

Trafficking, which has been subsisting for centuries, most often end with sexual exploitation of the women and children. The complex and diverse socio-cultural factors driven by the growing development challenges affect women and children's vulnerability to trafficking and sexual exploitation. In this age of free market economy, global developments such as escalating inequality and unbalanced trading system have provided a new thrust to such a phenomenon and substantially human trafficking is held to be mounting swiftly. The HIV vulnerability of women and girls lies primarily in the lack of control over their sexual circumstances and these conditions are exacerbated for those who are trafficked. Having a comparatively new attention, the issue, however, attracts an emerging global response.

In Bangladesh the complexity of human trafficking and sexual exploitation against women and children has been accumulated by poverty, illiteracy and ignorance about the consequences. The organised gang of traffickers is targeting the poorest of the poor and disadvantaged women and children for trafficking them from Bangladesh to India, Pakistan and the Middle Eastern Asian countries for engaging them in forced prostitution and various kinds of bonded labour such as slavery, sex slavery, pornography, sex tourism, camel jockey etc. Lack of information about the number of trafficked women and children and their socio-economic status is a great problem in developing techniques and mechanisms for addressing the issue.

In spite of having a good number of legal instruments in different South Asian Countries, sometimes it becomes difficult to negotiate the cross border trafficking, which demand for a unified legal approach to attain. So far no research had been conducted or study done in identifying the gaps and loopholes in existing laws and instruments, which will enable the government and Non-Governmental agencies for addressing the issue of human trafficking and their sexual exploitation.

The need executing bilateral/multilateral agreement between the countries who are exposed to sending and receiving trafficked labour were emphasised and it is

heartening to note that a bilateral agreement between India and Bangladesh has been drafted after a wide range of consultation with the different professionals and legal experts from both the countries, which is under serious consideration for signing.

UNIFEM has taken this demanding initiative of conducting the "*Study on Analysis of the Laws Related to Trafficking and Sexual Exploitation against Women and Children*" in the South Asian Countries and as the pioneer organisation in the field of trafficking and Human Rights, Bangladesh National Women Lawyers' Association (BNWLA) has conducted the same in the context of Bangladesh.

BNWLA offers special thanks to UNIFEM for providing an excellent opportunity of getting involved with such an important research.

Salma Ali,

*Human Rights Advocate*

Executive Director

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## Executive Summary

In the last few years, the Bangladesh National Women Lawyers' Association (BNWLA) has published a number of research reports on the issue of trafficking and sexual exploitation of women and children. There were no prior researches or study identifying the gaps and loopholes in existing laws and instruments which the government and Non-Governmental organisations could take into account for addressing the issue of human trafficking. On Behalf of UNIFEM, this time BNWLA has conducted the "Study on Analysis of the Laws Related to Trafficking and Sexual Exploitation including commercial sexual exploitation against Women and Children" as a part of a comprehensive study in the South Asian Countries. The study aimed at reviewing the existing laws relating to trafficking and sexual/commercial sexual exploitation against women and children in Bangladesh to find out the gaps and loopholes in the existing laws and to reveal findings on the situation of the implementation of those laws and problems related thereto.

Human trafficking, which most often causes sexual exploitation of women and children has emerged as the largest problem in the south Asian Region. A Universally accepted definition of Human Trafficking has not yet been established. But to mention the most authentic definition of trafficking in context of Bangladesh the definition developed by Bangladesh Counter Trafficking Thematic Group lead by MOWCA may be cited which says " a situation where a person no longer has control over some elements of their life for a given period of time. These elements include the type of work they do,, the environment conditions in which this work is carried out and the person's freedom of movement in the context of this work situation. This lack of control is the actual harm of a trafficking experience".

There is no definite definition for the words "Commercial Sexual Exploitation." Sexual exploitation leads to or often results in commercial sexual exploitation. In its general sense Commercial sexual exploitation means [ Insert definition of commercial sexual exploitation]

A number of factors like poverty, ignorance or little education, lack of awareness, disregard for the girls facilitate trafficking and sexual exploitation against women and children. Absence of effective enforcement of law is another major factor that stimulates the trend to a great extent. There are existing laws while implemented might have protected women and child trafficking and their sexual exploitation but improper implementation due to numerous causes provide the traffickers with opportunity to elude legal action. As a result the victims remain deprived of legal support. However the survey conducted under this study reveals that most of the people of the society irrespective of occupational background feel that laws relating to trafficking and sexual exploitation against women and children are inadequate. The survey also pointed out that poor or improper implementation of the existing laws further aggravates the situation.

Under the current situation the laws of the land relating to trafficking and sexual Exploitation and the process of its implementation needs to be reviewed to explore ways and means to improve the situation. The study has reviewed all the national and international laws related to trafficking and sexual/commercial sexual exploitation against women and children, which has been included in Chapter-III. Various politics have been drawn upon by the government with a view to provide protection to women and children susceptible to trafficking. To name the few among them are: National Policy and National Action Plan for Women's Advancement, the National Child Policy and National Action Plan for Children and the recently developed National Plan of Action on Commercial Sexual Exploitation of Children, including Trafficking.

Apart from the existing local laws and legislation Bangladesh has in addition ratified the Convention on the Rights of Children (CRC), 1989, and the Convention on Elimination of all forms of Discrimination against Women (CEDAW) 1979 and most recently the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution 2002. The provisions and these conventions reflects the provisions relating to fundamental rights in our constitution. For example the fundamental rights of equality and equal protection (Article 27); right to be free from discrimination on the basis of religion, race, caste, sex or place of birth (Article 28);

right to protection of the law (Article 31); prohibition against forced labor (Article 34), torture and cruel, inhuman or degrading treatment (Article 35) and freedom of movement (Article 36) but the status of implementation of the relevant provisions of these international Conventions in Bangladesh is dismal.

The women and children who are survivors of sexual exploitation and trafficking or other forms of exploitation are sceptical about the prospect of getting proper judgement against the crimes committed on them. The analysis of responses on laws related to trafficking and sexual/commercial sexual exploitation against women and children and status of implementation of those laws have been gathered from legal experts, judges, lawyers, members of the law enforcement agencies along with the cruel experiences of the trafficked and sexually exploited survivors drawn through the focus group discussion has been included in Chapter-IV.

The participants recommended some institutional reforms. They also emphasised on the sensitization of all the concerned parties on the issue of trafficking and sexual exploitation against women and children. The participants suggested for establishing an Independent Investigation Department within the police administration and increasing the awareness of the members of the law enforcing agencies and creating a women and children friendly environment in the police station. It was also recommended to intensify the coordination among the government agencies including making the Investigation Officers more accountable to the judicial authority. The study also conducted questionnaire survey and cross section of professional was interviewed. Findings on these in the form of an analysis have been included in *Chapter-V*.

A number of case studies prepared on the basis of exclusive interviews of the trafficked survivors and sexually exploited women and children have been included in Chapter - VI. All the survivors staying in the BNWLA shelter home came to know about the child right through the regular counseling and attending informal education classes and sessions who demanded tougher punishment of the traffickers.

The South Asian Countries at present address the issue of trafficking and sexual exploitation against women and children through the laws of their lands. But sometimes it becomes difficult to negotiate the cross border trafficking, which demand for a unified legal approach to attain. It has been recommended that bilateral or multilateral agreement should be drawn up between countries, which are experiencing the trade of trafficking. It is heartening to note that a bilateral agreement between India and Bangladesh has been drafted after a wide range of consultation with the different professionals and legal experts from both the countries, which is under serious consideration for signing.

The study also found the importance of formation of a task force with the representative of Bangladesh Rifles, Ministry of Women and Children Affairs (MOWCA), Ministry of Foreign Affairs, Ministry of Home Affairs and Non-Governmental organisations.

It is expected that this new approach in identifying gaps and loopholes in the legal procedures will come up with some useful recommendation to be implemented in the South Asian Countries including Bangladesh and the report will generate valuable information data which will be useful in combating trafficking and sexual exploitation against women and children. BNWLA is optimistic that continued efforts by determined individuals and collaboration between groups of social workers and NGO's will surely produce gradual social change and an improved society, safe and secure, for the women and children of Bangladesh.

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The Extradition, 1974 (Act No. LVIII of 1974)	
The Vagrancy Act, 1943 (Bengal Act VII of 1974)	
The Emigration Ordinance, 1982 (Ordinance No. XXIX of 1982)	
The Suppression of Violence against Women and Children Act, 2000(Act No. VIII of 2000)	
The Suppression of Violence against Women and Children Act, 2003	

### **Other Laws that are indirectly contributing to trafficking and sexual exploitation**

The Births, Deaths and Marriages Registration Act, 1886 (Act No. VI of 1886)  
The Child Marriage Restraint Act, 1929 (Act No. XIX of 1929)  
The Dowry Prohibition Act, 1980 (Act No. XXXV of 1980)  
The Muslim Family Laws Ordinance, 1961 (Ordinance No. VIII of 1961)  
The Evidence Act, 1872 (Act No. I of 1872)

### **Analyse the policy and plan of action concerning trafficking and sexual exploitation**

Government Policy

The National Plan of Action against Trafficking and Sexual Exploitation

World Congress against Commercial Sexual Exploitation of Children 1996

### **Identify laps gaps and shortcomings in the national laws/acts and policies and plan of action**

The Penal Code 1860, (Act No. XLV of 1860).

The Children (Pledging of Labour) Act, 1933 (Act No. II of 1933).

The Suppression of Immoral Trafficking Act 1933(Bengal Act VI of 1933).

The Bangladesh Passport Order, 1973

The Children Act 1974 (Act No. XXXIX of 1943)

The Extradition, 1974 (Act No. LVIII of 1974)

The Emigration Ordinance, 1982 (Ordinance No. XXIX of 1982)

National Children Policy 1994

National Plan of Action 1997- 2002:

The Suppression of Violence against Women and Children Act, 2000(Act No. VIII of 2000)

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The Evidence Act, 1872 (Act No. I of 1872)

The Muslim Family Laws Ordinance, 1961 (Ordinance No. VIII of 1961)

The Child Marriage Restraint Act, 1929 (Act No. XIX of 1929)

The Births, Deaths and Marriages Registration Act, 1886 (Act No. VI of 1886)

The Muslim Family Laws Ordinance, 1961 (Ordinance No. VIII of 1961)

The Dowry Prohibition Act, 1980 (Act No. XXXV of 1980)

The Dhaka Metropolitan Police Ordinance , 1976

### **Anti Trafficking and sexual exploitation related international laws, articles Human Rights or any other international and /or regional instruments**

#### **International Instruments**

The Universal Declaration of Human Right, 1948

The Minimum Age Convention, 1973 (No.138)

The Forced Labour Convention, 1930 (No. 29)

The UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)



The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956  
The Convention on the Rights of the Child (CRC)  
The International Covenant on Civil and Political Rights, 1966  
The World Congress against Commercial Sexual Exploitation of Children, 1996  
The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979  
The Worst Forms of Child Labour Convention, 1999 (No. 182)  
The SAARC Summit, 1997  
The SAARC Convention for Preventing and Combating Trafficking in Women and Children for Prostitution, 2002  
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The International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families 1990 (Enters into force on 1<sup>st</sup> July 2003)

## **Special Legal Intervention by South Asian Countries**

### **India**

#### **Judicial Decisions**

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The Penal Code of Pakistan, 1860  
The Offence of *Zina* (Enforcement of *Hudood*) Ordinance 1979  
The Prevention and Control of Human Trafficking Ordinance, 2002  
Punishment for human trafficking

### ***Nepal***

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The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Trans national Organized Crime, 2000  
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## BANGLADESH

### Facts About Trafficking and Sexual Exploitation against Women and Children

- ◆ **Bangladesh and Nepal are the main sources of trafficked children in South Asia.** (CATW Fact Book, citing Masako Iijima, "S. Asia urged to unite against child prostitution," Reuters, 19<sup>th</sup> June 1998)
- ◆ **Human Rights monitors estimates that more than 20,000 women and children are trafficked from the country for the purpose of forced prostitution annually** (*Department of State, USA, Human Rights Report 2000*)
- ◆ **27,000 Bangladeshi women and children have been forced into prostitution in Indian brothels.** (CATW Fact Book, citing "Women Forced into Indian Brothels," CWCS, June 1998)
- ◆ **Over the last decade, 200,000 Bangladeshi girls were lured under false circumstances and sold into the sex industries in nations including Pakistan, India, and the Middle East.** (CATW Fact book, citing Tabibul Islam, "Rape of Minors Worry Parents," IPS, 8 April 1998)
- ◆ **According to the estimates, around 25-50 children are trafficked out of the country every month.** (*An alternative Report to the UN Committee on the Rights of the Child, submission to the UN CRC, 1997 citing Jatlath D'Souza of BICPAJ*)
- ◆ **About 10,000 girls are active in prostitution inside the country.** (ILO-IPEC, Rapid Assessment of Child Labour Situation in Bangladesh, 1996)
- ◆ **65 percent of 135 surveyed women and girls in brothels in Bangladesh were between age 11 and 13, and 33 percent were between age 13 and 15.** (CATW Fact book, citing BNWLA, Bangladesh Country Paper: Law and Legislation)

## List of Acronyms

- AIDS- Acquired Immune Deficiency Syndrome**
- BNWLA- Bangladesh National Women Lawyers' Association**
- CRC- Convention on the Rights of the Children, 1989**
- CEDAW- Convention on the Elimination of all Forms of Discrimination against Women, 1979**
- ILO- International Labour Organisation**
- MOWCA- Ministry of Women and Children Affairs**
- NPA- National Plan of Action**
- SAARC- South Asian Association for Regional Cooperation**
- STI- Sexually Transmitted Infections**
- SEACT- Sexual Exploitation and Abuse of Children including Trafficking**
- UN- United Nations**
- UNICEF- United Nations International Children Emergency Fund**
- VAW- Violence Against Women**
- WHO- World Health Organisation**
- NGO- Non-Governmental Organisation**
- INGO- International Non-Governmental Organisation**
- HIV- Human Immune Virus**

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Trafficking, which has been subsisting for centuries, most often end with sexual exploitation of the women and children. The complex and diverse socio-cultural factors driven by the growing development challenges affect women and children's vulnerability to trafficking and sexual exploitation. In this age of free market economy, global developments such as escalating inequality and unbalanced trading system have provided a new thrust to such a phenomenon and substantially human trafficking is held to be mounting swiftly. The HIV vulnerability of women and girls lies primarily in the lack of control over their sexual circumstances and these conditions are exacerbated for those who are trafficked. Having a comparatively new attention, the issue, however, attracts an emerging global response.

In Bangladesh the complexity of human trafficking and sexual exploitation against women and children has been accumulated by poverty, illiteracy and ignorance about the consequences. The organised gang of traffickers is targeting the poorest of the poor and disadvantaged women and children for trafficking them from Bangladesh to India, Pakistan and the Middle Eastern Asian countries for engaging them in forced prostitution and various kinds of bonded labour such as slavery, sex slavery, pornography, sex tourism, camel jockey etc. Lack of information about the number of trafficked women and children and their socio-economic status is a great problem in developing techniques and mechanisms for addressing the issue.

In spite of having a good number of legal instruments in different South Asian Countries, sometimes it becomes difficult to negotiate the cross border trafficking, which demand for a unified legal approach to attain. So far no research had been conducted or study done in identifying the gaps and loopholes in existing laws and instruments, which will enable the government and Non-Governmental agencies for addressing the issue of human trafficking and their sexual exploitation.

The need executing bilateral/multilateral agreement between the countries who are exposed to sending and receiving trafficked labour were emphasised and it is heartening to note that a bilateral agreement between India and Bangladesh has been drafted after a wide range of

consultation with the different professionals and legal experts from both the countries, which is under serious consideration for signing.

UNIFEM has taken this demanding initiative of conducting the "*Study on Analysis of the Laws Related to Trafficking and Sexual Exploitation against Women and Children*" in the South Asian Countries and as the pioneer organisation in the field of trafficking and Human Rights, Bangladesh National Women Lawyers' Association (BNWLA) has conducted the same in the context of Bangladesh.

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Salma Ali,  
*Human Rights Advocate*  
Executive Director  
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## Executive Summary

In the last few years, the Bangladesh National Women Lawyers' Association (BNWLA) has published a number of research reports on the issue of trafficking and sexual exploitation of women and children. There were no prior researches or study identifying the gaps and loopholes in existing laws and instruments which the government and Non-Governmental organisations could take into account for addressing the issue of human trafficking. On Behalf of UNIFEM, this time BNWLA has conducted the "Study on Analysis of the Laws Related to Trafficking and Sexual Exploitation including commercial sexual exploitation against Women and Children" as a part of a comprehensive study in the South Asian Countries. The study aimed at reviewing the existing laws relating to trafficking and sexual/commercial sexual exploitation against women and children in Bangladesh to find out the gaps and loopholes in the existing laws and to reveal findings on the situation of the implementation of those laws and problems related thereto.

Human trafficking, which most often causes sexual exploitation of women and children has emerged as the largest problem in the south Asian Region. A Universally accepted definition of Human Trafficking has not yet been established. But to mention the most authentic definition of trafficking in context of Bangladesh the definition developed by Bangladesh Counter Trafficking Thematic Group lead by MOWCA may be cited which says " a situation where a person no longer has control over some elements of their life for a given period of time. These elements include the type of work they do,, the environment conditions in which this work is carried out and the person's freedom of movement in the context of this work situation. This lack of control is the actual harm of a trafficking experience".

There is no definite definition for the words "Commercial Sexual Exploitation." Sexual exploitation leads to or often results in commercial sexual exploitation. In its general sense Commercial sexual exploitation means prostitution adopted without voluntary consent for money. The Declaration from the First World Congress against Commercial Sexual Exploitation of children defines commercial sexual exploitation as " Sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons". The same may apply to adult women substituting the word child. In any case the victims are subject to sexual

abuse for money or commerce or trade. In dealing with sexual exploitation the study shall also deal with commercial sexual exploitation of child and women.

A number of factors like poverty, ignorance or little education, lack of awareness, disregard for the girls facilitate trafficking and sexual exploitation against women and children. Absence of effective enforcement of law is another major factor that stimulates the trend to a great extent. There are existing laws while implemented might have protected women and child trafficking and their sexual exploitation but improper implementation due to numerous causes provide the traffickers with opportunity to elude legal action. As a result the victims remain deprived of legal support. However the survey conducted under this study reveals that most of the people of the society irrespective of occupational background feel that laws relating to trafficking and sexual exploitation against women and children are inadequate. The survey also pointed out that poor or improper implementation of the existing laws further aggravates the situation.

Under the current situation the laws of the land relating to trafficking and sexual Exploitation and the process of its implementation needs to be reviewed to explore ways and means to improve the situation. The study has reviewed all the national and international laws related to trafficking and sexual/commercial sexual exploitation against women and children, which has been included in Chapter-III. Various politics have been drawn upon by the government with a view to provide protection to women and children susceptible to trafficking. To name the few among them are: National Policy and National Action Plan for Women's Advancement, the National Child Policy and National Action Plan for Children and the recently developed National Plan of Action on Commercial Sexual Exploitation of Children, including Trafficking.

Apart from the existing local laws and legislation Bangladesh has in addition ratified the Convention on the Rights of Children (CRC), 1989, and the Convention on Elimination of all forms of Discrimination against Women (CEDAW) 1979 and most recently the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution 2002. The provisions and these conventions reflects the provisions relating to fundamental rights in our constitution. For example the fundamental rights of equality and equal protection

(Article 27); right to be free from discrimination on the basis of religion, race, caste, sex or place of birth (Article 28); right to protection of the law (Article 31); prohibition against forced labor (Article 34), torture and cruel, inhuman or degrading treatment (Article 35) and freedom of movement (Article 36) but the status of implementation of the relevant provisions of these international Conventions in Bangladesh is dismal.

The women and children who are survivors of sexual exploitation and trafficking or other forms of exploitation are sceptical about the prospect of getting proper judgement against the crimes committed on them. The analysis of responses on laws related to trafficking and sexual/commercial sexual exploitation against women and children and status of implementation of those laws have been gathered from legal experts, judges, lawyers, members of the law enforcement agencies along with the cruel experiences of the trafficked and sexually exploited survivors drawn through the focus group discussion has been included in Chapter-IV.

The participants recommended some institutional reforms. They also emphasised on the sensitization of all the concerned parties on the issue of trafficking and sexual exploitation against women and children. The participants suggested for establishing an Independent Investigation Department within the police administration and increasing the awareness of the members of the law enforcing agencies and creating a women and children friendly environment in the police station. It was also recommended to intensify the coordination among the government agencies including making the Investigation Officers more accountable to the judicial authority. The study also conducted questionnaire survey and cross section of professional was interviewed. Findings on these in the form of an analysis have been included in *Chapter-V*.

A number of case studies prepared on the basis of exclusive interviews of the trafficked survivors and sexually exploited women and children have been included in Chapter - VI. All the survivors staying in the BNWLA shelter home came to know about the child right through the regular counseling and attending informal education classes and sessions who demanded tougher punishment of the traffickers.

The South Asian Countries at present address the issue of trafficking and sexual exploitation against women and children through the laws of their lands. But sometimes it becomes difficult to negotiate the cross border trafficking, which demand for a unified legal approach to attain. It has been recommended that bilateral or multilateral agreement should be drawn up between countries, which are experiencing the trade of trafficking. It is heartening to note that a bilateral agreement between India and Bangladesh has been drafted after a wide range of consultation with the different professionals and legal experts from both the countries, which is under serious consideration for signing.

