment, rehabilitation and reunion of the victim with his family⁵⁵ and the victim shall be entitled to all legal aid, physical and mental assistance for effective social integration.⁵⁶

For helping the victim trafficked in foreign countries, the Bangladeshi embassy of foreign countries have been necessitated to rescue the victim and provide all legal assistance⁵⁷ and in the same way the government shall repatriate the victim of trafficking in his own country who has been brought in Bangladesh following necessary legal procedures.⁵⁸ The Bangladeshi embassies in the foreign countries have been tasked with core responsibilities of looking after the issues of trafficking in these provisions. But sometimes for lack of due care from embassy, victim of trafficking cannot get proper assistance and thereby suffers unexpectedly.

Right to Information and Privacy

Section 34 (1) of the Act enunciates that victim of human trafficking shall have the right to be informed at least once in a month about actions taken against the traffickers and latest update of the respective criminal proceedings. The victim shall be updated about right to compensation and other legal aids under this Act by the investigation officer⁵⁹ and government shall establish a comprehensive data-storage providing minute detail of trafficking ensuring sufficient respect to the privacy of the victim.⁶⁰

Protection of Victim and Witness and Rule of Caution

Every person or agency involved in the legal procedure under this Act shall ensure that the victim of the offence of human trafficking is not subjected to conviction or punishment⁶¹ and without the permission of the Tribunal, no one is permitted to publish or broadcast the name, photograph or any information or identity of a victim or any

⁵³ Section 32 (1)

⁵⁴ Section 32 (2)

⁵⁵ Section 35 (1)

⁵⁶ Section 36

⁵⁷ Section 33 (1-3)

⁵⁸ Section 33 (4)

⁵⁹ Section 34 (2)

⁶⁰ Section 34 (3)

⁶¹ Section 37 (1)

member of his family and any violation of the section shall incur criminal responsibility of maximum 6 months imprisonment or maximum 1 lac taka or both.⁶²

For ensuring the right to privacy of the victim and his family, the law enforcement agencies have to be vigilant. With social media reaching in every corner of the society, protecting privacy of the victim has been more difficult than ever. Crucial it is to mention that if victim or witness gets threatened, he shall be entitled to police protection and other protective measure of the government.⁶³

Right to Institute Civil Suit

Victim of human trafficking shall be entitled to sue for compensation in any civil court for his actual sufferance of legal injury resulting from the offence or for the breach of any contract concerned to the offence besides the right to institute criminal proceedings⁶⁴ and the government may provide financial assistance to the victim from the fund established under this Act.⁶⁵ But in reality, victim faces trouble to take recourse to law. So without erasing the difficulties of getting the perpetrators to punishment, such procedure of civil suit will not of much help. It is relevant to mention here that no such abovementioned fund has yet been established.

Composition of the Human Trafficking Prevention Fund and National Anti-Human Trafficking Authority

The government by gazette notification shall establish a fund naming “ The Human Trafficking Prevention Fund” and the fund shall be used and operated in accordance with the manner prescribed by Rules⁶⁶ and source of the money of the fund is grants or sanction from the Government, grants of local authority or any person or institute and any other sources.⁶⁷ The government may establish a body to be titled ‘National Anti-Human Trafficking Authority’ in the manner prescribed by the rule.⁶⁸

Prevention and Suppression of Human Trafficking Rules, 2017 has come into effect but unfortunately no abovementioned fund and Authority have seen light for lack of good-will of the concerned people.

⁶² Section 37 (2)

⁶³ Section 37 (3)

⁶⁴ Section 39

⁶⁵ Section 40

⁶⁶ Section 42 (1)

⁶⁷ Section 43 (2)

⁶⁸ Section 43

Offence by Company or Firm

If the offence is committed by any company or firm, then people engaged in running the company or firm shall be held responsible for the offence unless they can prove that the offence committed beyond their knowledge or they tried their best to prevent the offence. It is immaterial whether the company is incorporated in Bangladesh or not.⁶⁹ For making undue profit, some agencies send people abroad and more horribly traffic those destitute souls in hostile countries.⁷⁰ Making these goons liable for this offence behind the identity of so called agency or firm, this section has facilitated to identify the real offenders and punish them in accordance with law.

Conclusion

With the sharp rise of illegal immigration in the recent years, human trafficking has been widespread in our country and abroad. The Prevention and Suppression of Human Trafficking Act, 2012 has been widely acclaimed in legal fraternity for its inclusiveness, victim friendliness and complying international standards. Unfortunately, the victims are not being benefitted mostly for lack of knowledge. The government has also failed to bring the mechanism of this Act into reality. Though seven Anti-Human Trafficking Tribunals has been established recently, it did not start trying cases yet.⁷¹ No such Tribunal has been established in the border districts⁷². Hence, for the purpose of controlling human trafficking, the government should best use the provisions of this Act and without any delay eradicate all the legal hurdles.



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⁶⁹ Section 44

⁷⁰ Lured to Vietnam: Rab identifies 6 recruiting agencies, The Daily Star Online Report, 9 July 2020

⁷¹ দেশে ছয় হাজার ১৩৪টি মানব পাচার মামলা রুজু হয়। এর মধ্যে ২৩৩টি মামলার বিচার কার্যক্রম নিষ্পত্তি হয়েছে ও পাঁচ হাজার ৯০১টি মামলার বিচার কার্যক্রম চলমান। শুধু ৩৩টি মামলায় ৫৪ জন আসামির সাজা হয়েছে।- দৈনিক সমকাল, ১০ জুন ২০২০

⁷² কক্সবাজার জেলায় বর্তমানে ৬৪২টি মামলা চলমান থাকলেও সেখানে কোনো পৃথক ট্রাইব্যুনাল নেই।