The study also found the importance of formation of a task force with the representative of Bangladesh Rifles, Ministry of Women and Children Affairs (MOWCA), Ministry of Foreign Affairs, Ministry of Home Affairs and Non-Governmental organisations.

It is expected that this new approach in identifying gaps and loopholes in the legal procedures will come up with some useful recommendation to be implemented in the South Asian Countries including Bangladesh and the report will generate valuable information data which will be useful in combating trafficking and sexual exploitation against women and children. BNWLA is optimistic that continued efforts by determined individuals and collaboration between groups of social workers and NGO's will surely produce gradual social change and an improved society, safe and secure, for the women and children of Bangladesh.

**Report**  
*on*  
***Study on Analysis of the Laws Related to Trafficking and  
Sexual Exploitation against Women and Children***

**Prepared by**

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**Bangladesh National Women Lawyers Association (BNWLA)**

## **Chapter - One**

### **Introduction**

This is a report of a "Study on Analysis of the Laws related to Trafficking and Sexual Exploitation against Women and Children in Bangladesh" carried out by Bangladesh National Women Lawyers' Association (BNWLA) on behalf of UNIFEM. The study was aimed at reviewing the existing laws relating to the aforementioned issues in Bangladesh with a view to explore the gaps and loopholes if there are any and revealing findings on the situation of the implementation of those laws and problems related thereto.

### **Rationale and Justification of the Study**

Trafficking and sexual exploitation including commercial sexual exploitation of women and children have emerged as one of the major problems for Bangladesh. Fragile socio-economic condition leads many women and children to become victims of trafficking, prostitution and other forms of violence. Little or no legal support further aggravates the situation. Although there exists tough and appropriate laws against these sorts of crime but laps, gaps, anomalies, loopholes in the laws and lack of implementation due to various reasons make the laws unable to protect women and children from being victimised. As a result trafficking in women and children within the territory and across the border and sexual/commercial sexual exploitation is gradually increasing. Under the present situation the laws of the land relating to trafficking and sexual/ commercial sexual exploitation and the process of its implementation should be reviewed to explore ways and means to improve the situation.

### **The main focus of the study**

The study contains a review of the laws and an analysis of responses on laws related to trafficking and sexual/commercial sexual exploitation and implementation of those laws gathered from legal experts, judges, lawyers, members of the law enforcement agencies. The study also contains case studies from exclusive interviews with survivors of trafficking and sexual exploitation and findings derived from focus group discussions within the relevant groups.

## **Methodology of the Study**

The study had four major components that include (i) literature review covering analysis of laws and provisions and prevailing situation on trafficking and sexual/commercial sexual exploitation of women and children (ii) Findings based on interview based survey, focus group discussions with professional groups (Lawyers, Judges, law enforcing agencies etc) as well as survivor women and children. The group also included representative of various Non-Governmental and civil society organisations and (iv) Case studies based on exclusive interviews with women and children went through an experience of trafficking and / or commercial sexual exploitation and related legal process.

## **Limitations of the study**

The limitation the study faces is mainly on the area of survey conducted through questionnaire and case studies drawn upon through interviewing survivors of sexual /commercial exploitation. The findings related to the causes and consequences and the thoughts of the survivors were not as precise as was expected. The questionnaire survey was designed to interview 500 individuals but it has included the responses from 450 individuals as all of the questionnaires were not completed. The survey should have covered more area than it has done.

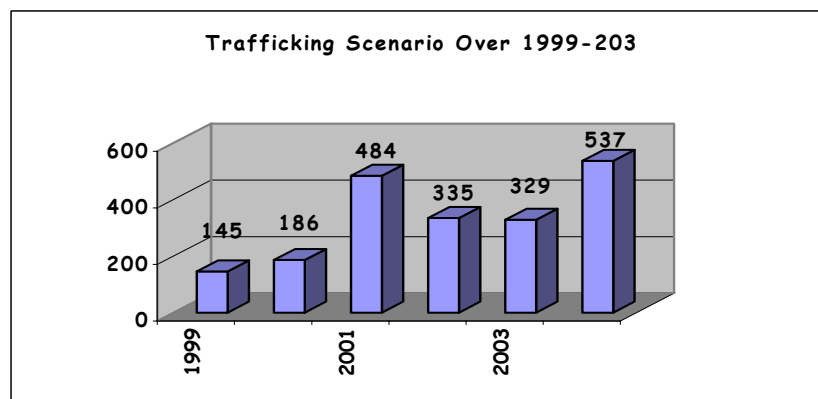
## Chapter - Two

### Background

#### Situation Analysis of Trafficking and Sexual Exploitation of Women and Children in Bangladesh

Having no social, economic or racial frontiers, trafficking in women and children is common occurrence that mostly blatantly deprecates women and children's rights as human being in South Asia. Bangladesh, as an underdeveloped country with a gender biased society suffers from a number of social evils of which trafficking, and sexual exploitation of women are the most noteworthy. Trafficking in women and children within the territory and outside Bangladesh is a common phenomenon. Vulnerable women and children who are deprived of financial, social and legal support and opportunities, easily become victims of internal and cross border trafficking. The organised gang of traffickers target the poorest of the poor and disadvantaged women and children and traffic them from Bangladesh to India, Pakistan and other countries of Middle Eastern Asia for engaging them in forced prostitution and various kinds of bonded labour including domestic servitude, begging, pornography, sex slavery, camel jockey etc.

**Graph-I: Analysis of Trafficking Situation in Bangladesh**



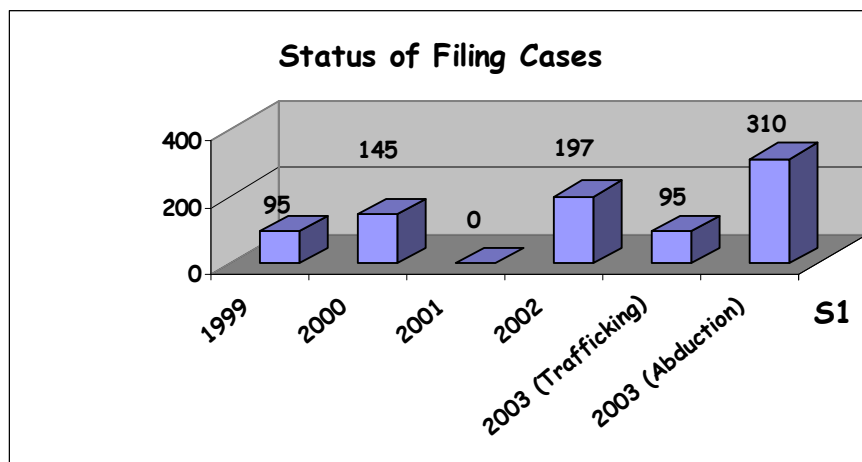
There are two common types of trafficking- one is internal and the other is cross border. It has been found that woman and children are often taken away from their homes through abduction, or inducement for better life with good employment, by traffickers who in turn sell them in brothels in Bangladesh in the case of internal trafficking. Poor women are trafficked from the rural area to the urban area. Vulnerable children and women are also trafficked from the rural/urban area of the country of origin to the country of transit and to the country of destination. These



children and women are again smuggled by gang of traffickers across the border to further destinations such as India, Pakistan and different Middle Eastern Asian countries where their ultimate fate is a life of sexual exploitation and abuse and other forms of bonded labour. Almost all of the 1.6 million garment working girls and young women are the vulnerable group who can easily be the victim of internal and cross border trafficking.

In Bangladesh trafficking and sexual exploitation is the most prevalent type of violence that can affect a girl throughout her childhood and adolescent. Many girls are forced into prostitution and denied their human rights and dignity by the mental and physical abuse they endure. Poverty, illiteracy, child marriage, cultural practices, money powers, illegal migration and above all girls' low status in society encourages and sustains for such kind of exploitation. Everyday victims face violence, intimidation, rape, and torture from pimps, brothel owners and even from the members of the law enforcement agency. Though the Constitution of Bangladesh, 1972, states that 'the state shall adopt effective measures to prevent prostitution and gambling', in practice this sexual servitude is maintained through coercion, physical force, emotional blackmail, economic deprivation, social isolation, and even threats for death.

**Graph-II Analysis of status of Case Filed**



For Bangladesh's perspective sexual exploitation is the major outcome of both internal and cross border trafficking. In many occasion child marriage, repeated pregnancy, women's poor health, unable to fulfill dowry demands, inability to give birth to male child open the floodgate of family violence that ranges from wife beating to polygamous marriage, which led the young brides thrown out of their matrimonial home or are abandoned by husband. These women are either abducted or

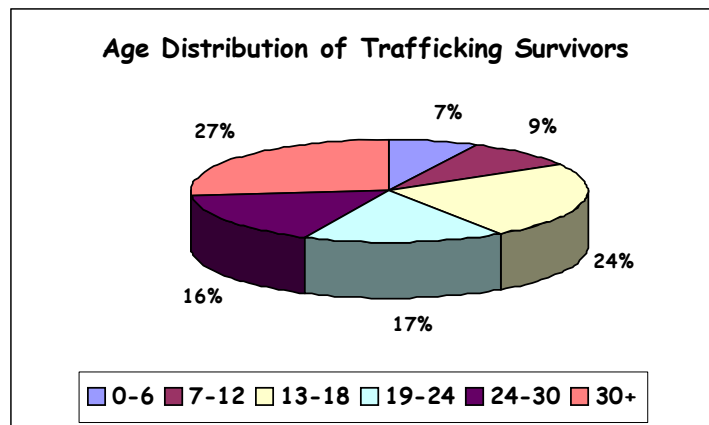
induced by the traffickers for better life where lucrative job or marriage or false proposals to visit city or holy places are presented before them. But the reality is that they become victims of trafficking and sexual exploitation and eventually embrace the lives of agony and torture.

The children of broken families and the children who are deprived of financial, social and legal support and opportunities are also easily become the target of internal and cross border traffickers. These children are smuggled by the organized gang of traffickers across the border to further destination.

The barbarous trade in women and child trafficking and sexual exploitation creates extremely adverse affect on the body and mind of them. Apart from the mental trauma and physical disorders, most of the children who are forced into prostitution suffer form serious health hazards notable of which are early infection of HIV/AIDs, sexual dysfunction and many other STDs.

In Bangladesh the children and women are sexual exploited in a variety of settings, including in home, hotel, streets, and even in the workplace. There is a low societal acceptance and recognition attached to it and this means that the offender go scot-free. The shame and stigma of sexual exploitation and the tendency to blame the victim and survivor rather than the perpetrator leads to this silence and cover-up. As a coping mechanism, the community members including the girls have adopted a practice of bearing the pain in silence. If a girl is sexually exploited, the primary concern of the parents is not to access justice by ensuring punishment of the violator. Their primary concern is to ensure that the girl's prospect of marriage does not suffer.

**Graph - III Age distribution of Trafficked Victims**



A study in the late 1990's revealed that girls and boys comprise a significant number of street based prostitutes in the capital city of Dhaka who are particularly vulnerable to sexual exploitation. The mean age of entry into commercial sexual exploitation was approximately 13 for girls and 11 for boys. The study found that the girls became sexually desirable after they reached puberty whereas for boys the age is less important. It is a common complaint of both girls and boys being sexually exploited on the street is forcible rape and sex without payment. Seventy percent children who become sexually exploited came from rural poor families. The girls who switched from garments industry to street based sex work regularly face problems from police and *mastans* (hoodlum) and have to pay informal taxes to various peoples.

Women and child domestic service is a large employer of rural and urban women and children especially girls. These women and girls mostly live with their employer's family and are at risk of sexual abuse or exploitation. Poverty compels parents to engage their daughters in domestic service. Divorced or abandoned young women thinks that domestic service is comparatively safe working environment for them but most of them faces sexual exploitation, beating or sometimes rape. The perpetrators are the male employers or his son or a visiting male relative or friend.

Children who grow up in the brothel environment are at risk of sexual exploitation. Both boys and girls, like their mother, face discrimination from societies and are rarely permitted to integrate with other children. Choice of different profession is impossible for the prostitute's children, as they are not socially accepted.

Although sexual exploitation of women and children is understood to be increasing and assuming alarming proportions, there is little concrete evidence or statistical data on the problem. There are major obstacles in trying to estimate the magnitude of the problem. The social stigma and legal sanctions attached to it inhibit easy identification. The stranglehold of criminal gangs and brothel keepers enforced through violence prevent the proper identification of victims. Some isolated studies have been done on girl victims but less has been documented about the boys who are victims of sexual exploitation and its impact on them. According to the government statistics there are 16-registered brothel at different districts in Bangladesh with around 10,000 girls forced into prostitution. Of them almost 50% are aged under 18 years. According to the police assessment there were around 15,000 to 20,000 floating sex workers. Of the floating sex workers 50% are between the age group of 10 and 20 years. Almost all the girls forced into prostitution were sexually abused before entering into sex work. All the sex workers in Dhaka experience rape before being forced into prostitution. The girls usually experience sexual abuse within the age of 10 years.

A sample survey of 135 brothel based Commercial Sex Workers (CSWs) in Bangladesh conducted by BNWLA indicates that over 65 percent of the children who are victim to trafficking are aged between 1 and 13, while the age of 33 percent of the children range between 13 to 15. The survey also reveals that 21 percent of the migrant girls are internally trafficked to Dhaka from different parts of the country to be sold to the pimps and 90 percent of the children have experienced their first sexual encounter before they crossed ten years of age. It also asserts that 30 and 40 percent of the CSWs in the Indian red light zones of Kolkata and Delhi respectively are trafficked from Bangladesh.

There are demands for trafficked labour in some sectors in home and abroad due to various motivational factors for employers and consumers such as better profit, easy to control, fills needs for hard to recruit workers, low cost of maintenance, low cost goods and services etc. The main demand related outcomes as identified are:

- Domestic servitude
- Sex industry
- Pornography
- Factory work
- Hard labour
- Bonded labour
- Beggars
- Camel jockey

The victims who are forced into prostitution in the brothels are the high-risk group of being HIV positive, AIDS and other Sexually Transmitted Infections (STIs). In some cases survivors of trafficking who ended up with sex work in turn become traffickers and traffic girls and young women to other countries for forcefully engage in prostitution.

### **Trafficking for sexual exploitation in the name of migration**

Trafficking is not opposed to migration but it is an aspect of it. Trafficking for prostitution, migration and trade in humans for the purpose of commercial sexual exploitation was at the end of the 1800s and in the beginning of the 19<sup>th</sup> century described as *white slavery*. A person shall be deemed as trafficked if he has no choice over the type of work (situation of forced labor, servitude, sex work or slavery-like practices), working environment and the conditions of work he/she do for their livelihood, his freedom of movement (within and across borders to the situation, which results from: coercion, force, deception or fraud in the context of this work situation.

Case studies collected from time to time show that the experience of being trafficked often initiates a migrant career. Lured, deceived, cheated, deprived of freedom and/or income, compelled to engage in work against their will, women who are trafficked painfully learn and acquire skills useful to their survival

*According to a study conducted by a Kolkata based organisation a large number of women and children are being trafficked to Kolkata from adjoining districts and from other countries especially Bangladesh and Nepal with the promise of providing with better job are eventually compelled to adopt prostitution as a profession. The most dreadful matter is that 60% of them are minor girls.*

*Migration for the purpose of trafficking to Mumbai is also not new. Work for women in bars became widely available after 1990 that often required sex work. Motivators and recruiters were mainly relatives and neighbours. In most cases there were "Contract Marriages" whereby a man married for the purpose of migration to Mumbai. Marriage protected him from accusation of trafficking and he could claim 50 percent of his wife's income. Many of the women and girls migrated to Mumbai are considered as trafficked as they have no control over their occupation and mobility. It was also found that the majority of "women" who have been trafficked are adolescent girls below the age of 18.*

### **Problems in addressing the issue**

Although there has been increasing anxiety and fear among the concerned groups both at Government and NGO levels concerning the pervasive nature of trafficking for sexual exploitation unfortunately there has not been extensive effort from the concerned groups except a few one in this regard. The country could not formulate any migration policy yet to operationalise the initiatives at various levels. A large number of cases of cross border trafficking in women and children are filed under Section 11 (c) of the Bangladesh Passport Act, 1973, under which punishment for such crime is very negligible. Traffickers escape taking the advantage of improper implementation of law and elude the tougher punishment as prescribed in the Women and Children Repression Prevention Act, 2000. As a result trafficking in women and children continues almost unabated.

As the status of implementation of the existing laws relating to trafficking and sexual exploitation in women and children is very dismal, it is difficult to combat trafficking in terms of ensuring prevention, protection, recovery, rehabilitation and reintegration of the survivors of internal and cross border trafficking. Moreover the relevant government departments do not have necessary data and information about the trafficking and sexual exploitation scenario in the country. A few Non-Governmental organisations have conducted a few study and research to assess how

gruesome the situation of trafficking and sexual exploitation in women and children is, but that may not reflect the over all prevailing situation of the whole country. As a result comprehensive action programmes with full geographical coverage has not been possible on the part of any party including government and Non-Governmental to undertake.

In spite of many intervention for prevention, law enforcement, tougher punishment, rescue and rehabilitation, there does not appear to have much impact on overall trafficking and sexual exploitation scenario because of the lack of seriousness among law enforcement machinery and administration in addressing this problem due to ambivalent attitude of the society to the problem, non enforcement of existing laws, non availability of free legal aid, widespread corruption in the law enforcing agencies, insufficient awareness about the prevalence and ramifications, social stigma and family problem faced by the survivor as a result they are not willing to return to their families, difficulties in estimating the age of the child, lack of coordination between border police and neighbouring countries, lack of support lines, shelter homes when the victims are mentally traumatised, insufficient infrastructure in the form of institutions for stay and rehabilitation.

Most people in Bangladesh are now simply priced out of the judicial system. The state, instead of taking effecting measures seems to refuse to recognize the plight of the disadvantaged groups in terms of their right to equal protection under the law and access to the judiciary. Equal justice for all is a recognised principle and a judicially enforceable right. However, in the absence of sufficient resources, this right is merely theoretical. Laws remain only in books and not applied in practice.

There are some other forms of problems such as understanding and way of addressing the issue by different organisations. Some organisations consider the occurrence of trafficking as a cognisable offence and initiate legal action against the trafficker(s). Some take it as an incident, which can be remedied by advocacy. There is a gap between the groups in prioritising action that sometime create hindrance in ensuring legal support for the survivors. To minimise the gap relating to conceptual clarity and address the problems a thematic group comprising almost all the major organisations working in the field has been formed. The group has developed flowchart on trafficking in person with an aim to enhance conceptual clarity among the stakeholders so as to enable them to initiate appropriate interventions in a more co-ordinated approach.

Bangladesh is a country where the plight of children often takes a backseat to other developmental and human rights issues. As a result inadequate separate work done for children as an independent group within the population. Often children are lumped

together with women as an accessory or additional supplement to women's rights despite their issues and needs being of a different and distinctive character. Several researches have been carried out on trafficking of women and children but very few on trafficking in children as a separate group. Reporting on their plights have been lost or been subsumed by that of women.

***Some initiatives in combating trafficking and commercial sexual exploitation of women and children:***

Initiatives are being taken both at national and regional level within South Asian region. South Asian countries have signed two important Conventions on Combating Trafficking in Women and Children and on Child Welfare at the 11th SAARC Summit in Kathmandu, Nepal. The Convention on "SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution" is likely to be ratified by the member countries soon. Bangladesh has already ratified the convention.

Meanwhile the government of Bangladesh has formulated a National Plan of Action against the Sexual Abuse and Exploitation of Children including Trafficking. The NPA is based on the data collected at different level through the initiatives of Government, N.G.O., I.N.G.O. and UN Agencies. BNWLA has been one of the members of the core group formed by the government comprised of representatives from relevant government departments, The NPA has also a policy on HIV/AIDS that is at the stage of implementation. Currently the NPA is at the stage of implementation. A National Monitoring and Implementation Committee on National Plan of Action against Sexual Exploitation and Abuse of Children including Trafficking (SEACT) has been formed.

Beside Government, I.N.G.O.s and N.G.O.s took out various programs to combat sexual exploitation of women and children, for example, ILO-IPEC project on anti-trafficking.

Appropriate and adequate laws and their effective implementation are utmost important for combating sexual exploitation of children. An effective and adequate legal framework needs to be developed in line with relevant international instruments ratified by Bangladesh such as CEDAW, CRC, ILO Conventions and the UN Convention against Transnational Organized Crime and its Protocol on migrants, including revising and strengthening the existing legal framework and enforcement measures to protect women and children from future exploitation.

## **Chapter - Three**

### **Literature Review**

#### **Definitions of different terminology used**

##### **Trafficking in women and children**

The definition of trafficking in women and children greatly debated in the anti-trafficking movement. As trafficking in women and children is a very complex issue, intertwined with various and often-conflicting interests on behalf of States and NGOs, the definition become even more complicated. When outlining measures and policies are set to prevent trafficking, wording of the definition can make the difference between law and policy or measure, which assists the women involved and one that further victimizes them. Different individuals, organizations and international institutions define trafficking and sexual exploitation from different perspective.

The first international legal instrument to deal with trafficking was the 1949 Convention of the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. For the first time in an international instrument, the Convention declared prostitution and the traffic in persons to be incompatible with the dignity and worth of the human person and to endanger the welfare of the individual, the family, and the community. Though the United Nations Convention against Trans national Organised Crime, 2000 did not define the term 'trafficking' but the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 2000 broadens its definition of "trafficking in persons" to include a range of cases where human beings are exploited by organized criminal groups, particularly where there is an element of duress involved and a transnational aspect, such as the movement of people across borders. The Protocol highlights the inhuman, degrading and dangerous exploitation of trafficked person and is expected to standardize the terminology, laws, and practices of countries.

##### **Minor/Child**

In the International arena, almost all relevant instruments like the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 2000, SAARC Convention for Preventing and Combating Trafficking in Women and Children for Prostitution 2002 and the Worst Forms of Child Labour Convention, 1999 (No. 182) define "Child" as any person who is under eighteen years of age.



At National level, to meet different circumstances, different Acts define the term 'child' in a different way where the age of children varies from 21 years to 12 years. As for example, for the purpose of child marriage, 'child' or 'minor' means a person who, if a male, is under twenty-one years of age and if a female is under eighteen years of age. According to the Vagrancy Act, 1943, and the Women and Children Repression Prevention Act, 2000, a child is defined as anyone who is under the age of 14 years. Under the Children (Pledging of Labour) Act, 1933, a person who is under the age of fifteen years is a child. Under the Shops and Establishment Act, 1965, "child" means a person who has not completed 12 years. According to the Factories Act, 1965, and the Women and Children Repression Prevention Act, 2000, child means a person who has not completed 16 years.

### **Child Sexual Abuse**

According to the United Nations, child sexual abuse means the contacts or interactions between a child and an older or more knowledgeable child or adult (a stranger, sibling or person in a position of authority, such as parent or caretaker) when the child is being used as an object of gratification for an older child's or adult's sexual needs. These contacts or interactions are carried out against the child using force, trickery, bribes, threats or pressure.

Sexual abuse can be physical, verbal or emotional and includes touching and fondling of the sexual portions of the child's body (genitals and anus) or touching the breasts of pubescent females, or the child's touching the sexual portions of a partner's body.

Both UNICEF and WHO defines 'child sexual abuse' in almost same language as an incident where a child is involved in a sexual activity to which he or she is unable to give informed consent (and may not fully comprehend), or for which the child is not developmentally prepared and cannot give consent, or which violates the laws and taboos of the society. Most of the cases, the perpetrators are adults who due to the age is in a relationship of mutual trust or domination over the child.

### **Sexual Exploitation**

According to the **UNICEF**, sexual abuse becomes sexual exploitation when a second party becomes benefited by involving a child in sexual activity, which can include child prostitution and child pornography.

**Save the Children** explains sexual abuse and exploitation as the imposition of sexually inappropriate acts, or acts with sexual overtones by one or more persons, who derive authority through ongoing emotional or professional bonding with that child or who have a commercial or other interest in the child.

## **National Anti-Trafficking and Sexual Exploitation Laws/Acts and Other Laws/Acts Related to Protection of Women and Children:**

### **Legislation and its enforcement**

One can get the flavour of the relevant Laws protecting the interest of women and children of Bangladesh in terms of anti-trafficking and sexual exploitation in different National Legislations including the Constitution of Bangladesh, 1972. Here are the glimpses of the legal provisions relating to trafficking and commercial sexual exploitation of child-

#### **The Constitution of Bangladesh, 1972**

In the third paragraph of the Preamble to the Constitution of Bangladesh, 1972, it is pledged that it shall be the fundamental aim of the state to realise through the democratic process a socialist society, free from exploitation-a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens.

Article 28 (4) empowers the State to make special provisions, which will favour women and children.

The Constitution of Bangladesh, 1972, as the Supreme Law of the land, banned all forms of forced labour under Article 34(1) and this provision is placed under Part-III, Titled "Fundamental Rights", means this provision is judicially enforceable.

In Article 18 (2), under Part-II, Titled "Fundamental Principle of State Policy", it is said that the State shall adopt effective measures to prevent prostitution.

#### **The Penal Code, 1860**

The Penal Code, 1860, deals with various offences affecting the human body ranging from exposure and abandonment of a child under twelve years by parents or others (sec. 317), to wrongful restraint (sec. 339) and wrongful confinement (sec. 340), criminal force (sec. 350) and assault (sec. 351) to kidnapping (sec. 359), abduction (sec. 362), slavery (sec. 371), forced labour (sec. 374), rape (sec. 375) and other kinds of unnatural offences (sec. 377).

Some provisions of the Penal Code, 1860, such as Kidnapping from lawful guardianship (sec. 361), Kidnapping and abducting a person under the age of ten (sec. 364A),

Procuration of minor girl (sec. 366A), Importation of girl from foreign country (sec. 366B), Selling minor for purposes of prostitution, etc. (sec. 372) and Buying minor for purposes of prostitution, etc. (sec. 373) address children only.

**Punishment for the above-mentioned Crimes under the Penal Code, 1860:**

The Penal Code, 1860 keeps the provisions of imprisonment for seven years and fine as punishment for Kidnapping of minor boys under fourteen years and girls under sixteen years, a maximum sentence of 10 years and/or fine or both for the procreation of a minor girl and for habitual dealing in slave, kidnapping or abducting any other person (sec. 367), or wrongful concealing (sec. 368), or kidnapping a child under ten years with the intention to steal from his parents (sec. 369), for forcing a minor girl under the age of eighteen years to illicit intercourse with another person (sec. 366A), for buying and selling of minors for purposes of prostitution or for any unlawful and/or immoral purpose (secs. 372, 373), death or rigorous punishment for up to 14 years for kidnapping or abducting anyone under the age of 10 for grievous hurt, slavery or the lust of any person (sec. 364 A).

The Penal Code, 1860, also provides punishment for the person who unlawfully compels any person to labour against his will for imprisonment, which may extend to one year (sec. 374).

**The Suppression of Immoral Traffic Act, 1933**

The Suppression of Immoral Traffic Act, 1933 was enacted to make better provisions for the suppression of brothels and of trafficking in women and girls for immoral purpose.

Though the Act contained lots of impressive provisions relating to the offence of living on the earnings of prostitution (sec.8), procuration (sec. 9), importing a female for prostitution (sec. 10) but the punishment for these offences are very nominal which may be imprisonment which may extend to three years or fine upto one thousand taka or with both.

The Act provides punishment for the keeper of a brothel or for the person who allows premises to be used as brothel, which may extend to two years or fine or with both. The same Act has also provided imprisonment and fine as punishment, which may extend to three years and one thousand taka or both if any person detains a woman under the age of 18 years against her will. Section 12 of the same Act has provisions for two years imprisonment and/or fine, which may extend to one thousand taka or with both.

Under section 13 of the Act, the Commissioner of Police, Superintendent of Police or a police officer not below the rank of a Sub-Inspector may remove any girl under the age of 18 years from any brothel and may put such girl aged 16 before a Juvenile court for disposal as provisions of the Children Act, 1974.

### **The Children Act, 1974**

This Act is the manifestation of the decision of the lawmakers to consolidate and amend the laws relating to the custody, protection and treatment of children.

Part VI of this Act includes special offences in respect to children. This Part sets out different kinds of offences committed against a child, which are punishable with imprisonment for upto two years, or with fine upto one thousand taka, or with both, including any kind of cruelty, employing children for begging, giving intoxicated liquor or dangerous drugs, alluring the child to be in a brothel, carrying or encouraging seduction, exploitation of child etc.

### **The Extradition Act, 1974**

The Extradition Act, 1974 (Act No. LVIII of 1974) keeps provisions for extradition of fugitive offenders to and from a treaty State the names of which states are declared by the Government by notification in the official Gazette. So, if any person commits an offence enlisted in the Schedule of this Act and fly away to any Treaty State, then for the ends of justice, the Government of the Treaty States shall extradite that offender.

The Act enlisted few offences in the Schedule, among which offences like rape, procuring or trafficking in women or young persons for immoral purposes, kidnapping, abduction or dealing in slaves, stealing, abandoning, exposing or unlawfully detaining a child, aiding and abetting, or counselling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit, any of the aforesaid offences are relevant for this study.

### **The Vagrancy Act, 1943**

The Vagrancy Act, 1943 was enacted to deal with vagrancy in Bangladesh. The law defines a 'vagrant' as a person found asking for alms in any place, or wondering about or remaining in any public place in such condition or manner as makes it likely that such person exists for asking for alms but does not include a person collecting money or asking for food or gifts for a prescribed purpose.

### **The Emigration Ordinance, 1982**

Article 7(2) of the Emigration Ordinance, 1982, prohibits any person to recruit or attempt to recruit any citizen for overseas employment except in accordance with the provisions of the Ordinance unless he possesses a valid demand.

Simultaneously, Article 7(2) validates the emigration<sup>1</sup> of a citizen if he is in possession of valid travel documents with registration and he has been selected for emigration by a foreign employer through an organization or authority or by a recruiting agent, recognized by the government in this behalf or under an agreement or treaty between the government and a foreign government.

Under Article 8 (1), the government may prohibit the departure of any person and emigration regarding the occupation, profession, vocation or qualification of any person, if the government is satisfied that the emigration of such person is not in the public interest. By 1997, the Government banned the migration of unskilled women, which was implemented as a protective measure.

### **The Women and Children Repression Prevention Act, 2000**

The Act was enacted to make necessary provisions for combating rigorously the offences relating to repression of women and children.

The Act, in section 5(1), dealing with punishment for the trafficking in women and in section 6 (1), dealing with the punishment for child trafficking, keeps provisions of death sentence or life imprisonment and fine as punishment for a person who imports or traffic or send any women in abroad with the intention of using that woman in prostitution or using for unlawful or immoral purposes or buys or sells or lets to hire or handed over for any kinds of torture or in similar reason, keeps a woman in his possession, "Zimma" or puts under his custody.

Besides, if any man to get his sexual desire illegally touches, by any of his organ or any object, the sex organ of any woman or a child, the act as such by him shall constitute sexual harassment and for that he shall be liable for punishment with rigorous imprisonment for three to ten years [section 10(1)]. Again, if any man violates modesty of a woman or makes obscene gesture to her to get his sexual desire illegally his act as such shall constitute sexual harassment and for that he shall be punishable with not exceeding seven years of rigorous imprisonment [section 10(2)].

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<sup>1</sup> Article 2 (e) of the Emigration Ordinance, 1982 defines "Emigrant" as any person who emigrates or is assisted emigrate or has emigrated under this Ordinance and includes any dependent of an emigrant. In Article 2 (f), the Ordinance defines "Emigrate" and "Emigration" as the departure by sea, air, or land out of Bangladesh of any person for the purpose or with the intention of working for wages or engaging in any trade, profession or calling in any country beyond the limits of Bangladesh.

Recently, an amendment to this Act has been passed by Parliament.

## **Other Laws that are indirectly contributing to trafficking and sexual exploitation**

### **The Births, Deaths and Marriages Registration Act, 1886**

This Act has been enacted for the voluntary registration of births and deaths among certain classes of persons for the more effectual registration of those births and deaths and of the marriages registered under the Act, 1872, and for the establishment of general registry offices for keeping registers of those births, deaths, and marriages.

### **The Child Marriage Restraint Act, 1929**

Section 5 of the Child Marriage Restraint Act, 1929, provides punishment for simple imprisonment which extend to one month or with fine which may extend to one thousand taka or with both for solemnizing, performing, conducting or directing a child marriage unless the person doing so had reason to believe that the marriage was not a child marriage. For the parents or guardian concerned in a child marriage, section 6 provides punishment for one month simple imprisonment only and this section exclude women guardian from punishment.

### **The Dowry Prohibition Act, 1980**

To define 'Dowry', section 2 of the Dowry Prohibition Act, 1980, says that 'Dowry' means any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party, or by the parents of either party to a marriage or by any other person, at the time of the marriage or at any time before or after the marriage as consideration for the marriage of the said parties but does not include dower or *mehr*.

While section 3 of the Act mentions penalty for giving or taking dowry which is imprisonment which may extend to five years and shall not be less than one year, or with fine or with both, section 4 expresses penalty for demanding dowry which is imprisonment which may extend to five years and shall not be less than one year, or with fine or with both.

Section 7 (b) of the Act says that no court shall take cognizance of any such offence except on a complaint made within one year from the date of the offence.

### **The Muslim Family Laws Ordinance, 1961**

Section 6 of the Muslim Family Laws Ordinance, 1961, prohibits another marriage of a man during the subsistence of an existing marriage without the previous permission in writing of the Arbitration Council and if he does so that marriage will not be registered under the Muslim Marriages and Divorces Act, 1974. For doing so, a man will be punished with simple imprisonment which may extend to one year with fine which may extend to five thousand taka or with both.

### **The Evidence Act, 1872**

The Evidence Act, 1872, under section 101, requires any person who desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts, must prove that those facts exist.

In section 103, the Act also compels any person to prove the particular fact who wishes the court to believe the existence of the fact.

## Identify laps gaps and shortcomings in the National Laws/Acts and Policies and Plan of Action:

In Bangladesh the legal, social and cultural norms preclude sex outside marriage, however, it is of concern that the specific age for giving consent for sexual purposes is still not clear. Moreover in the Penal Code, 1860, rape within marriage is not considered as crime unless the wife is less than 13 years of age. This is a clear contravention to the Child Marriage Restraint Act, 1929, as the bride cannot be younger than 18 years. Moreover, according to section 375 of the Penal Code, 1860, any man who has sexual intercourse with a female, with or without her consent, when she is less than 14 years of age will be said to have committed rape. Rather than being described as a 'child', the 14 year old described as a 'woman' in the Penal Code and in the Women and Children Repression Prevention Act, 2000, which is uniform with the Children Act, 1974, Child Marriage Restraint Act, 1929, and Convention on the Rights of Children (CRC), 1989.

Here is the summery of the loopholes of the existing Bangladeshi Act/Laws relating to trafficking of children, women and commercial sexual exploitation.

### **The Penal Code, 1860**

The Penal Code, 1860, deals extensively with different elements of trafficking and sexual exploitation of children, women and men. However, punishment in the form of imprisonment varies from one to fourteen years and **death penalty**, whereas in most cases the traffickers and their agents are rarely touched. Even if they are arrested, they hardly sentenced the full term of their comparatively short sentences. Moreover complex legal procedure consumes time, so always there remains a chance that justice may be denied due to unwanted delay.

According to the Penal Code, 1860, any one who induces or forces a girl under 18 years of age into illicit intercourse shall be liable to punishment. Although not part of any written law, a practice has emerged in Bangladesh whereby any woman above 18 years may affirm an affidavit before a Notary Public or First Class Magistrate attesting to her age and that she has willingly chosen to engage in prostitution by not having any other source of income. The affidavit is commonly referred to as the license or registration of the prostitute. In reality some corrupt Notary Public and lawyers have made false affidavits to minor girls as adult. It has been found that girls who have engaged in prostitution usually entered her false name in the register of local police station and pay a certain amount of fees. Thus brothel is an important source of income for the police who have clear interests at stake in keeping business flourishing even though it means covering up and protecting illegal practices. But it is



fully contrary to Article 18 of the Constitution of the People's Republic of Bangladesh, 1972.

The Penal Code, 1860, does not specifically deal with child pornography; sections 292, 293 and 294 (amended) of the Act pertain to the sale, rent, distribution, exhibition and/or circulation of materials that are obscene. Interestingly, the punishment for selling, renting, distribution, exhibition, and circulating, obscenity to young persons under 20 years of age is twice as harsh which is with the penalty extended from a prison term of up to three months and /or a cash fine up to six months in prison and/or a cash fine. The law has no provision against incest or sex tourism.

### **The Children (Pledging of Labour) Act, 1933**

The Act provides for penalizing such parents or guardian who make an agreement to pledge the labour of a child with a fine of up to Tk. 50 (less than US\$1) and the person who enters into the agreement with a fine of up to Tk. 200 (less than US\$4). Since the enactment, the amount of fine remains unchanged. It is a matter of great sorrow that the Government of Bangladesh has not yet amended the amount of fine even though after the enactment of this Act eighty-one years have passed.

So the law keeps the provisions so that the parents can be restrained to pledge their children to jobs from which sites children are trafficked within and outside the country. Moreover the legislation being antiquated the quantum of punishment needs immediate review and increased substantially.

### **The Suppression of Immoral Traffic Act, 1933**

Article 18(2) of the Bangladesh Constitution states that, the state shall adopt effective measure to prevent prostitution. There will arise a contradictory situation if we compare the present situation under the Suppression of Immoral Traffic Act, 1933 and the provisions of the Constitution. Surprisingly, the framers of the constitution, keeps the provision regarding 'commercial sexual exploitation ' i.e. prostitution as a fundamental principle of state policy, which is not judicially enforceable.

The Suppression of Immoral Traffic Act, 1933, draws bar regarding the prostitution of a girl under 18 years of age but there are no provisions against other form of immoral professions held by the women above the age of 18 years. They are restricted to practice it in any public place under the law. At the same time the law prohibits landlord, owner, lessor tenant, or lessee to let their houses for using for the purpose of prostitution. Now the question arises where the woman will carry on their profession?

The definition of brothel made in the Act is not comprehensive. The definition of "public place" does not provide any concrete idea. The Act prohibited the carrying out of the business of the prostitutes in every place of public amusement like circus, carnival, cinema, bazaar, hall where the public has access to go. In this way the section is not extensive in its nature. Thereby we cannot approach the place where the business of prostitution could be carried on.

The provisions of this Act do not consider prostitution as a punishable offence. Moreover as per section 4 (7) the Act creates a bar for an aggrieved person who intends to go to the court of law for justice by saying that, no court shall take cognisance of any offence punishable under this Act unless there is a complaint made by the Chairman of the Paurashava, Zilla board or Union Parishad within the jurisdiction of which the premises are situated along with three or more persons occupying separate premises or holding resident in the vicinity of the premises or holdings to which the complaints relates and a representative of the society.

Article 6 of CEDAW says that the state parties should take appropriate measures including legislation to suppress all forms of traffic in women and exploitation of prostitution of women. Many brothels have been established even after the entry into force of the Bangladesh Constitution. Bangladesh was one of the signatory countries of the CEDAW. Till today, the Suppression of Immoral Traffic Act, 1933, has not been properly amended and implemented to meet the reality.

Neither the Suppression of Immoral Traffic Act, 1933, nor the Children Act, 1974, has taken into consideration the involvement of the boys in prostitution, which is another issue to take into serious consideration especially for the floating boys. There is no monitoring committee or body to monitor the conduct of parents or guardian of a minor under the Children Act, 1974, and due to lacking of such arrangement most of the time children are abused illegally and harassed sexually.

### **The Vagrancy Act, 1943**

The Act is totally incompatible with CRC. Many children who are arrested under this Act do not satisfy the criteria of the definition of a 'vagrant'. Many of them have parents, but police rarely help children to find out their parents before arresting them. The Act has no provision for legal representation and reportedly the Magistrate rarely asks the arrested children any questions before determining them to be 'vagrants' and sending them to a vagrant's home. The Act only includes the provisions for education and skill training, however there are no provisions for psychological care for those in need. While in custody, especially those who are living with older children and adults, are at a risk of further sexual abuse and exploitation, not to mention corporal punishment. The staffs of vagrants home are also not vigilant

about children's right and no provisions relating to the accountability of the concerned officers are stipulate in the Act.

The Social Welfare Directorate is assigned with the duty of rehabilitation of prostitutes, but what it has done in the recent past in the name of rehabilitation is nothing but unlawful eviction. There is a very contradictory aphorism on part of the Government to handle this situation. Due to poor strategy and lack of institutional guideline and alternative arrangements, this program has been proved to be an almost unsuccessful one.

### **The Bangladesh Passport Order, 1973**

Rather than withholding complaints, law enforcement officials accept bribes to allow illegal crossing or hold traffickers responsible only for a passport violation a lessor charge instead of trafficking, which have severe penalties. The traffickers are charged under section 11(c) of the Bangladesh Passport Order, 1973 but are released of charges the next day because it is a minor offence to travel across a border without a passport. Law prescribes only nominal fine and six-month imprisonment for this. So, when this gang of traffickers are arrested by the border police for the offence like kidnapping, abduction etc. then with the transaction of huge ransom, the police show them arrested under the Bangladesh Passport Order, 1973, instead of arresting them under the Penal Code, 1860.

### **The Children Act, 1974**

According to section 42 of the Children Act, 1974, no girl under 16 years of age, either willingly or through coercion, is permitted to work as a prostitute. The Act also provides punishment for a person who causes or encourages her to become a prostitute. Under section 41, no child over the age of 4 years is permitted to reside in a brothel and any one who allows the child to reside in a brothel will be punished. This Act did not incorporate any provision relating to boys engaged in prostitution. It is worthy to note that provisions of the Act have not been enforced and no cases relating to any of such offences in respect of children have yet been filed under the Act.

Enforcement of the provisions of the legislation above-mentioned is done either by police or statutory bodies set up by the Government. Laws relating to trafficking of children and protection of children having no or little societal and familial support fall under the domain of police. The prevalent high rate of street child prostitutes or child beggars, a good number of orphans and guardian less, are indicators of the indulgence or ignorance of police about their responsibilities entrusted to them by the Children Act, 1974. The police do almost nothing against those who are the culprit

in sexual exploitation of the children. Police often arrest children from streets when they find such children are doing acts that are contrary to their well being. Such a child may initially be collected and interned briefly in police stations before producing them in a court which may direct to sent such child as per section 32 (4) of the Children Act, 1974, to an approved home or a certified institute or to be committed in the prescribed manner to the care of a relative or other fit person named by the court and willing to undertake such care, until such child attains the age of 18 years, or for any shorter period.

Again it is found that a girl child is not always safe under temporary police protection. A number of cases were published in news media where a girl child is sexually abused and harassed in police custody. Despite the enactment of several legislations the problem of child sexual abuse still persist due to lack of serious and sincere commitment on the part of agencies authorised by the Government to act for the best interest of the child.

For almost all the criminals, the neighbouring state India is the danger-free zone. The provisions of the Extradition Act, 1974, will only be effective if we have a treaty with India for the repatriation of these criminals. Though we had a treaty with India which was enforceable during 1974-1998 (for 25 years) but since we do not have such treaty with the neighbouring state, the provisions of this remains mere decorative.

### **The Extradition Act, 1974**

Since this Act is in force, the Government of Bangladesh may enter into agreements or treaties with other countries of the world, and can bring back the traffickers to home when they are traced across national borders, and tried. In Bangladesh, we have no single provision in national legislations to try the citizens for sexual or any other grievous offences committed against children in abroad.

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### **The Emigration Ordinance, 1982**

Various groups, NGOs and others opposed the Government ban on migration of unskilled women as they deemed it to be unconstitutional and discriminatory and they argued that it would contribute to illegal trafficking in women. The ban was subsequently lifted on all categories of women workers except for domestic aids.

However the undocumented migration of women and children still continues as only licensed recruiting agencies are allowed to process papers of migrant workers.

### **The Women and Children Repression Prevention Act, 2000**

The tremendous rise in cases of violence against women in the 1990's and the awareness of a lacking in the law to respond to these incidences resulted in the proposal and enactment of the Women and Children Repression Prevention Act, 2000.

Though the govt. is apparently giving maintenance of the law and order top priority and has passed the Women and Children Repression Prevention Act, 2000, that has again been amended in 2003 but only a few traffickers were arrested.

The Government earlier declared that legislations relating to trafficking were not effective in part due to the profitable relationships between law enforcement agents and traffickers. That's why the Government in collaboration with various NGOs, organize and implement a considerable amount of preventive measures to check trafficking in women and child and sexual exploitation in Bangladesh. In this circumstance the Government of Bangladesh passed this new Act.

The law is not fully accord with the CRC and other International instruments, which the Government of Bangladesh has ratified. The law has defined 'child' as any person of age not exceeding 16 years instead of 18. It is notable that in the previous Act a child is a person who is 16 years old.

The law is not a comprehensive one. The law metes out harsh penalties like capital punishment for those who are convicted of committing violent crimes including trafficking. So far we have observed that capital punishment depends on the prove of the offence beyond reasonable doubt but due to lacking of proper protection of witness most of the time prosecutor failed to prove the cases and as a result reduces the rate of punishment.

In case of prostitution the law provides punishment for pimps or for *dalals* only, it did not include the clients. This Act provides punishment to pimps for engaging a women or girl in prostitution. Male child prostitutes were excluded from the Act. The Act provides for certified institutes or approved homes for children found homeless, destitute, requiring safe custody and others must be reviewed. In Bangladesh we do not have any Independent Investigation Agency. As a result Police Officers who are overburdened with other responsibilities cannot pay proper attention in preparing report. Government appoints Prosecuting Agency in ad-hoc basis for a particular period. So they fail to give a real picture of a case to the investigation agency. In most of the cases Investigation Officer (I.O.) and Medical Officer do not appear in

the court in time. Government has failed to set up adequate number of tribunals, as most of them are overburden with cases.

It has been mentioned earlier that even though the law provides severe penalties for trafficking few perpetrators are punished. In most of the cases police and local govt. officials often either ignore trafficking in women, or are easily bribed.

Since its adoption in 2000, this law has benefited many women, however some problem areas and loopholes have also been highlighted. In these circumstances the Bangladesh government has again amended some provisions relating to 'the age of child', 'laws relating to sexual harassment', 'offence related to dowry' and 'investigation procedure' in 2003. The new amendments keep the previous provisions of the Women and Children Repression Prevention Act, 2000, in respect of laws relating to trafficking in women and children unchanged. The lawmakers failed to realize that trafficking could be happened for other purposes than for prostitution and they did not include or add anything about the victim's physical and mental treatment and protection during the trial of their cases. By concentrating on the end result and not on the process of trafficking, the law does not recognize trafficking as a distinct and heinous crime regardless of a nexus with prostitution.

### **Other laws**

Many national laws were enacted to prevent the offence that are the root causes of trafficking and sexual exploitation of children and women like exchange of dowry through the Dowry Prohibition Act, 1980, and Women and Children Repression Prevention Act, 2000, restrict polygamy by the Muslim Family Laws Ordinance, 1961, prevent child marriage by the Child Marriage Restraint Act, 1929, the Muslim Marriage and Divorces Act, 1974, and family violence by the Penal Code, 1860, but the legal loopholes and corrupted social practices prevent children and women to take the advantages of these laws.

The Child Marriages Restraint Act, 1929, prohibits marriage of girls less than 18 years of age and boys less than 21 years of age. However, under Muslim personal laws, a guardian may give marriage to a child who is under 18 years of age until she or he reaches puberty. The Dissolution of Marriages Act, 1939, allows a child bride to repudiate the marriage before attaining 19 years provided that the marriage has not been consummated [section 2 (vii)].

However, repudiating the marriage on attaining the age of majority is not so easy as the girl has to prove that the consent in marriage was given by her parents or guardian, that it was solemnized when she was under 18 years of age, that she repudiated the marriage before she reached 19 and that the marriage has not been

consummated. This is a tall order for many girls who are unlikely to know the law let alone take the case forward.

Though section 3 of the Muslim Marriages and Divorces Registration Act, 1974, has made the registration of a Muslim marriage compulsory but in rural areas the rate of marriage registration is very poor. Now a day, the Ministry of Religious Affairs train the Marriage Registrars and they are directed not to register any marriage where either or both the parties to the marriage is minor. But in many cases, the Marriage Registers write down false age in the registration book due to the absence of proper monitoring mechanism. Absence of birth registration also contributes to the acceptance of false statements of age for marriage registration.

### **The Evidence Act, 1872**

The Evidence Act, 1872, provides that the burden of proof lies on the prosecution as he or she brings the charges or allegations. In the cases of trafficking and sexual exploitation the burden of proof lies on the victim. It is difficult for a victim to satisfy all the requirements to prove such a heinous crime committed against her. Moreover, in context of our social values a sexually exploited victim irrespective of age, status and religion confronts the society as an object of shame as if she is the guilty for that situation and the offender takes the advantage. Thus, regarding sexual exploitation, it can be said that the rules of burden of proof as prevailing in the existing law are inadequate and one sided. It is impossible for a child to prove the fact that he has been trafficked and some sort of sexual exploitation had been committed against him. For this type of cases, the Evidence Act, 1872, should be amended and the accused should prove that he is an innocent person. Though in that cases, there are also possibilities of false cases but in that context there may have the provisions of punishment for false cases like it is introduced in the Code of Civil Procedure, 1908.

### **The Muslim Family Laws Ordinance, 1961**

This Ordinance did not declare polygamy illegal but a husband must obtain the permission of his wife in order to marry again. In most cases women are not generally willing to give permission to their husbands, as a result the issue of polygamy becomes a cause of domestic violence and divorce as men often torture their wives physically and emotionally to give permission for another marriage. In reality this requirement of obtaining the existing wife's permission is a mere formality because if a man seriously desires another marriage, it is impossible for his wife to stop him. Moreover, is simple imprisonment, which may extend to one year. In reality the first wife rarely sues her husband and the husband cares little for this simple punishment. In Bangladesh, the practice is that the husbands are respected beyond expression.

So when a woman sues her husband, she is bound to compromise the suit due to the pressure of the family members. But though she withdraws or compromise the suit, but she remains mentally aggrieved even after the compromise. These wives are easy to exploit and induce. The trap of the traffickers can easily convince them and they can become the victim of trafficking.

### **The Child Marriage Restraint Act, 1929**

The Child Marriage Restraint Act, 1929 provides 18 years as the minimum age for girls and 21 years for boys however girls in Bangladesh continue to get married at a very young age. According to Bangladesh Demographic and Health Survey 1996-97 by the age of 19 years more than half of adolescent girls get married.

Under section 9, the law provides a limitation of one year time for filing a complaint under the Child Marriage Restraint Act, 1929. By the Muslim Family Laws Ordinance, 1961, a new restriction have been imposed whereby an aggrieved person or a citizen cannot come directly before the Magistrate with his complaint alleging a child marriage.

The complaint has to be filled before the Magistrate by the concerned Union Parishad, Paurashava or the City Corporation. This is so happens that the beneficiaries of a child marriage manage the concerned authorities of the Union Parishad or Pourashava by undue influence, and the aggrieved person has no remedy at all. That is why any case of complaint against any offence regarding child marriage has come up for trial under the Family Court Ordinance, 1961 came into effect. According to the Act child marriage is not void so the dishonest person always trap in the name of child marriage.

The Act only sanctions punishment against male persons (father, grandfather or any other relatives) who are directly involved in solemnizing child marriage. Thus due to legal loopholes female perpetrators can easily avoid punishment. And the punishment for the offenders is only simple imprisonment for one month, so the Act fails to contribute in the process of combating child marriage.

In these circumstances, the Government will have to take measures to harmonize the overlapping laws and contradictory legal system, remove inconsistencies regarding the definition of a child in the existing laws, amend the age old laws, and ensure proper implementation of laws to meet the reality.



### **The Birth, Death and Marriage Registration Act, 1886**

The Birth, Death and Marriage Registration Act, 1886, is almost a dead law, as it has not been amended and the registration of birth has not made compulsory to meet the reality. In Bangladesh, more than seventy percent parents do not register their child's birth due to illiteracy and ignorance.

For example, the registration of birth was not declared compulsory by the law rather this Act was enacted for voluntary registration of births and deaths. The persons who are authorised by law to give notice of birth to the registrar are not aware about their duties and responsibilities. The law provides a certain time limit to register the information regarding birth but did not mention the consequences if it was not informed within the specified time limit, etc. As a result, in most of the cases, the age of bride or bridegroom cannot be ascertained during the solemnization of marriage, as there remains no documentary evidence of the age of the parties concerned.

Such a gap makes it convenient for the parents or guardians to promote solemnization of child marriage by concealing the actual age of the boy or the girl. The lack of sufficient evidence of children's age due to non performance of birth registration system also create legal constrains in determining rescued child/girl prostitute or repatriated trafficked child or women's age. Here, any greedy relative of an orphan can easily give marriage of the child to a trafficker and open the floodgate of commercial sexual exploitation.

### **The Muslim Marriages and Divorces Registration Act, 1974**

The Muslim Marriages and Divorces Registration Act, 1974, empowers the Marriage Registrars to register every marriage whether it is solemnized by the Marriage Registrar or by some other person. As the age of both the parties to a marriage have to be mentioned in the marriage register, many marriages especially the child marriages are performed without registration. Again thousands of child marriages are still being conducted by showing in the marriage register the false age of the parties. So most of the girls got married without registration and as a result sometimes the husband totally denied the marriage and the girls failed to prove it and become victim.

In our society, the divorced woman or a woman who has failed to prove her marriage are not still accepted cordially. So they are always under-estimated and due to negligence towards them they can easily become the target of the trafficker.

### **The Dowry Prohibition Act, 1980**

The punishment for the offence of dowry has been discussed in both the Dowry Prohibition Act, 1980, and the Women and Children Repression Prevention Act, 2000. But the basic differences between the two laws are that the Dowry Prohibition Act, 1980, has made the offence of giving, taking or demanding dowry as a non-cognizable, non-bailable and compoundable while the Women and Children Repression Prevention Act, 2000, declared the same offence non-bailable and cognizable. For simple giving, taking or demanding dowry is a punishable offence under the Dowry Prohibition Act, 1980, while if there is any grievous or simple hurt arises out of dowry demand then the offence will fall under the purview of the Women and Children Repression Prevention Act, 2000.

The Dowry Prohibition Act, 1980, has not been proved to be much helpful in checking the offence as the police or social welfare organizations are not empowered to lodge cases on behalf of the victim under the Dowry Prohibition Act, 1980, as it is very natural that the members of the victim's family may not always go to courts for various unutterable reasons. Moreover, the law demands independent witness to prove the dowry demands, in reality, it is very difficult to provide such witness, as a result the case become weak.

There is a provision of the law that no court shall take cognizance of such offense except on a complaint made within one year from the date of offence.

### **The Dhaka Metropolitan Police Ordinance , 1976**

Article 74 of the Dhaka Metropolitan Police Ordinance, 1976, mentions the same thing as described in section 7 of the Suppression of Immoral Traffic Act, 1933 except the punishment, which prescribed for three months.

According to this Article, a woman can be arrested after being charged for alluring a man for sexual purpose either openly or secretly. But unfortunately it has been revealed that in most cases the fundamental rights of citizens are carelessly misused by this Article. Many children also were arrested by the police from the street or sometimes elsewhere and later trapped them to enter into prostitution.

## **Analyse the Laws, Policy and Plan of Action concerning trafficking and sexual exploitation:**

### **Government Policy**

The basic needs of children and the duties of the state towards them are derived from the Constitution of the People's Republic of Bangladesh, 1972. Article 14 of the Constitution prohibits all sorts of exploitation, and Article 15 ensures the right to social security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement suffered by orphans.

The Women Affairs Division of the Government of the Peoples' Republic of Bangladesh, established in 1976, was upgraded as the Ministry of Women's Affairs in 1978. Later, this Ministry was given an added responsibility for the development and protection of children and their rights, and currently it is known as the Ministry of Women and Children Affairs.

Meanwhile, Bangladesh ratified the UN Convention on the Rights of the Child, 1989 in September, 1990 with reservation to Article 14<sup>2</sup> and Article 21(a)<sup>3</sup>.

In December 1994, the Government of Bangladesh adopted a National Policy on Children with six objectives, such as-

- (1) Survival of the Children
- (2) Education/psychological development of the Children,
- (3) Family environment to be ensured for the Children,
- (4) Assistance to children in especially difficult circumstances,
- (5) Best interest of the children and
- (6) Protection of their legal rights.

In keeping with the policy the government has formed National Council for Children to monitor the said objectives. The government also launched the National Plan of Action on Child Labour in 1997 banning all types of hazardous and abusive child labour including child labour in welding and similar engineering works, construction sector, quarrying and brick breaking, bidi factories, leather industry, shrimp industry, tea plantation, child trafficking and child prostitution.

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<sup>2</sup> Child's right to freedom of thought, conscience and religion,

<sup>3</sup> Adoption of children.

Besides the Ministry of Women and Children's Affairs (MOWCA) has made a campaign against trafficking as an important priority. The Ministry has drafted a National Policy for the advancement of women, which has incorporated one Section on violence against women and measures to combat trafficking. MOWCA has a unit on violence against women that monitors incidents of violence against women and submits the report to the National Committee on Violence Against Women. The Ministry has also implemented a comprehensive three year project to combat trafficking in association with NORAD and UNICEF.

### **The National Plan of Action against Trafficking and Sexual Exploitation**

In the light of the declaration of the 1st World Congress against Commercial Sexual Exploitation of Children, 1996<sup>4</sup>, the Government of Bangladesh has formulated a National Plan of Action against the Sexual Abuse and Exploitation of Children including Trafficking, which was presented at the 2nd World Congress, 2001 held in December in Yokohama, Japan.

The NPA is based on the data collected at different level through the initiatives of government, NGO, INGO and UN Agencies. A core group comprised of representatives from relevant Government Departments, UN bodies, I.N.G.O.s and N.G.O.s working on child rights was formed by the government.

The National Plan of Action (NPA) was formulated after a wide range of consultation with different national and divisional level professional groups including the children and analysing the situation of sexual exploitation of child, which ended with various suggestions and recommendations from all relevant groups. In this connection, in 2001, three sub national consultations in Chittagong, Rajshahi and Khulna and one national consultation in Dhaka was held on September 2, 4, 11 and 16 respectively. The objective of these sub national and national consultations was to elicit information and recommendations from the local level people and from different professional groups including government officials, lawyers, journalists, doctors, engineers, NGO representatives. Formulation of the National Action Plan includes not only thorough analysis of child sexual exploitation but also suggestions and recommendations from all relevant groups.

The NPA describes the main problems in the areas of child sexual abuse, exploitation and trafficking. The major areas of intervention within the range of the NPA are:

**Prevention:** Explore and initiate proper action program to stop sexual abuse and exploitation of children and save them from being trafficked;

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<sup>4</sup> Stockholm, Sweden, 27-31 August 1996.

**Protection:** Develop mechanism and implement them to help children who have been sexually abused, exploited and trafficked;

**Recovery and Reintegration:** To get the children out of harm situation and ensure their proper physical and mental recovery through making proper referral to the safe havens for the children run by govt. or NGOs for making sure that the children are reintegrated into the mainstream of the society;

**Perpetrators:** To take appropriate measures against the people who sexually abuse and exploit children and traffic them;

**Child Participation:** To find out what part the child will play in the fight against child's sexual abuse, exploitation and trafficking;

**HIV/AIDS, STIs and Substance Abuse:** What needs to be done to protect sexually abused or exploited and trafficked children from the dangers of getting diseases through sex and of using tobacco, alcohol and other drugs;

**Co-ordination and Monitoring:** Set up strategies how people, organisation and the government will work together to successful in combating against child sexual abuse, exploitation and trafficking and ways of checking on how successful the work done under this NPA.

Currently the NPA is at the stage of implementation. A National Monitoring and Implementation Committee on National Plan of Action against Sexual Exploitation and Abuse of Children including Trafficking (SEACT) has been formed. The committee has also developed a Terms of Reference for developing a working group to implement the NPA.

Though the Government has incorporated the rules of Convention on the Rights of the Child, 1989 in the National Child Policy, 2000, but the proper implementation has not yet found.

### **National Children Policy, 1994**

In accordance with fundamental principles of the Constitution and the United Nations Convention on the Rights of the Child, 1989, the Government of Bangladesh has decided to formulate and implement a national policy on children to ensure the security, welfare and development of children. The policy states that child labour, child oppression, child trafficking must be effectively stopped and the nation should take necessary steps to protect the interests and rights of all children in the country. The govt would give priority to the interest of children when current laws

are applied or amended and also ensure children are not subjected to physical or mental torture. The national council would also work for enactment of new laws and formulation of appropriate rules if required.

### **National Plan of Action 1997- 2002**

In the National Plan of Action (NPA) 1997-2002, only one section is devoted to children in need of special protection measures. This section explicitly addresses child trafficking and indirectly deals with child prostitution. There are five goals overall, of which four are indirectly applicable to child prostitution. The other goals are vague and they address issues such as overall safety nets for all children and placing children's rights on the agenda. The specific goal on trafficking is adequate in terms of specificity but there are no concrete measures to attain this goal. The NPA only states that the government wants to combat inter and intra country trafficking in children and assists the victims of violence due to prostitution and sexual exploitation. Further the plan envisions the evolution of administrative, legal and rehabilitative measures both with and between member states. The Government should focus on harmonizing the Children's Act 1974, read with the Children's Rules 1976, laws relating to juvenile offenders, the Vagrancy Act, 1943, and Women and Children Repression Prevention Act, 2000. They need to be brought into consonance with the CRC.

### **Anti Trafficking and sexual exploitation related International Laws, Articles on Human Rights or any other International and /or Regional Instruments:**

Under the leadership of the United Nations (UN), international community gave their sincere thoughts and efforts to ensure the child protection through eliminating various kinds of oppression of women and children including trafficking. Accordingly the UN has made several Declarations and Conventions, which was ratified by most of the member countries. As an active member state of the UN, Bangladesh has also ratified various UN Declarations and Conventions aiming at protecting women and children's right. A brief account of the relevant Conventions, anti trafficking international laws, ratified by Bangladesh and the provisions of other available international and regional instruments are given below.

### **Judicial Decisions**

Judicial decisions or precedents are also a set of principles of laws which are often used by the higher courts in admitting or giving ruling in similar kind of cases. There are a number of cases relating to sexual/ commercial sexual exploitation of women

and children which have now become precedents used as guidelines by the court in terms of such cases. A couple of such cases relating to trafficking and eviction of sex workers are cited below:

In the case of **Mr. Abdul Gafur..... Petitioner vs. Secretary, Ministry of Foreign Affairs, Govt. of Bangladesh and another.....Respondents**, where petitioner's daughter, Hasina Begum aged about 15 years was missing since 1992 and it was learnt on 1996 that she was being lodged in a women's Home in India and the petitioner after repeated complaints with the government had received no relief, The High Court Division directed the Respondents to initiate appropriate actions at the state level for effecting repatriation of Hasina Begum and to inform the developments to the petitioner from time to time. The judgement refers to article 27 (equality before law ) and article 31 (Protection of law ) of our constitution.

Both these cases vests responsibilities upon state as against trafficking of its citizens and to repatriate those whose cases are reported and who are victim of violence in a foreign state. These cases creates platforms and opens the door wide open for bringing about cases relating to trafficking in women.

In the case of **Sultana Nahar, Advocate..... Petitioner vs. Bangladesh, represented by the Secretary, Ministry of Home Affairs, Government of the Peoples' Republic of Bangladesh and others..... Respondent** It was held that the profession of sex workers are not illegal and they are entitled to protection in accordance with the fundamental principles of our Constitutional law. The judgement refers to article 31, 32, 40 and 43 of the Constitution. The principle was followed in a similar case in Bangladesh Society for the Enforcement of Human Rights(BSEHR), Bangladesh National Women Lawyer's Association (BNWLA) and others vs. (BNWLA) where prostitutes of the area of Nimali and Tanbazar of Narayanganj were evicted and later were pushed into vagrants home, it was held that the eviction is unconstitutional and illegal as they have been deprived of their livelihood under article 31, 32 of our Constitution.

## **India**

In the famous case of *Visakha vs State of Rajasthan*, the Supreme Court of India held that the Convention was an essential part of Indian law. Though Article 23 the Indian Constitution specifically prohibits trafficking, but the term has not been defined. It has been interpreted as a generic definition that applies to the state as well as the private sector.

The Supreme Court has delivered two important judgments with regard to the issue of trafficking. On the issue of child prostitution, in the case of *Vishal Jeet vs Union*

*of India*, the Supreme Court called on the Central and State Governments to set up advisory committees to advise the Government on matters relating to child prostitution and social welfare. As a result of the decision the Government of India set up a Central Advisory Committee on Child Prostitution and State Governments also set up an Advisory Committee.

In the second decision, *Gaurav Jain vs Union of India*, 1997, the Supreme Court of India directed the Government to constitute a committee to conduct an in-depth study of the problem of prostitution and child prostitutes and to develop strategies for their rescue and rehabilitation. A Committee on Prostitution, Child Prostitutes and Children of Prostitutes headed by the Secretary, Department of Women and Child Development was formed.

## **International Instruments**

### **The Universal Declaration of Human Right, 1948**

The Magna Carta for modern time, the Universal Declaration of Human Rights, 1948 adopted by United Nations General Assembly on 10th December 1948, prohibits slavery and the slave trade in all their forms in Article 4. Since no woman wants but compelled to be a prostitute so the commercial sexual exploitation or prostitution is nothing but 'slavery' in the modern sense.

### **Minimum Age Convention, 1973 (No.138)**

The ILO the year of its inauguration adopted the first of its eleven Conventions on Minimum Age for admission to employment in 1919. In 1973, it adopted a Minimum Age Convention (No.138) as well as its companion recommendations No. 146. This Convention requires the ratifying States to pursue a policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. The Convention also provides for progressive extension of its application to different branches of economic activities. It has fixed the minimum age for employment in general at 15 years, at 18 years for employment likely to jeopardise the health, safety and morals of young people, at 13 years for light work. The minimum ages may be set at 14 years for normal work and 12 years for light work for a state whose economy and administrative facilities are insufficiently developed. The minimum age may be fixed at 16 years instead of 18 for employment or work hazardous to health, safety and morals of young persons, provided they are fully protected against such hazards and are given adequate specific instructions and vocational training in the relevant branch of activity. Bangladesh has not ratified this convention.



### **Forced Labour Convention, 1930 (No. 29)**

The aim of this Convention is to suppress the forced labour in all its forms, and it states that the illegal exaction of forced or compulsory labour shall be punishable as a penal offence. This Convention enables one to examine practices with regard to the commercial sexual exploitation of children, such as child prostitution within the meaning of the Convention. The Convention defines forced labour as the work or service which is exacted from any person under the threat of any penalty and for which the said person has not offered him voluntarily. Bangladesh has ratified this Convention. In South Asia, India ratified it in 1954, Pakistan in 1957 and Sri Lanka in 1950, while Nepal has not ratified this convention.

Bangladesh also ratified ILO Convention no. 59 fixing the Minimum Age for Admission of Young Persons to Employment as Trimmers or Stokers (1921) and to Industrial Employment (revised in 1937). It also ratified Conventions on Night Work of Young Persons Employed in Industry (1919 and 1948), Convention on Forced or Compulsory Labour (1930) and Convention on Abolition of Forced Labour (1957).

ILO took initiatives on the issue of child labour through the International Programme on the Elimination of Child Labour (IPEC) in 1991. This is a technical co-operation Programme launched to support member countries in their national efforts to combat and eliminate child labour of any form progressively while simultaneously creating a world wide movement against it. In its framework ILO/IPEC identifies prostitution and other forms of commercial sexual exploitation of children as a form of forced labour. The Government of Bangladesh signed a memorandum of understanding with ILO in 1994. Through this, Bangladesh agreed to prohibit, restrict and regulate child labour in general, and forced child labour in particular, within the framework of Convention No. 138, and the ILO would provide financial and technical assistance to governmental and Non-Governmental Organisation, trade union and employers organizations for this purpose.

### **UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949**

This Convention, which could be more authoritative and influential to combat trafficking in Persons and of the Exploitation of the Prostitution of Others has not been able to draw the attention of a good number of states as members due to its ill-defined and broad terminology, a weak enforcement mechanism and its uniquely abolitionist perspective.

The preamble to the Convention claims that prostitution and accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and community.

Article 17 of this Convention gives special protection to children in the situation of entering/leaving a country.

Under Article 1, the parties to this Convention agree to punish a person who procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person. In Article 2, the Parties to the present Convention further agree to punish any person who keeps or manages, or knowingly finances or takes part in the financing of a brothel and knowingly lets or rents a building or other place or any part thereof for the purpose of prostitution. There are also provisions to adopt measures to prevent trafficking through education, health facilities, social and economic activities (Article 16); check the trafficking in immigration (Article 17) and also for supervision of employment agencies (Article 20).

### **The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956**

Bangladesh is a state party to the Slavery Convention of 1926 as amended by protocols of 1953. It has acceded the Supplementary Convention on January 1963 and is thus obliged to take all practical and necessary legislative and other measures to bring about progressive and as soon as possible the complete abolition or abandonment of institutions and practices relating to slavery and slave trade including debt bondage and serfdom (Article: 1).

### **The Convention on the Rights of the Child, 1989**

The Convention on the Rights of the Child, 1989, adopted by the United Nations General Assembly is the clearest and most comprehensive expression of what the World Community wants for its children. It is also the one of the most expected Human Rights treaties as almost every country, including Bangladesh, in the world has now ratified it.

Article 2 states that the state parties shall respect and ensure the rights set forth in the Convention to each child within their jurisdiction without making any discrimination of any kind and to this end, states parties shall promote the conclusion of bilateral agreements or accession to existing agreement.

The Convention recognizes the children need, special care and protection because of their vulnerability. Article 34 of this Convention provides for the protection of the child from all forms of sexual exploitation and sexual abuse and requires the state party to take appropriate national, bilateral and multilateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual practices, the exploitative use of children in pornographic performances and material. States parties shall protect the child against all forms of exploitation prejudicial to any aspects of the child's welfare (Article 36). States parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment, which fosters the health, self-respect and dignity of the child (Article 39).

In respect to Trafficking, under Article 11(1), the state parties shall take measures to combat the illicit transfer and non-return of children abroad.

Article 32 of the Convention requires the state party to recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. To ensure the implementation of this article, the state party shall take legislative, administrative, social and educational measures. In particular, the state party shall provide for a minimum age or minimum ages for admission to employment, for appropriate regulation of the hours and conditions of employment, and for appropriate penalties or other sanctions.

Article 33 authorises the state parties to take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 35 imposes a similar obligation on the state party concerning abduction, sale or trafficking in children for any purpose or in any form.

**Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 23 October, 2001**

A giant step in the protection of children from exploitation, trafficking and sexual abuse has been achieved by this Protocol. Bangladesh is one of the first ten countries ratifying the Protocol.

Article 3 authorises the state parties to make the offer, delivery or acceptance of a child for the purpose of sexual exploitation of child, transfer of organs of the child for profit, engagement of the child in forced labour and for child prostitution punishable under the penal laws of the land.

Once ratified and translated into national law, the Optional Protocol on the sale of children, Child Prostitution and Child Pornography places responsibility squarely with the adults involved in these activities, criminalizing these violations of children's rights. It also calls for measures towards increased public awareness and international co-operation in efforts to combat them.

### **The International Covenant on Civil and Political Rights, 1966**

Article 8 of this Covenant reads out that none shall be held in slavery and servitude. This Article also prohibits slavery and the slave trade of all forms and none shall be required to perform forced or compulsory labour. Article 7 protects against inhuman and degrading treatment and Article 24 calls for the protection of children. Bangladesh ratified the International Covenant on Civil and Political Rights.

### **The First World Congress against Commercial Sexual Exploitation of Children, 1996**

The representative of the Governments of 122 countries, UNICEF and other agencies within the family of the United Nations, and other concerned organisations and individuals world-wide, gathered in Stockholm, Sweden, from 27<sup>th</sup>-31<sup>st</sup> August 1996, for the World Congress against Commercial Sexual Exploitation of Children representing, together with End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT), and commit themselves to a global partnership against the commercial sexual exploitation of children.

Bangladesh was one of the participants of 122 countries in the First World Congress against Commercial Sexual Exploitation of Children, 1996. In this First Congress, along with all the existing international instruments relating to trafficking and commercial sexual exploitation, few concerted plans and measures have been adopted to combat the trafficking in women and children. Due to its international nature and number of actors involved, co-ordinated policies to combat commercial sexual exploitation of children.

In Bangladesh there has not been extensive effort from the concerned groups in this regard. In recent time only a number of NGOs have started taking initiative in combating sexual abuse of children. But the initiative, which has been done in combating commercial sexual exploitation of children in Bangladesh, is nothing in comparison to the severeness of this problem. Currently some of the NGOs in Bangladesh are working closely with different UN Agencies including UNICEF and ILO to address children's affairs including sexual exploitation and abuse of children and trafficking. A few NGOs are also lobbying with respective government departments to establish partnership among the concerned groups to address the issue in an effective manner. Unfortunately the parties involved in the process have not been able to create substantial changes in the statistics concerning sexual exploitation and abuse of children. By analysing nine National Leading Dailies it is found that during the period from January to August 2001 a total of 223 children were sexually exploited and/or abused. These are only the recorded and reported cases. There were many cases during the same period behind the screen. Still the partial statistics indicates that the situation of commercial sexual exploitation and abuse of children is dismal.

### **The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979**

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

Article 6 empowers the state parties to take all appropriate measures including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

### **The Worst Forms of Child Labour Convention, 1999 (No. 182)**

The Worst Forms of Child Labour Convention No. 182 was opened for signature on 17<sup>th</sup> June 1999 in Geneva, where Bangladesh was one of the signatory States.

Article 1 urges all ratifying member of this Convention to take immediate and effective measures to secure the prohibition and elimination of the worst form of child labour as a matter of urgency.

Article 3 defines "worst forms of child labour" as all forms and practices of slavery such as the sale and trafficking of children, debt bondage and serfdom and forced or

compulsory labour including forced or compulsory recruitment of children for use in armed conflict, the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances, the use procuring or offering of a child for illicit activities in particular for the production and trafficking of drugs and the work, which is likely to harm the health safety or morals of children.

Under Article 4, the competent authority after consultation with the organisations of employers and workers concerned shall identify where the types of works determined exist and periodically examine and revise the list of the types of work determined.

Article 5 prescribes each member to establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention. Besides, each member shall design and implement programs of action to eliminate as a priority the worst forms of child labour.

### **International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990**

Entering into force on 1<sup>st</sup> July 2003, the Convention seeks to play a role in preventing and eliminating the exploitation of migrant workers throughout the entire migration process. Bangladesh has ratified the Convention.

Article 2 defines 'migrant worker' as a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a foreign state. Article 9 provides for the migrant workers and members of their families the protection of the right of life, article 16 entitles them effective protection by the State against violence, physical injury, threats and intimidation. Under Article 10 all migrant worker or member of his family are excluded from torture or to cruel, inhuman or degrading treatment or punishment. Article 11 provides that a migrant worker or member of his or her family shall be held neither in slavery or servitude nor be required to perform forced or compulsory labour.

### **The Vienna Declaration on Criminality and Justice, 2000**

The Declaration adopted on the 10<sup>th</sup> UN Congress on Crime Prevention and Offenders Treatment declares that the member states of the United Nations Organizations, commit to implement more effective means to collaborate among themselves with a view to eradicate the scourge represented by the traffic in persons in particular in

women and children and traffic in migrants and set the year 2005 as a deadline to get to a perceptible decrease of the incidents of such forms of international criminality.

### **The SAARC Summit, 1997**

With grave concern at the trafficking of children within and between the countries the Head of the Governments of SAARC Member States met in Male on 12<sup>th</sup>-14<sup>th</sup> May 1997 and pledged to co-ordinate their efforts and take effective measures to address this problem. They also decided that the concerning Technical Committee should examine the feasibility of framing a Regional Convention on Combating the Crime of Trafficking in Women and Children for Prostitution.

### **The SAARC Convention for Preventing and Combating Trafficking in Women and Children for Prostitution, 2002**

Adoption of SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution on January 5, 2002 at the Eleventh SAARC Summit held in Kathmandu is a timely initiative and significant milestone in combating and preventing trafficking. In terms of initiative though it is a milestone but in terms of implementation, the Convention is nothing but the compilation of few holistic words. Still the Convention has not entered into force and certainly it will see the day light if ratified by the seven countries. Only

In the Preamble, the Convention considered the crime of Trafficking as 'evil' not crime.

The Convention is lacking of conceptual clarity in relation to definition. It is very important to recognize the conceptual difference between trafficking and prostitution. Trafficking of women and children across boundaries is happening for various purposes and not only for prostitution i.e. women, girls and children are being trafficked for forced labour, forced marriages, and to work as camel jockeys to various parts of the South Asia and other regions and additionally it is important to maintain conceptual clarity in separating the regimes that operate for women and those that operate for children. Children may need additional special measures to prevent them from victims of trafficking and the Convention does not distinguish between movements and migrations that are legitimate and consensual and those that are coerced. This will result in a great deal of abuse and the violation of women's freedom of movements in a context of constant movement of people across national and local borders.

In the convention, Pornography as the purposes of trafficking is not included as offence.

The Convention is not in conformity with the new international legal standard on trafficking in persons as set out in the protocol to the new United Nations Convention on Trans national Organized Crime. Moreover the Convention does not distinguish between women and children. The legal regime surrounding women should be based on a framework of rights and the concept of coercion when it comes to trafficking. The legal regime with regard to children must be completely different. In addition, the Convention brings into play the concept of 'Proactive Custody' after rescue and rehabilitation without stipulating that any stay in a govt home should be voluntary. The need to ensure women's economic and social rights within this context is also not examined.

### **Identify laps, gaps and shortcomings in the International/Regional Instruments:**

The main gap of International instruments is that the provisions of these instruments are not judicially enforceable even by of against a state that has ratified that instrument. In the country level, in countries like ours, different interests may influence the lawmakers but it is thought that in international arena, the instruments are prepared by keeping in mind the greater interest of the human being. Besides, most of the international instruments do not mention effective implementation mechanism. But the instruments, which mention the implementation procedure, become popular and widely accepted. Think about the provision of European Convention on Human Rights, 1950. One can go to the European Court of Human Rights if any provision of the Convention is violated. There are some international instruments, which keep the provision of state reporting, inter-state communication and even individual complaint procedure, where any individual can go before the court. The international instruments relating to trafficking and commercial sexual exploitation should adopt strong implementation mechanism. In every Conference of the Parties (COP) or Meeting of the Parties (MOP), a target can be set up for a country that they will achieve such reduction of trafficking and commercial sexual exploitation by the next COP or MOP. Here are few specific problems regarding the international instruments.

### **Bilateral mechanism/agreement**

One of the modes of enforcing the principles of international instruments may be to develop bilateral mechanism or to draw upon bilateral agreement based on the principles of such instruments. SAARC Convention essentially refers to such bilateral



mechanism to facilitate implementation of the provisions of the convention. A draft of a Bilateral Agreement on Combating Trafficking in Women and Children to be entered into between India and Bangladesh had been prepared and is undergoing serious consideration of being executed between the countries. This kind of effort is pragmatic and commendable and should be carried out in practise at the earliest and similar initiative with other neighbouring countries should be undertaken by the state at national level. BNWLA is constantly continuing its effort in developing such Bilateral Agreement and has played a vital role in negotiating and drafting the bilateral agreement considered to be executed between Bangladesh and India.

SAARC Convention has also iterated the necessity of the member states to develop measures for the supervision of employment agencies and to promote awareness through media to prevent trafficking of women and children.

### **UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Trans national Organized Crime, 2000**

The Protocol presents the problems of lack of clarity in the actual translation of the definition of trafficking fails to distinguish between trafficking and smuggling, implying that trafficked persons would receive the same treatment as illegal migrant. It foregrounds prostitution, albeit with an interpretive note, among the sites of trafficking and consider the consent of the 'victims' irrelevant. Importantly the Protocol does not require State parties to provide any redress measures or services to the trafficked persons. The Convention apparently not been able to surmount the conceptual impasse of equating disparate categories like trafficking with migration and prostitution.

On 24 February 1997, in Brussels, the Member States adopted a Joint Action to take measures to further enhance the protection of children or combat trafficking in human beings. Its objectives are to improve the judicial co-operation in the context of combating trafficking and sexual exploitation of children, and to review the existing national laws relating to the sexually exploiting and abusing children and to

trafficking for sexual exploitation and abuse. In the measures to be taken (Title II) it is stated that in the national laws these offences should be classified as criminal offences and offenders should give criminal penalties.

### **Special Legal Interventions by South Asian Countries:**

#### **India**

In India the problem of trafficking is dealt with the Prevention of Immoral Traffic Act of 1986 (PITA). Under the domestic laws of India prostitution is not illegal but soliciting and exploiting prostitution are offences. PITA has been amended recently, that has made stricter punishment for offences relating to children and the presumption of guilt is now on the accused for cases in which children or minors are found in a brothel who have been determined by medical examination to be sexually abused. PITA also provides for the appointment by the Government of a police officer to fight trafficking nationwide.

The Indian Penal Code, 1860, also have some provision on trafficking that are based on the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution, 1949. The Indian Penal Code, 1860, includes offences relating to wrongful confinement, kidnapping, abduction, slavery, forced labour, and sexual offences. Of particular significance are importation of a girl from a foreign country, selling of a minor for purposes of prostitution buying a minor for purposes of prostitution and rape.

The Juvenile Justice Act, 1986 has kept provisions for the care, protection, treatment, education and vocational training for development and rehabilitation of children rescued from those procuring, inducing and taking persons for the sake of prostitution and detaining persons in premises where prostitution is carried on. Such children are covered under the definition 'neglected juvenile'. Voluntary institutions also functions as protective homes under the respective laws.

The Foreigners Act, 1946, which regulates the entry, stay and departure from India of foreigners, is also relevant to the trafficking issue.

## **Pakistan**

### **The Pakistan Suppression of Prostitution Ordinance, 1961**

Article 6 of the Pakistan Suppression of Prostitution Ordinance, 1961, provides punishment for imprisonment, which may extend to 2 years and with fine for any adult person who is knowingly living on earnings of prostitution. The Ordinance also provides, in Article 10, punishment of rigorous imprisonment which may extend to three years and with fine for a person who keeps any woman or girl, against her will, in any place with intent that she may have sexual intercourse with any man other than her lawful husband.

### **The Pakistan Penal Code, 1860**

These laws are primarily relating to the security and protection of the personal rights of children and woman, which are always being violated when it comes to the practice known as trafficking. Many parents are fully aware of the fact that their children are being sold either for illicit purposes, or in the case of camel jockeys, are being herded into a job that endangers their lives. But unfortunately there are no laws under which the authorities can penalize these parents.

### **The Offence of Zina (Enforcement of Hudood) Ordinance, 1979**

This Ordinance in section 13 and 14 provide stricter punishment of life imprisonment and with whipping not exceeding thirty stripes, and fine for a person who sells or buys, lets to hire or hires, or otherwise disposes or obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful or immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose.

In 1979, the then Government of Pakistan had promulgated the Hodood laws. The Hodood Ordinance criminalizes Zina, which is defined as extra-marital sex including adultery or fornication. It also criminalizes *Zina-bil-jabr*, which is defined as rape outside of a valid marriage. The Hudood Ordinance further defines *Zina* and *Zina-bil-jabr* on the basis of the assigned criminal punishment. The level of proof for Zina and Zina-bil-jabr liable to hadd requires either a confession or at least four Muslim male witnesses. Invariably, the cases of rape, if at all registered by the police, and if unable to prove rape, the court takes the rape victim's statement as a confession of adultery which results in the punishment of the rape victim.

The Human rights observers always considers that no legislation in Pakistan that claims to protect the rights of women and children can be seen in isolation as long as

the Hudood Ordinance is in existence. The mere existence of this ordinance makes a mockery of the rights of a child because under it rape can be equated with adultery in the absence of proper witnesses.

### **Bangladesh Perspective**

A number of women and children who were trafficked into Pakistan and were subject to commercial sexual exploitation were held under this Ordinance. It was reported they went through immense suffering not only as victims of trafficking but for being held under the provisions of this Ordinance for no fault of their own. They victims were later recovered and repatriated to Bangladesh. BNWLA strongly feels about the existence of such law and wishes to draw the attention of all concerns through this platform for abolition of such law.

### **Prevention and Control of Human Trafficking Ordinance, 2002**

Recently in Pakistan, a new Ordinance, the Prevention and Control of Human Trafficking Ordinance, 2002, has been passed.

According to this Ordinance, the human trafficking is punishable with imprisonment, which may extend to ten years and shall also be liable to fine. The Ordinance also provides for punishment for imprisonment, which may extends to seven years and shall also be liable to fine for the planning of human trafficking. 'Victim' means the person who is the subject of or against whom any offence under this Ordinance has been committed.

### **Nepal**

In 1999, the Government of Nepal has formulated and put into effect a National Policy and National Plan of Action to Combat Trafficking in Women and Children for Commercial Sexual Exploitation with the participation of NGOs. The Ministry of Women, Children and Social Welfare as the National Focal agency for Children was a landmark development. Legislative improvements in the form of Children's Act, Child Labour (Prevention and Regularization) Act, Human Trafficking (Control) Act in line with the state commitments are underway.

Initiation has been taken to introduce an intensive chapter on "Prevention and Control of Sexual Exploitation and Abuse of Children" in the Children's Act. A new Domestic Violence (Control) Act has been passed by the parliament as a recent development.

A joint initiative against trafficking in women and girls has been initiated in 2000 as collaborative effort between His Majesty's Government of Nepal and United Nation Task Force on Trafficking.

Preventive measures for protecting the women have been taken forward through interventions at family level for social and economic empowerment in terms of production credit for rural women, micro-credit project for women, and women awareness and income generation programs for women.

A high-powered National Commission on women has been formed to work for the strategic betterment of women.

### **Recent Development:**

#### **The Victims of Trafficking and Violence Protection Act 2000, the United States of America**

This Act is a sun of new hope for the victims of trafficking and commercial sexual exploitation. The Department of State of the United States of America has recently released its first report on trafficking where 'severe forms of trafficking in persons' was defined as sex trafficking in which commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery. Under this Act, the Government of USA can offer citizenship to the victims of trafficking and commercial sexual exploitation if the Government is satisfied that the life and safety of the will be endangered if the victim is returned to his own country.

This Act provides a framework, an impetus, and a template for anti trafficking legislative and policy initiatives to the global community. This Act concentrated primarily on trafficking for sexual exploitation to the exclusion of trafficking into other forms of forced labour. The Act confirms what human rights activists and experts of trafficking as undocumented migrants, criminal or both. The Women's Rights Division of Human Rights Watch (HRW) criticised the Act by stating that the US report confirms what human rights activists and experts on trafficking already know that Governments around the world treat victims of trafficking as undocumented migrant, criminals or both. They said Government should be offering protection to these victims and not hitting them with prosecution.

The US Act views trafficking as a problem of migration, economics, labour, public health and human rights. Among its seven criteria for serious and sustained efforts to eliminate trafficking this Act ascertains whether Governments monitor immigration and emigration patterns for evidence of trafficking and whether law enforcement agencies respond appropriately. In terms of monitoring mechanisms of protection measures for women and girls affected by trafficking, the US report has been criticised for glossing over the problems of state complicity and corruption.

## Chapter - Four

### Focus Group Discussion

#### Design of the Focus Group Discussion

The "*Study on Analysis of the Laws Related to Trafficking and Sexual Exploitation against Women and Children*" stipulated conducting of four focus group discussions. Two with the professional groups including judges, lawyers, journalists, members of law enforcing agencies and representatives of various Non-Governmental organisations working to combat trafficking and sexual exploitation against women and children. The other two as stipulated in the proposal were conducted with the survivors' women and children who have bitter experience of trafficking and sexual exploitation staying under the care of BNWLA in the shelter homes.

The two Focus Group Discussions with the professionals were held on October 7, 2001 and October 30, 2003 at the conference room of Bangladesh National Women Lawyer's Association and the other two were held on January 19, 2003 and January 20, 2003 at the "Proshanti" shelter home of BNWLA at Agargaon, Dhaka. The discussions were conducted on the basis of the two different guidelines developed earlier, one for the discussions with the judges, lawyers, journalists and members of the law enforcing agencies and the other for the discussions with the victims women and children. Both the guidelines have been enclosed in the *Annexure-IV* and *Annexure V*. The discussions with the professional groups were designed to find out the back slashes or various forms of limitations and obstacles they face in implementing the law while conducting various cases and complaints relating to trafficking and sexual exploitation. The two discussions also went on identifying various gaps, loopholes and anomalies in the existing laws and legal system.

The discussions with the survivors' women and children concentrated on various aspects including legal affairs of child trafficking, child rights and child protection. Knowledge about the rights, their expectations from the government or even from the society as they perceived were some of the queries of the discussions to the participating survivors. The intention of the group discussion carried out by the facilitators was to elicit information from the child discussants stimulating their thoughts and experiences on the relevant area of which they were victimised.

The first of the two focus group discussions were participated by a number of journalists, senior lawyers and Public Prosecutors and the second day of the focus group discussion was participated by the same professional groups. The day one of the focused group discussion was attended by 12 children especially girls and the second day of the focus group discussion was participated by both the boys and girls totalling about 12. The focus group discussion with the lawyers, Judges and police officials were facilitated by advocate Shirin Nahar and the Focus Group Discussion with the survivor women and children were conducted by Advocate Sharmeen A Farouq.

### **Finding of the Focus Group with the Professional Group**

The members of the professional groups like judges, lawyers, journalists and police officials however unanimously stand together on the following points:

The participants opined that the existing present scenario of trafficking and sexual abuse against women and children will not simply disappear with the annoyance of severe punishment enriched in elaborate legal enactments, rather, it will require the change of the deep-rooted belief that exist in the society that women and children are inferior to men and therefore they demand special care.

- ⇒ Threats to witnesses from the accused create some sorts of insecurity among the witnesses. The problem of witness is severe, which mostly happen due to threat from the accused persons. In some instances just due to the lack of proper witness the cases loose their merits.
- ⇒ In some cases the lawyers find the victims to be convinced by the accused socially or in lieu of money.
- ⇒ The victim or anyone on behalf of the victim has to face lots of complexities in informing or lodging the cases in the police stations. In this regard, to avoid the hassles, the participants suggested for establishing a monitoring cell within the police stations by the human rights organisations.
- ⇒ There should have provision of strict punishment for filing false cases.
- ⇒ The accountability of the police officials should be ensured. The Investigation Officer should be made accountable to the Judges along with their departmental accountability and to ensure such accountability of the Investigation Officers to the Judges some part of the ACR of the police officials should be recommended by the judges.



- ⇒ There should have parallel investigation mechanism to be conducted by a watchdog body of the human rights organizations. The fact-finding report of various human rights organisations should be considered as official findings.
- ⇒ Responsibility and accountability of the Public Prosecutors should be increased and they should be closely monitored. Judge should take into account of all interference by the Public Prosecutors.
- ⇒ Unfortunately, the provisions of the international instruments like CRC and CEDAW are not judicially enforceable by the national laws. Most of the times these provisions are mere declaration and holistic realization of the world community. It seems that the Government is more aware to join the world community than to implement the provisions of these instrument. In accordance with the provisions of international conventions and human rights instruments, the national laws should be amended and where necessary new laws should be enacted.
- ⇒ To improve the skills of the Investigation Officers (IO), regular or special type of training program should be designed basing on the laws and procedures relating to the protection of women and children. A body should be formed which will inform them the recent changes and amendments of the relevant laws in the earliest possible time.
- ⇒ There is always an insufficiency of police officers with limited number of transport and stationeries. The members of the law enforcing agencies should be properly equipped to conduct investigations and to take rapid action. The police department should be kept beyond political interference in all aspects. The promotion of police officials should be made systematic in accordance with experience; efficiency or dedication and their remuneration should be handsome. Though the police department is blamed for the inside corruption but there are still many honest and world class police officer who should be rewarded and can be engaged in the border areas.
- ⇒ Remarkable corruption that was pointed out by the participants among the police officials, judicial officers and court officials should be checked by any means.
- ⇒ During the selection and appointment of Public Prosecutors and Assistant Public Prosecutors political interest and affiliation are considered and service rules and experience are ignored which should be avoided for our own sake.

- ⇒ According to the Police Regulation Book, the police officers are bound to receive complaints but due to fear of harassment and ill treatment by the police and political interference women are generally discouraged to file cases.
- ⇒ In spite of having a good number of legal instruments in different South Asian Countries, sometimes it becomes difficult to negotiate the cross border trafficking, which demand for a unified legal approach to meet the issue of cross border trafficking.
- ⇒ There should have Task Force with representatives of
  - ⇒ Bangladesh Rifles
  - ⇒ Ministry of Women and Children Affairs
  - ⇒ Ministry of Foreign Affairs
  - ⇒ Ministry of Home Affairs
  - ⇒ NGOs
- ⇒ The community people should be involved through raising awareness among the grass roots people with special emphasise on the trafficking porn areas.
- ⇒ The laws related to trafficking are not adequate. To address the issue of cross border trafficking there should have a bilateral or multilateral agreement between the sending and receiving countries.

### **Finding of the Focus Group with survivor Women and children**

The survivor women and children participating the FGD opined their views in accordance with the pre-designed guidelines for conducting the discussion.

It was first inquired whether the child participants know about trafficking and whether the children know that child trafficking is a heinous crime and whether they are aware of their rights to justice.

Responding the above questions placed before the participants, they replied that more or less they are aware of the facts. The participants of the first group responded in the following manner:

- ☞ Trafficking means stealing and taking away of women and children from his/her own place to another place or country initially by promising for good job and better life but subsequently forcefully engaged as camel jockey and in other bad activities, which they do not like.

- Those who deceive women in the name of giving good jobs, false assurance of happy and better life.
- Trafficking is a heinous crime. Lives of trafficked children are spoiled and they have no freedom but they have the rights to get justice from being exploited, abused and trafficked.
- All the perpetrators of women and child trafficking, child abuse and exploitation should strictly be punished as an example for the like minded people.

Regarding the degree of punishment most of the women and children demanded the punishment of life imprisonment for the perpetrators of trafficking as provided by the law of the country. They opined that death penalty although tougher punishment but they prefer life imprisonment as they viewed that the traffickers during the imprisonment will realise the misery of a trafficked child.

Regarding the Rights, the girl child participants demonstrated their knowledge about child rights stating the following

- As the human being every child has rights to live, protection, growth and their basic needs such as food, cloth, safe shelter and recreation.
- Engaging them in immoral activities against their consent infringe their rights to protection.
- Parents can ensure better protection for children.
- The street children do not have the rights to protection. There is no law for them. As a result they are used for dangerous and hazardous purposes.
- Street children are used to carry bomb during the procession which is very risky for their tender health.
- Rich people of the society should also come forward with broad heart to salvage these women and children.

#### **The women and children like to**

- ⊙ have education and teach others who are deprived of the opportunity of receiving education.
- ⊙ stay with parents/husband and relatives and have love and affection of the people
- ⊙ have the accompany of gentle people specially children.

#### **The Women/Children dislike**

- ❑ engaging them in household difficult works for a long time
- ❑ engaging them in hazardous industrial work
- ❑ engaging the in commercial sexual activities

- ❑ torturing and engaging them in unauthorised sexual activities
- ❑ the doctors who are not kind to provide treatment without money even to the poor
- ❑ unnecessary misbehaviour by the adults specially who are taking care of them.

### **Persons they like and dislike**

#### **Like**

- The people who care them specially their parents, brothers and sisters.
- Their friends and love the people who do anything good for them.

#### **Dislike**

- Traffickers and their associates and those who abuse and exploit children.
- Those relatives who are wicked.
- Those who neglect or disregard children and their affairs.
- People who forcefully engaged children in sex work.

#### **What are the things children afraid of?**

- Horror dreams while sleeping and similar incidents while awaking
- Ghost or bad spirit
- Wicked people

#### **How children would like adults and organisations to help them?**

- ❖ The participating children expect that they should be provided with the basic essentials they need and desire.
- ❖ The organisation should work to uphold their rights.
- ❖ They want government and Non-Governmental organisations to provide them with proper education and skill through training.

#### **How they can help other children from being trafficked**

- ❖ Children having bad experiences of being trafficked or being exploited can make other children aware in the school with the help of their teachers.
- ❖ Children may remain vigilance against trafficking attempt of any other children and inform parents or helpful adults.

#### **Whether the participants know about the international laws related to woman and child rights and protection**

It has been generally found that most of the children except a very few do not know specifically about international laws and declarations that are made for preserving and ensuring their rights and different facilities. But the way they expressed their feelings and understanding are very much similar with that of the provisions of UN CRC, CEDAW and other international laws and declarations-

- ◆ According to them all women and children irrespective of religion, race and colour have the rights to life, education; participate in recreational activities and to be flourished.
- ◆ Few of them found to have knowledge on CRC as well as its implementation status in Bangladesh.
- ◆ According to the children, families and educational institutions should have their respective rules and regulations from which every child will be able to learn necessary things, which will be required in their future.
- ◆ All women and children have rights to live with their families and education to be a worthy citizen.
- ◆ Social organisations should organise programmes to flourish the abilities, talents and skills of those women and children who do not have family and social support or who have experienced exploitation, torture and abuse.
- ◆ Such organisations should create pressure on the government to address the women and child rights issue in the light of UNCRC and CEDAW.

#### **How they would like to see implementation of these laws?**

- The women and children want the government to implement these international instruments properly.
- They want the government to listen to their views in implementing the provisions of these international instruments.
- The state should enact laws keeping pace with these international instruments.
- The government as well as Non-Governmental organisations should be sympathetic to the affairs of women and children and national laws should properly protect their rights.

#### **Women and Children's opinion in ensuring their participation in implementation of their rights and protection.**

- Regarding their affairs, women and children participants feel that their participation should be ensured at every levels including policy making.
- No initiative should be taken without involving women and children in the decision making because they know best what they like and dislike.
- Participation of those women and children who have no family or social support at all levels should also be ensured in making decision about their future.

Most of the women and children expect that the government should come forward with more boldness to combat trafficking in women and children with a view to uphold their status and dignity in the society.

## Chapter - Five

### Questionnaire Survey

#### Design of the Questionnaire survey

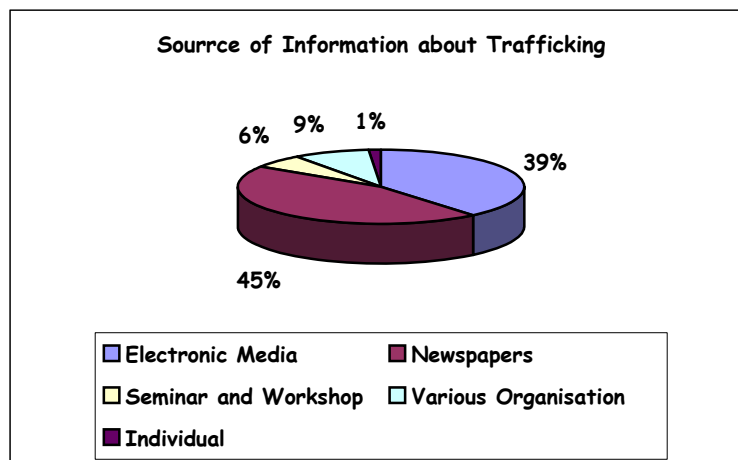
The survey was conducted by following a pre-designed questionnaire, which has been attached in Annexure - III. The senior staff members of BNWLA conducted an orientation of the questionnaire for the numerator. The survey was conducted in thirteen focal points of BNWLA from across the country. The program assistant working in the focal point and the clinic lawyers were engaged for conducting the survey at the district level. The court going lawyers, the fact finding official and the members of the investigation cell were involved for conducting the survey at the national level. A total of 450 individuals were interview covering lawyers, judges, police officers, members of the CSOs and NGOS working in this issue.

#### Findings of the Questionnaire Survey

##### Knowledge about trafficking in women and children

The analysis of the data found during the survey states that only 68.67 (309 persons) percent of the respondents know about the issue of trafficking and remaining 31.33 (141 persons) percent of the respondents have no idea about trafficking. Out of the 309 respondents who have idea about the issues of trafficking 38.83 (120 persons) percent respondents came to know the issue of trafficking from various electronic news media like radio and television.

#### Graph-IV: Distribution of source of information about trafficking



About 45.31 (140 in person) percent of the respondents got the information of the incidents of trafficking from various national and local level newspapers. Only 5.82 (18 persons) percent of the respondents became aware of the incidents of trafficking in women and children by attending various seminar and workshops. The most interesting thing is that in spite of the serious intervention of a number of Non-Governmental organisation only 8.74 (27 persons) percent of the respondents reported that they came to know about trafficking from various organisations and only 1.29 (4 persons) percent of the respondents have information about trafficking from individuals.

All the respondents unanimously opined that trafficking in women and children and their sexual abuse is a challenging issue to be addressed. However, they were asked about the possible initiatives or interventions of the government, Non-Governmental Organisations or even from the private sectors to combat trafficking in women and children.

### **Government Initiatives**

About 45.77 (206 persons) percent of the total respondents opined on behalf of developing a comprehensive anti-trafficking policy at national level to address the issue of trafficking. All the respondents although do not have enough knowledge about the issue of trafficking have however emphasised on the awareness-raising program initiated by the government in association with the Non-Governmental organisations. Most of the participants suggested for rescuing victims of trafficking from various confinements like brothel, cage brothels etc. About 23.55 (106 persons) percent of the participants emphasised on the bi-lateral or multilateral agreement between the receiving and sending countries to expedite repatriation and ensuring extradition and extra territorial prosecution. Only a few of the respondents 4.88 (22 person) percent suggested for establishing safe shelter home for rehabilitation of rescued and repatriated trafficked victims ensuring homely and friendly environment and minimum standard of care.

### ***Non-Governmental initiatives***

Most of the respondents 64.22 percent (289 persons) under the survey suggested for establishing a network for Non-Governmental organisations across the country to undertake concerted programs against trafficking in women and children having special emphasis on the raising awareness of the community people for initiating preventive measures. Some of the respondents 40.44 percent (182 persons) opined that the Non-Governmental organisations should help the government agencies to undertake related action programs for combating trafficking in women and children and their sexual exploitation. Among the respondents 30.67 percent (138 persons) viewed that the law enforcing agencies should be cooperative with the Non-

Governmental organisation while rescuing the trafficked victims from various confinements. A total of 42.44 percent (191 persons) respondents expect that the rescued survivors should be rehabilitated through establishing safe shelter homes ensuring a friendly and family environment for them. Only a few respondents 5.11 percent (23 persons) emphasised on the monitoring of the justice system for ensuring the prosecution of the traffickers while demand for effective advocacy and lobby for policy reform and enactment of appropriate laws and for amendment of existing laws related to trafficking in women and children.

The survey also concentrate to elicit the general understanding of the respondents about the existing shelter home facilities in the country run by different Non-Governmental organisaion and the management system. Only a few of the respondents have some ideas about running shelter home most of which mentioned about the shelter home run by Bangladesh National Women Lawyers' Association (BNWLA).

### ***Private Sector Initiative***

Most of the participants 64.00 percent (288 persons) suggested for creating opportunity of job for distressed and disadvantaged women and children at the community level. Some of the respondents 34.67 percent (156 persons) however emphasised on creating job opportunity for the vulnerable women especially for those survivors who have been rescued after being trafficked. Most of the respondents however gave special thoughts about the role of the transport owner and drivers particularly of buses and trucks.

### **General information about place of trafficking and type of victim.**

#### ***Place of Trafficking***

It is quite tough in Bangladesh to identify any single place or region as the primary site from which women and children are being trafficked. In response to the queries regarding the place of trafficking most of the respondents (291 persons) opined that the floating children from Railway Station, Bus terminal and Launch Ghat were trafficked. Some of the participants (84 persons) mentioned that women and children from the stranded Pakistani Camp and Rohingya Refugee camp and the enclaves also become the target of the traffickers.

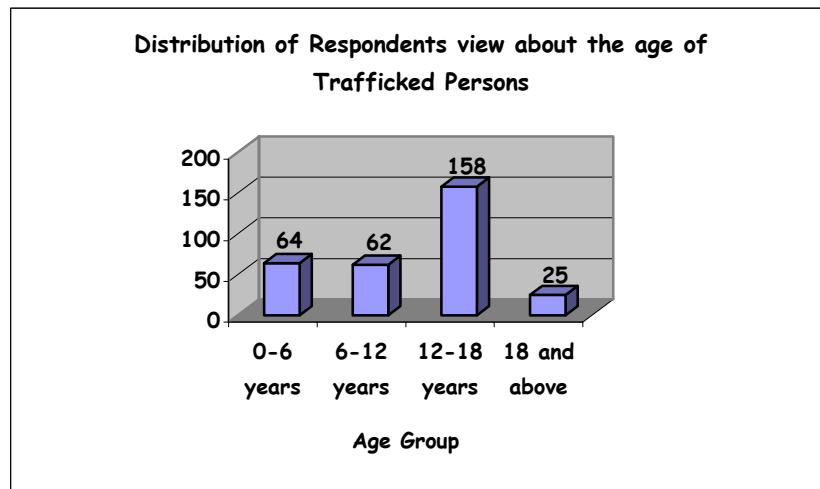
#### ***Age distribution of the trafficking survivors***

The responding individuals were also asked about the age of the survivors of trafficking or at what age most of the children become the target of traffickers. Most of the respondents, 51.13 percents (158 persons) viewed that children specially the girls of age 12-18 years become casualty of trafficking and become sexually



abused. A number of respondents 20.06 percent (62 persons) opined that the children of 6-12 years of age become target of traffickers. A moderate number of respondents 20.71 percent (64 person) said that the children specially the boys of 0-6 years of age become target of the traffickers most of whom were trafficked to Middle Eastern Asian country specially in United Arab Emirate as Camel Jockey. Only a few number of the respondents 5.56 percent (25 persons) said that Women of 18 years and above fall in the prey to trafficking. Some of the young women of this age group become sexually abused and mostly used as the fake mother while trafficking children.

**Graph-V: Distribution of Respondents view about the age of Trafficked Persons**



***Type of women and children fall prey to trafficking***

About the type of women and children who used to fall the prey to trafficking, various classes were stipulated in the questionnaire. The variety types of women and children include orphan children, children of broken family, children having step mother at home, survivors of child marriage, children of poor families having large number of children, children deprived of family support and social facilities, children living in slum, children seeking adventure, children from unaware and illiterate family, young women of marriageable age, widow, husband abandoned women, women and children migrated from one place to another in search of better livelihood, floating women and children, women and children who are affected by river erosion and others natural disasters, women and children working at garment industries, women and children working as domestic helpers.

Most of the respondents 39.80 percent (123 persons) opined that women who were abandoned by husband and migrating from one place to another in search of better livelihood fall prey to trafficking. About the children some of the respondents 47.24 percent (146 persons) said that orphan children and those from the poor family having large number of children easily become trafficked. It was found in the survey that children from illiterate and unaware family especially the young women of marriageable age and those having step mother at home became victim of trafficking.

### **Causes of trafficking**

The respondents were also asked about what they think or consider as the causes of trafficking in women and children. The question was open ended with some choices for the respondents which include poverty, broken family, child marriage, lack of education, lack of proper implementation of laws related to trafficking and sexual exploitation of women and children, discrimination of gender in the society, lack of human rights awareness, poor state policy for migration, unemployment, unplanned and unrecorded migration, greed, adventure, dependence on others relatives or friends, lack of knowledge about trafficking, natural disaster, demand at the receiving end, lack of social security.

It was found that, poverty mostly driven by unemployment, discrimination of gender are the main causes of trafficking in women and children. Insecure social system was compounded by the demand at the receiving end appears as the key factors of trafficking according to the participants. Some of the interviewee replied that homeless women and children due to natural disaster and river erosion and their after dependence on others like relatives and friends makes them vulnerable to trafficking. Sometimes the women and children who fall prey to trafficking fail to presume their suffering which most of the respondents, 58.00 percent (261 persons), identified due to the lack of knowledge about trafficking. Some of the cases greed of the traffickers and vary adventurous mentality of the children were found as the causes of trafficking.

### **Factors that facilitate trafficking**

The survey stipulated some queries to elicit information about influential factors that facilitates trafficking in the society. Having the social possibilities and enough reasons as found in the survey were designed to draw some factors that encourage trafficking or in other words makes easier opportunities for the traffickers to traffic women and children. It was asked what are the major factors that facilitate trafficking having options like long and open border, organised crime, negligence towards girl child, gap, loopholes and anomalies in laws, negligence and corruption of law enforcing agencies and others. It has been revealed from the findings that

majority of the respondents, 69.25 percent (214 persons), talked about the negligence and corruption of the law enforcing agencies as the vital cause of trafficking. Another group of respondents 59.22 percent (183 persons) united in their opinion saying that a long and open border is mainly responsible for cross border trafficking in women and trafficking in children is mostly happen as an outcome of negligence towards girl child. Almost all the respondents identified organised crime as the gearing force of trafficking incidents. A portion of the respondents said that lack of proper implementation of the existing laws related to trafficking due to gaps, loopholes and anomalies is a major factor that facilitates trafficking.

### **Destination of trafficked victims**

About the destination (Geographical) of the trafficked women and children most the respondents 73.13 percent (226 persons) opined that the women and girl children are trafficked to Kolkata, Mumbai and Delhi in India and the boy children are being trafficked to United Arab Emirates (UAE) and Kuwait. Some of the respondents 29.44 percent (91 persons) viewed that women and children are also being trafficked to Kuwait and Malaysia. A number of respondents suspect that a major portion of the trafficked person particularly the women are being sent to Karachi and Islamabad in Pakistan and get married as slavery, bonded labour etc.

### **Consequences of trafficking**

#### *Common Types of harm the trafficked person face*

The socio economic and cultural context underpinning women and children's lives determines their choices, strategies and coping mechanism. Women's unequal rights and access to formal labour, the restricted control they exercise over their own lives, and gendered aspects of poverty all lead women to seek job opportunities in their homeland and even outside. This intense need sometimes makes them more vulnerable to trafficking.

As a result what are the common consequences the trafficked women and children supposed to face were another queries to the respondents. It was found in the study that most of the respondents think that women and young girls are being sold to brothel for sexual purposes or for any other form of commercial sexual exploitation. Some of the respondents 58.90 percent (182 persons) opined that most of the children specially the girls are being forced for domestic labour where the girl children also become sexually abused in some cases. Some of the respondents 24.60 percent (76persons) mentioned about the engagement of the women and young girls in sex tourism. A portion of the respondents pointed out the involvement of the trafficked women and children in rigorous and hazardous industrial work and their

engagement in Biri, Churi factory of different parts of India. Maximum 67.96 percent (210) of the respondents said that the boy children are being used as the Camel Jockey while a few of the respondents said that the trafficked women and children are being engaged in begging, which mostly happened within the country.

### **Major consequences usually faced by the trafficked person**

Most of the respondents 52.75 percent (163 persons) said that among the trafficked persons the women and girls specially become infected with various diseases like HIV/AIDS/STI.

A number of the participants said that the trafficked women and children are being physically and mentally abused leading them towards psychologically traumatised. In some cases the respondents opined that the trafficked women and children become temporarily or even permanently mentally disabled and detached from their family. Some of the respondents mentioned that mental and physical growth is highly compromised in case of children.

### **Prospects and problems in combating trafficking**

#### **Major obstacles in combating trafficking in women and children**

Lack of proper implementation of the existing laws along with the political and administrative interference over the legal process were identified as one of the major obstacles in combating trafficking in women and children by most of the respondents 93.53 percent (289 persons). Ignorance and negligence of law enforcing agencies compounded with legal and procedural complications in cases of repatriating the trafficked persons from other countries was identified as a serious obstacle by 78.64 percent (243 persons) of respondents. Lack of complete education with special emphasis on Human Rights creates obstacles in awareness raising for prevention of trafficking were pointed out by some respondents as a hindrance to combat trafficking in women and children. Lack of instance exemplary punishment mostly caused due to gaps and loopholes in the existing laws related to trafficking and sexual exploitation of women and children were identified by majority of the respondents 83.50 percent (258 persons). Dealing with the trafficking related cases, lack of protection of victim as well as witness along with the problem of identifying traffickers were pointed out by some respondents 36.69 percent (114 persons) as a major obstacle of combating trafficking in women and children.

#### **Possible way out of the problems in combating trafficking in women and children**

Creating mass awareness on the rights related issues with special education for mass people to make them enable to protect the rights of women and children were viewed

as an essential preventive measure to overcome the problem of combating trafficking in women and children by most of the respondents 54.34 percent (168 persons). With a view to increase the skill of the law enforcing agencies specially of the police and sensitising the judicial people to ensure proper legal action against traffickers some of the participants 38.51 percent (119 persons) suggested for organising training for them. The basic training may include special focus changing the varying attitude, their knowledge about the international conventions and instruments, national law and policy and skill of dealing cases particularly of monitoring, coordination, trial/hearing process, investigation etc. A number of the respondents 63.45 percent (196 persons) emphasised on the reform of the existing laws to eliminate the gaps and loopholes of the laws. Some of the respondents pointed out the importance of a bilateral/multilateral agreement between the sending and receiving countries like Bangladesh and India to simplify repatriation and extra territorial prosecution to overcome the problems of combating trafficking in women and children particularly to address the cross border trafficking. Majority of the respondents 62.46 percent (193 percent) pointed out the need of the government initiatives to repatriate trafficked person from other countries and making necessary arrangements so that rescued trafficked persons can stay at a government or Non-Governmental shelter home outside the jail. As a part of the joint collaboration to combat trafficking in women and children 23.62 percent (73 persons) of the respondents said the government should help Non-Governmental organisation in creating rehabilitation services for released and repatriated trafficked persons.

### **Adequacy of existing laws, provisions and policies**

Responding to the question whether there are adequate and proper laws against the crime like trafficking 58.89 (182 persons) percent of the respondents replied in the negative and 24.91 (71 persons) percent of the respondents replied in the positive and the remaining 19.74 percent (61 persons) percent of responds' have no idea or knowledge about any law.

### **Remarkable features of the existing laws**

The respondents who have some knowledge about the existing laws and provisions for combating trafficking and sexual exploitation against women and children however mentioned the following feature of the existing laws:

- ☞ ***The Suppression of immoral Traffic Act, 1933:*** this Act provides punishment for those who detain minors for the purpose of prostitution.

- ☞ **The National Plan of Action:** this Act has an intensive intervention on trafficking and commercial exploitation of women and children, prepared with the objective of amalgamating the principle of CRC within the national development activities.
- ☞ **The Child Marriage Restrain Act, 1929:** this Act provides some unique provisions for restraint child marriage. This law prohibits the marriage of a girl under the age of 18 and of a boy under the age of 21. It also provides punishment for parents and guardians of minors who undertake to marry them off. The Act declares such marriage as irregular and not void.
- ☞ **The Birth, Death and Marriage Registration Act, 1886:** this Act although has adopted provisions of registering newborn child, it is not very much effective as it is not made compulsory. They however suggested for making the provision compulsory for all. If the birth of child is registered properly, they opine that that will help in reducing child marriage.

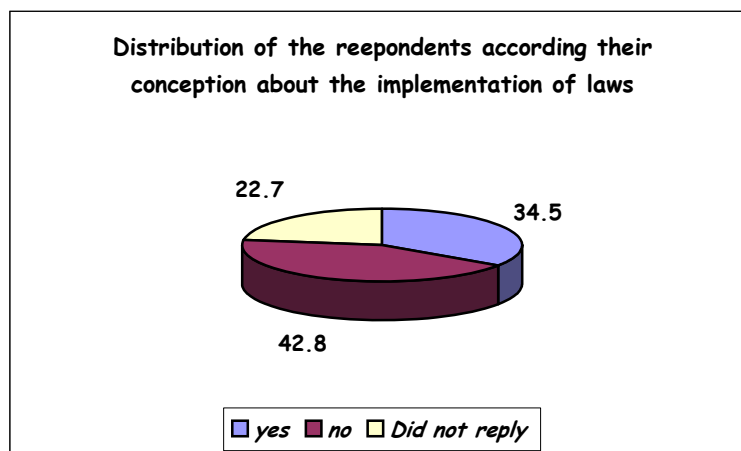
### **Adequacy of International laws and/or legal instruments**

While asking about the adequacy of the international laws and/or legal instruments to combat trafficking and commercial sexual exploitation of women and children it revealed that a very few, only 5.18 percent (16 persons) of the respondents know about the international human rights instrument and 94.82 percent (292 persons) of the respondents have no idea about any of these instrument.

### **The state of implementation of laws related to combating trafficking incidents.**

#### **Whether laws are properly implemented?**

Graph-VI: Distribution of the respondents according their conception about the implementation of laws



While the respondents were asked whether the existing laws are properly implemented or not, only 34.5 percent of the respondents replied in positive, 42.8 percent of the respondents replied in the negative and the remaining 22.7 percent of the respondents denied to answer the particular question.

### **The major difficulties in implementing such kind of laws**

The respondents although were not very much specific in identifying the major difficulties, however focused on the following issues to be addressed

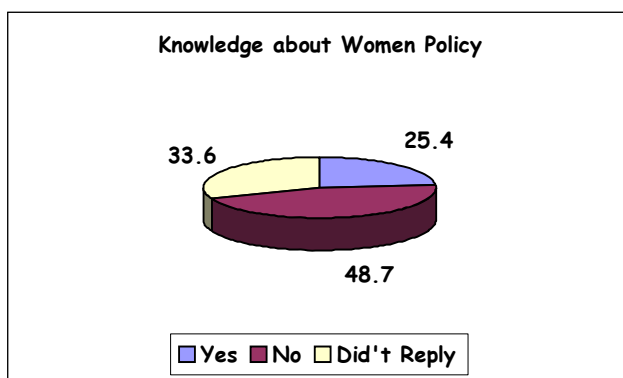
- Negligence and corruption of the law enforcing agencies. Ignorance of the members of the law enforcing agencies specially the Police Officers about the rights of the women and children is identified as major difficulties in implementing such kind of special laws.
- Lack of proper monitoring and accountability of the concerned officials as mentioned in various Laws and Acts were identified as another problem of implementation.
- The security of the victim and witness is a major problem for which most of the cases failed to reach the aggrieved judgment.

### **Status of policies related to women and children**

The survey stipulated some queries to know the general information about the existing policies dedicated to ensure the rights of women and children.

#### ***Comments about women Policy***

**Graph-VII: Distribution of Respondents on the basis of their knowledge about women policy**

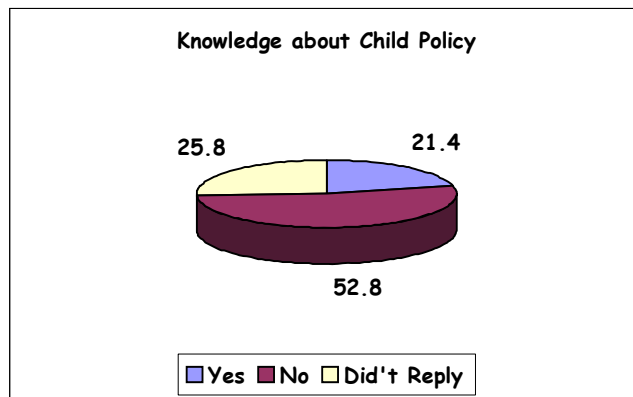


Replying to the question whether the respondents know about the *Women Policy* 48.7 percent of the respondents replied in the negative and 25.4 percent of the respondents replied in the positive and the remaining 33.6 percent of the respondents denied replying the particular question.

***Comments about Child Policy***

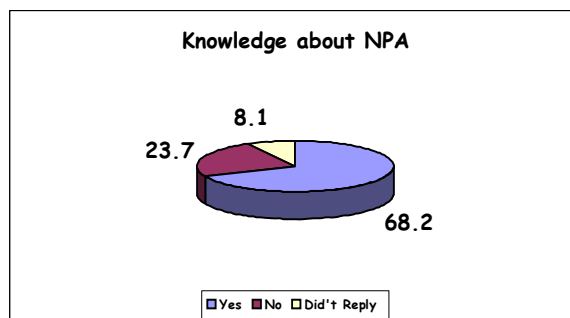
Replying to the question whether the respondents know about the *Child Policy* 52.8 percent of the respondents replied in the negative and 21.4 percent of the respondents replied in the positive and the remaining 25.8 percent of the respondents denied replying the particular question.

**Graph-VIII: Distribution of Respondents on the Basis of their Knowledge about child Policy**



**Comments about NPA**

**Graph-IX: Distribution of Respondents on the Basis of their Knowledge about NPA**



Replying to the question whether the respondents know about the National Plan of Action against the sexual abuse and Exploitation of Children including Trafficking 68.2 percent of the respondents replied in the negative and 23.7 percent of the

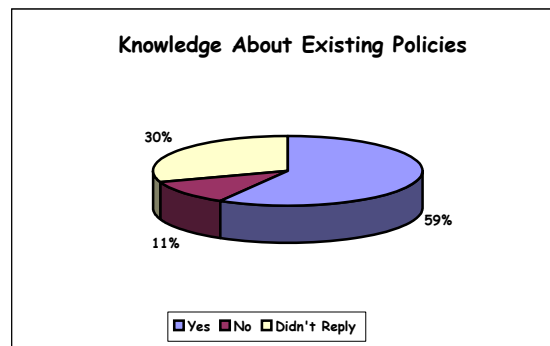


respondents replied in the positive and the remaining 8.1 percent of the respondents denied to reply the particular question.

### **Comments about the existing policies**

Replying to the question what the respondents think about the adequacy of the existing policies for protection of women and children 58.25 percent of the respondents (180 respondents) replied in the positive and 11.33 percent of the respondents (35 respondents) replied in the negative and the remaining 30.09 percent of the respondents (93 respondents) denied to reply the particular question.

### **Graph-X: Distribution of Respondents on the Basis of their Knowledge about Existing Policies**



### **Role of the Citizens in protecting women and children from being trafficked.**

- The general citizens although have no legal status of addressing the issue of trafficking may join the awareness campaign at the community level. Some of the respondents however gave importance on the participation of the mass people at the awareness campaign launched by government and Non-Governmental Organization. A few of the participants suggested for a joint campaign of the general people and the members of the law enforcing agencies who will sensitise the masses of the respective jurisdiction.
- The general people can help creating a women and child friendly society at the community level.
- The very mindset of the society is not well conversant of accepting the sexually exploited women and young girls to reintegrate them in their family. The community people can help creating a congenial atmosphere at family level.

## **Chapter - Six**

### **Finding of One in One Interview**

As stipulated in the methodology of the "Study on analysis of the Laws Related to Trafficking and Sexual Exploitation Against Women and Children", a total of 10 children who are survivors of trafficking and/or sexual exploitation were interviewed. All these children have been either rescued/released from internal harmful situation or repatriated from different countries. These children are currently living in the shelter home run by Bangladesh National Woman Lawyers' Association (BNWLA), who have expressed their story of sufferings:

#### ***Case Study - I***

Soma (not the real name), a girl of around 15 years, can not recall her date of birth, was sexually abused and tortured by the house keeper where she was sold for house hold works. The stranger traffickers Habib and Barek who offered her good job and better living in abroad deceived her. She never attained the school before she was trafficked but now studying under the non-formal education program of BNWLA. She was the daughter of a poor carpenter, Feroz Mia and Amena, a simple housewife and she was unable to trace her permanent resident but only Islampur as the name of her village. She was trafficked to India in 1997 and was accompanied by eight survivors including four tinny children and four teenage girls. She came to Kamalapur via Narayanganj by train, then Gabtali from Kamalapur by bus, from Kamalapur to Benapol by bus and finally from Benapol to Kolkata by train.

The police caught her while she was fleeing away from the confinement and later sent to Lilu Home. She was repatriated by BNWLA along with 13 other children in the year 2000. A case was filed in this connection and both the accused persons absconded. She came to know about the law and punishment of trafficking from the regular discussion held in the shelter home of BNWLA.

#### ***Case Study - II***

Nandita (not real name), apparently 14 years of age, an orphan of Noakhali District, was working in a garment factory at Azimpur in Dhaka. One day in March 2000, she lost her way back home and found by the alleged traffickers Bhutto and Sailful. They deceived her by promising to take her back to her home safely. Instead of doing so they gave her seductive drugs and took her to Rangpur by making her senseless. She was taken to Rangpur by bus from Gabtoli. She was kept at the residence of Saiful at Kathalbari. She was brutally raped and tortured there.

She fled away and took shelter at the residence of a local UP member who subsequently handed her over to the police. The police sent her to the safe custody and she was released by BNWLA. A case was filed in this connection accusing three persons namely Bhutto, Saiful and Babul, which is now pending for trial.

She did not know about the laws and punishment for trafficking in children but demanded life imprisonment for traffickers if law provides that. She has been staying at the shelter home of BNWLA since her release and receiving vocational training on tailoring. She is enjoying her stay at the shelter home and wants to be self-reliant in future by utilising her training.

### ***Case Study - III***

Tuni (not real name), 16 years old, daughter of an Ayurvedic Physician, Abul Hossain and Luky Begum, a small business women of Village-Jugipur, Police Station-Khanjahan of Khulna District, was kidnapped and was taken to Benapol border by making her senseless. She never attained school before trafficked. She was taken to Mumbai via Kolkata from Benapol by bus. Stranger Haroon trafficked and sold her to a pimp of a brothel in India and rescued by police on the following day. After that she stayed one and a half year at Dongi Jail and subsequently she was taken to Lilua Home where she stayed two and half years. She has been repatriated by BNWLA.

A case was filed in this connection accusing Haroon, Amena and Mother of Haroon, which is now pending for trial. She came to know about law and punishment of trafficking from the regular discussion held in the shelter home of BNWLA. Now she knows that there are provisions of tough punishment for trafficking in children and women. She demands severe punishment for those who trafficked her.

She is currently staying at the shelter home of BNWLA. After her repatriation she was brought under the psychosocial counselling programme and subsequently reintegrated into her family. But due to disturbance created by some wicked people her mother felt insecure with her in the locality and brought her again to the shelter home of BNWLA in June 2001. She is now receiving vocational training on different trades including tailoring, embroidery etc. She wants to get back to her family again after completing the skill training at the shelter home.

### ***Case Study - IV***

Kona (not real name), an orphan of 14 years of age while she was deceived and trafficked in July 2001 by Selim and Shahnoor, the relatives of Abed Ali, the landlord and was taken to Rajshahi. She was confined at a house in Rajshahi and was raped and tortured and subsequently rescued by police. Later she was released by

BNWLA from safe custody and brought to its shelter home. She is survivor of internal trafficking and a case has been filed accusing Selim and Shahnoor in this connection, which is now pending for trial.

She has superficial knowledge about the existing laws relating to trafficking. She demands severe punishment for those who trafficked her so that no other trafficker dares to traffic other children and spoil their lives.

### ***Case Study- V***

Shefali (not real name), a 16 year old girl came to Dhaka 4/5 years back to earn money in order to support her poor family. She took a job in a garment factory. There she met a woman named Rina and gradually became very near to her. But Shoma didn't know that Rina was a trafficker. Later Rina provoked Shoma to go abroad for good job in a beauty parlour with more salary and better living. Thus Shoma became allured and trafficked to India by Rina in 1999 accompanied by almost same aged six girls of different areas of Bangladesh. They started from Kalabagan by bus for Benapol border and from Benapol reached to Mumbai by train.

In Mumbai, Shoma was taken to a pimp who forcefully made her involved to prostitution in commercial hotels. She had to entertain both the Indian and foreign clients for long period of time as well as short courses. She was also physically tortured besides sexual exploitation. Payment was never given to her for work and always remained confined by the leader. Shoma had to bear that miserable life for three years. She tried to escape for several times, but failed. Finally along with one of her friend Kiron she managed to return to Bangladesh by the help of a pimp promising to give him thirty thousand Taka for this purpose.

Shoma returned to Bangladesh in June, 1999. She informed her neighbour and tried for Shalish for several times. Failing to have any remedy Shoma along with two other survivors went to Malibagh CID Office and informed the Police Inspector Mr. Rafiqul Islam the matter. Then, a case was filed under Sec-2b/5 of the Women and Children Repression Prevention Act, 2000 on February, 2003.

At present, three accused Rina, Shaheen and Md. Islam Ali have already been arrested. And Shoma, after returning from Mumbai, got married to her friend Kiron's brother and leading a happy life with her husband.

### ***Case Study- VI***

Rani (not real name), 15 years old daughter of farmer Mokor Ali and late Zayeda of village Kasba under Dinajpur district was taken away from Dinajpur Railway station by Manu a distant relative who sold her to Amirul and Jahangir and was raped and tortured by them. She was taken to Ambari from Dinajpur by bus, and caught by BDR along with Manu, Amirul, Jahangir while they were trying to cross Bangladesh border at Ambari area. She was released by BNWLA from safe custody and brought to its shelter home. A case has been filed in this connection accusing Sohel, Jahangir, Amirul, Shahin, Masud and Titu, which is now pending for trial.

She has no idea about the existing laws relating to trafficking. BNWLA's field level staff and local lawyers informed her about the provisions of law and punishment for child trafficking. Now she demands severe punishment for those who trafficked her so that no other trafficker dares to traffic other children and spoil their lives.

She has been staying at the shelter home of BNWLA since she was released by the organisation and receiving vocational training. As she had very bad experience of being raped by her stepfather, she does not want to reintegrate into her family rather she would like to be self-reliant in future utilising her training.

### ***Case Study- VII***

Kakoli (not real name) was only 15 years old when she was sold to a brothel at Jamalpur district and was own by a brothel madam named Dolly who tortured her every now and then to do sexual intercourse with maximum number of clients. Her neighbour Bangal Bacchu was deceived by the trafficker who took her away from home in the name of taking her to a party of marriage ceremony sometimes in 1999. The trafficker's permanent resident was in Barishal, who was then residing at Sutrapur area of the capital.

She was the daughter of a transport labour Nurul Islam and Morsheda, who used to sell water. A member of a lower middle class family Kakoli had her primary education in the village Khiarchak of Daudkandi police station under Comilla district. She was to Jamalpur through Mohakhali by bus station. and become a survivors of internal trafficking.

Having the information from a secret source an investigation team of BNWLA raided the brothel at Jamalpur and released the ill-fated girl with the assistance of police and then took her to their custody through court. Subsequently, a case was filed in

this connection, accusing Bangal Bacchu, Badla, Dolly and Kohinoor, which is currently at investigation level. The main accused Bangal Bacchu and Dolly have been arrested by police and presently at the jail.

Although she does not know about laws and legal provisions of punishment for the perpetrators she demands severe punishment for those who trafficked her so that other traffickers give their second thought before committing a crime like trafficking.

At present she has been staying at the shelter home of BNWLA since she was released by the organisation. But she is still in a traumatic condition and unwilling to be enrolled under the education programme of BNWLA. She also does not feel interested in receiving vocational training. The process of psychosocial counselling is going on to bring her back to a normal life. She wants to get back to her family at the earliest.

### ***Case Study- VIII***

Amina (not real name), a 25 year old woman hailed from Narayanganj district lost her husband at an early age and become distressed with her two children due to pervasive poverty. At that time one of her brother-in-law (cousin's husband) named Abu Taleb convinced her to go to Dubai and lured her with false promise of good employment and good earning. She was tempted with the jugglery of words that her brother-in-law used in favor of going abroad. Abu Taleb also convinced her father to send her Dubai. Subsequently Karim Mia managed Tk. 80,000/- by selling and mortgaging land and taking loan and sent her daughter Amina to Dubai to earn a huge amount of money. Amina went to Dubai in January 2001.

On arrival in Dubai, UAE Amina got work in a household of an Arabian family as maidservant from where she did not receive any money. After two months she was provided with a job by her Bangladeshi agent Karim at a Sri Lankan agency where she was confined in a room and was brutally tortured. In an attempt to escape from sexual assault she fell down from the rooftop of a two-storied building and got her back bone and legs broken. With such severe injury she was taken to a hospital at Dubai and received treatment for a while which did not improve her condition. With that physical condition BNWLA repatriated Amina in collaboration with the Labour and Employment Ministry of the Government of Bangladesh from UAE on June 26, 2001. On her arrival at ZIA International Airport representatives of BNWLA received her and directly took her to Holy Family Red Crescent Hospital where she was initially provided with treatment for a week. After that BNWLA sent her to Centre for the Rehabilitation of the Paralysed (CRP) at Savar for treatment and rehabilitation on July 2, 2001. She received specialised treatment at CRP for seven

months under the supervision of BNWLA and slowly got better and finally stands on her feet, which seemed to be impossible at the time when she was repatriated from UAE.

In recognition to CRP's service for Amina BNWLA provided CRP with monetary support. Besides, the organisation kept constant contact with CRP during the period Amina received treatment there. During the whole period the lawyers and counsellors of BNWLA provided Amina and her family with psychosocial counselling that helped her to get an early recovery at the one hand and prepared her family to receive her with full dignity on the other. After she fully recovered from her injury BNWLA eventually reintegrated her in her family on February 20, 2002.

### ***Case Study- IX***

Tanu (not real name) a divorced young girl, age around 17, daughter of Md. Abul Khair of Village- East Lama, Police Station- Shempur, District-Dhaka was trafficked to Mumbai, India through the Benapol border on 12<sup>th</sup> December, 2000, where she was forced into sexual work in different hotels. She was trafficked to India from Dhaka with the help of Monsur in Bangladesh part and Ashok and Shemol in Indian part. Several other girls were trafficked with her. The trafficker induced her with an offer of good job in a Beauty Parlour at Mumbai from where she returned after more than three years on 10<sup>th</sup> June 2002.

When Rina came to Bangladesh, her parents urged the local people who arranged a Shalish but the aggrieved failed to get justice. Then they informed the incident to the Detective Branch of Police, CID and a Case was filed under Women and Children Repression Prevention (Special Act) 2000, later on police arrested Rina Begum and her husband.

Police sent Taslima to the safe custody from where she was released by a lawyer of BNWLA. She wants justice and hopes no other girl to go through the same experience.

## Chapter - Seven

### Recommendations

The complex and diverse socio-cultural factors driven by the growing development challenges affect women and children's vulnerability to trafficking and commercial sexual exploitation which mostly causes by poverty, unsafe migration, urbanization, violence within and outside families, insufficient access to health care services and ethnicity. Often they are induced with a promise for secure employment, but owing to lack of available information, coupled with the sociocultural conditions that discourage women and children from actively seeking such information, they get duped into accepting situations that are coercive.

The social and economic factors driving trafficking and sexual exploitation against women and children are poverty and inequality, lack of access to services, uniform mobility, power asymmetries and various form of violence against women. Lack of awareness is a great concern in this regard, which demands a broader campaign. The other reason that trafficking in women and children persists is that judicial and law enforcement institutions have failed to systematic implement and enforce of anti-trafficking laws effectively; indeed, they have exacerbated the problem. Police collusion and bribery are often cited by anti-trafficking activities as a major part of the problem. Despite the existence of a legal framework for combating trafficking and sexual exploitation against women and children, the authorities in the countries of origin as well as destination countries lack both the capacity and the will to undertake the intensive investigatory and procecutorial work necessary to have significant impact on trafficking rings, which demands sufficient cross-boarder cooperation.

Strong national and cross border campaign along with an effective advocacy partnership with the countries in the region may lessen the intensity of the vulnerability of women and children to be being victim of trafficking and sexual exploitation. It is the social culture to be addressed helping root out the causes of trafficking and sexual exploitation as well as rehabilitating the survivors. The society has to have that specific mindset to accept and taking the responsibilities of the survivor women and children, which demand for an integrated rehabilitation system among the society which is diversified in nature between the South Asian countries.



The trend in number of trafficking incidents shows that it is increasing rather decreasing despite the fact that "trafficking" has been an issue of global concern for more than a hundred years indicates that "solution" or approaches already attempted have been insufficient and drawn from wrong perspective. To date, and as outlined in *Chapter - Three* (Literature Review) "Trafficking in women and Children" "Minor/Child" "Sexual Abuse" "Sexual Exploitation" have been defined and constructed to meet the needs of the State Authorities, Government Institutions/Departments and Law Enforcement Agencies. "Trafficking" has been defined from the perspectives from which women and children are mostly affected by the issue.

This is very much logical, in spite of all the previous attempts taken, to include at this point in time the opinions, voices, knowledge and stated needs of the victim of trafficking and sexual exploitation when formulating solutions and designing programs to minimize or abolish trafficking and sexual exploitation.

Having such intention in mind, all suggestions regarding endeavours, which should be taken, are accompanied or gathered in a joint recommendation that positively can generate further research. This research has been taken the form on analysing the existing laws and finding out the loopholes on those among the voice of those who has been trafficked and sexually exploited along with those who are liable to protect them, which should be further emphasized. The whole research also upholds the integrity of the social avenues as well as the state mechanism in almost every effort to combat women and children trafficking and sexual exploitation.

There is no room for excluding absolute role of law and the law enforcement agencies in combating trafficking and sexual exploitation, rather that the perspective from which laws were written or amended and brought into line with the needs of women and children, which should be at top of the agenda.

The tyrannical intention of arresting women who illegally cross the border or who engage the services of brokers to assist them in such illegal crossing, laws related women's equality or which assist in their ability to access opportunities of getting a good job or even to migrate for labour should put in place and implemented through proper enforcement.

Similarly if it is the honest intention that the dignity of women should be increased and have to decrease the number of women and children who are trafficked and sexually exploited, acknowledging the fact that most of them have least options but engaging in sex work is arguably a more effective step towards eliminating forced prostitution with the view that prostitutions should be eliminated from the society.

The study however gives an unique opportunity to accumulate the finding of the sending and receiving countries which has to be introduced while designing program and developing techniques for addressing the situation in an integrated approach. This will require collaboration at the program level of the Non-Governmental organizations working in the field of trafficking and sexual exploitation of women and children along with the Government agencies. Greater coalition between Non-Governmental organizations working both nationally and locally must be fostered.

In this modern age, it has become a need to develop an integrated database system to be contributed by both the Non-Governmental, Government and private entrepreneurs where there will have all information related to women and children who were trafficked and sexually exploited.

With the intension to come out of the legal barriers of addressing the issue of trafficking there should have bilateral or multilateral agreement between the sending and receiving countries. Due to the complexity of factors encouraging trafficking and sexual exploitation against women and children, no single approach or focus will be effective on its own. There needs a comprehensive and integrated approach that may be adopted for ensuring an environment fostering a wide range of programs. It is a pleasure on our part to provide in the following some more specific recommendations:

### **Recommendations for NGOs**

- ☞ Create cross border legal aid clinics and programs to facilitate the rehabilitation and repatriation of the persons trafficked.
- ☞ Undertake nationwide uniform awareness campaign to prevent trafficking and sexual exploitation of women and children.
- ☞ Encourage sharing of data among the NGOs and Government agencies through establishing network undertake concerted programs against trafficking and sexual exploitation of women and children.
- ☞ Assist Government in undertaking related action programs against trafficking and sexual exploitation of women and children.
- ☞ Rescue trafficked victims with the help of law enforcement agencies from various confinements

- ☞ Assist the Government in repatriating trafficked victims from others countries.
- ☞ Initiate rehabilitation program for rescued and repatriated trafficked victims.
- ☞ Establish safe shelter homes ensuring homely and friendly environment and minimum standard of care.
- ☞ Monitor the legal procedure for ensuring prosecution of traffickers.
- ☞ Initiate advocacy and lobby at policy level for enactment of appropriate laws and for amendment of existing laws relating to trafficking and sexual exploitation of women and children.

### **Recommendations for Government:**

- ☞ Adopt appropriate arrangements for the protection of victim and witness.
- ☞ Adopt a massive awareness program on the laws related to trafficking and sexual exploitation
- ☞ Set up a Monitoring Cell within the police station for Human Rights Organisations to observe the implementation of laws. Create a woman and child friendly environment at the police stations.
- ☞ The accountability of the police officials should be increased. The Investigation Officer should be made accountable to the Judges along with their departmental accountability and to ensure such accountability of the Investigation Officers to the Judges some part of the ACR of the police officials should be recommended by the Judges.
- ☞ Establish an independent Investigation department. There should have parallel investigation mechanism to be implemented or conducted by a watchdog body of the human rights organizations. The fact-finding report of various human rights organisations should be considered as official findings.
- ☞ Responsibility of the Public Prosecutors should be increased and they should be closely monitored. The Judges should take into account all interference by the Public Prosecutors.

- ☞ To improve the skill of the Investigation Officers, there should have regular or special type of training program designed following the laws and procedures particularly for the protection of women and children. They should be made well conversant with the laws and their recent amendments of the laws.
- ☞ The number of Police Officers should be increased along with ensuring required logistic support.
- ☞ The selection and appointment of Public Prosecutors and Assistant Public Prosecutors should be made independent of political interference.
- ☞ There should have Task Force with representatives of
  - ⇒ Bangladesh Rifles
  - ⇒ Ministry of Women and Children Affairs
  - ⇒ Ministry of Foreign Affairs
  - ⇒ Ministry of Home Affairs
  - ⇒ Various NGOs
- ☞ The laws related to trafficking are not adequate. To address the issue of cross border trafficking there should have bilateral/multilateral agreements between the sending and receiving countries.
- ☞ Adopt a national migration policy.

### **Private Sector:**

- ☞ Create job opportunity for vulnerable women
- ☞ Create livelihood options for women and children at community level
- ☞ Assist Government and NGOs in terms of ensuring rehabilitation of rescued trafficked victims through job placement
- ☞ Sensitising transport owners and workers who can play role in preventing trafficking

## **ANNEXURE - I**

### **Previous Studies and Research of BNWLA related to Trafficking and sexual Exploitation:**

1. Survey in the Area of Child and Women Trafficking - July to December 1997,
2. Bangladesh Country Report - "Trafficking in Children and their exploitation in prostitution and other intolerable forms of Child Labor in Nepal" - October 1998, Supported by ILO-IPEC and Government of United Kingdom,
3. A Study on Six Areas of Bangladesh: "Socio-Economic Correlates of Children and Women Trafficking" - October 1998 to December 1999,
4. A Socio-Economic Study on ten villages of Bangladesh: "Cause and Consequences of Children and Women Trafficking" - October to June 1999,
5. Prostitution: Women, Society, State and Law,
6. Birth Registration: Analysis of Laws and Social Condition - 1999,
7. A Study on Procedural inadequacy: "Rape and Burden of Proof",
8. Study on Women Prisoners of Bangladesh,
9. Study on existing laws on informal sector for women labor in Bangladesh,
10. Study on prostitution: an unresolved social issue due to incomprehensive nature of Suppression of Immoral Traffic Act-1933,
11. Study on laws relating to protection and trafficking in children,
12. Study on birth registration
13. Forced marriage a blot in women's freedom of expression, 2001.

## ANNEXURE - II

### Bibliography

1. *A Booklet published by ILO Area Office, Dhaka, Bangladesh.*
2. *Background Paper on good Practices and Priorities to Combat Sexual Abuse and Exploitation of Children in Bangladesh, By Karin Heissler, 2001.*
3. *Prostitution an Unresolved Social Issue Due to Incomprehensive Nature of Suppression of Immoral Traffic Act 1933, by Salma Ali, BNWLA.*
4. *Commercial Sexual Exploitation of Children, published by SAP Bangladesh.*
5. *Various Articles written by Ad. Salma Ali.*
6. *A Booklet on Sexual Exploitation of Children in Bangladesh, by Sharmeen A. Farouk, Published by BNWLA, 2001.*
7. *UN Special Reporter's Report on Trafficking in Women and Children in The South Asian Region, 2002.*
8. *Information Dossier on Human Trafficking, May, 2003.*
9. *Asian Regional Seminar on Using legal Instruments to Combat Trafficking in Women and Children an article written by Mr. Rajendra Kharel, Minister, The Nepalese Ministry of Women, Children, and Social Welfare.*
10. *Towards the Construction of an Empowered Subject: A Human Rights Analysis of Anti Trafficking Legal Interventions and Trends in South Asia written by Jyoti Sanghera, 2001.*
11. *Laws Relating to Offences Against Women: V.K Dewan, published by Orient Law House. WARBE, A newsletter of Bangladeshi migrant workers, July, 2003.*

## ANNEXURE - III

**Questionnaire: (For multiple choice please put tick  on every answer with which you agree)**

### **1. Knowledge of the concerned person about trafficking.**

#### ***A. Do you know about trafficking in women and children? Yes/No***

If yes, how do you know that? (Please put  in side the box)

- Heard from an individual
- Read in newspapers
- From any electronic media
- Known from an organization
- Others

If Others please specify

#### ***B. Do you think it is an important issue and needs attention of all levels including GO-NGO and Private Sector? Yes/No***

If yes, what type of measures do you think need to be undertaken?

#### **GO initiatives:**

- Develop comprehensive anti trafficking policy
- Awareness raising campaign in association with NGOs
- Rescue victims of trafficking from confinement (e.g. brothel, cage brothel etc.)
- Repatriate victims of trafficking from Others countries
- Enter into bi-lateral and multilateral agreements with receiving countries to expedite repatriation and ensuring extradition and extra-territorial prosecution
- Establish safe shelter homes for rehabilitation of rescued and repatriated trafficked victims ensuring homely and friendly environment and minimum standard of care
- Establish special cell to provide the victims of trafficking with legal support
- Others

If Others, please specify

**NGO initiatives:**

- Undertake nationwide uniform awareness campaign for prevention of trafficking and sexual exploitation of women and children
- Establish network of NGOs across the nation to undertake concerted programs against trafficking and sexual exploitation of women and children
- Assist government in undertaking related action programs against trafficking and sexual exploitation of women and children
- Rescue trafficked victims with the help of law enforcement agencies from various confinements
- Assist the government in repatriating trafficked victims from Others countries
- Initiate rehabilitation program for rescued and repatriated trafficked victims
- Follow standardize reintegration procedure
- Establish safe shelter homes ensuring homely and friendly environment and minimum standard of care
- Monitor the legal procedure for ensuring prosecution of traffickers
- Initiate advocacy and lobby at policy level for enactment of appropriate laws and for amendment of existing laws relating to trafficking and sexual exploitation of women and children

If Others, please specify

How NGOs are running shelter homes for the victims of trafficking?

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**Private Sector:**

- Create job opportunity for vulnerable women
- Create livelihood options for women and children at community level
- Assist government and NGOs in terms of ensuring rehabilitation of rescued trafficked victims through job placement
- Transport owners and workers can play role in preventing trafficking

If Others, please specify

**2. General information about place of trafficking and type of victim.**

***A. From where women and children are trafficked most?***

- Slums of urban area



- Railway Station, Bus Terminal and Launch Terminal
- Poverty stricken area
- Thickly populated rural and urban area
- Stranded Pakistani Camp
- Rohingya Camp
- Enclaves
- Others

If Others, please specify

***B. What is the age group mostly affected by such offence?***

- |                                       |  |
|---------------------------------------|--|
| <input type="checkbox"/> 0 - 6 years  | <input type="checkbox"/> 12 - 18 years |
| <input type="checkbox"/> 6 - 12 years | <input type="checkbox"/> 18 - 25 years |
| <input type="checkbox"/> Others       |  |

If others, please specify

***C. What type of women and children do you think fall prey to trafficking?***

- Orphan Children
- Children of broken family
- Step mother at home
- Victim of child marriage
- Children of poor family having large number of children
- Children deprived of family support and social facilities
- Children living in slum
- Children seeking adventure
- Children from unaware and illiterate family
- Young women of marriageable age
- Widow woman
- Woman abandoned by husband
- Women and children migrated from one place to another in search of livelihood
- Floating women and children
- Women and children who affected by river erosion and others natural disasters
- Women and children working at garment sector
- Women and Children working as domestic help

Others

If Others, please specify

### 3. Causes of trafficking

*What do you think are the most common causes of trafficking?*

Poverty

Broken family

Child Marriage

Lack of Education

Lack of Implementation of Law

Gender discrimination

Lack of awareness on human rights

Migration policy of the state

Unemployment

Unplanned and undocumented migration

Greed

Adventure

Dependence on Others (relatives/friends etc.)

Lack of knowledge about trafficking

Natural disaster and river erosion

Demand at the receiving end

Lack social security

Others

If Others, please specify

### 4. Facilitating factors

**What are the major factors that facilitate a trafficking event?**

Long and open border

Organized crime

Negligence towards girl child

Gaps, loopholes and anomalies in laws

Negligence and corruption of law enforcement agencies

Others

If Others, please specify

## 5. Destination of Trafficked victims

*Do you know what are the major destinations (geographical) for Bangladeshi trafficked women and children?*

- Kolkata, Mumbai and Delhi in India
- Karachi and Islamabad in Pakistan (Marriage for slavery, bonded labour etc.)
- United Arab Emirates (UAE)
- Kuwait
- Malaysia
- Others

If Others, please specify

## 6. Consequence of trafficking

*a) What are the common types of harm that are faced by the trafficked person?*

- Sold to brothel
- Sex slave
- Used in pornography
- Rigorous and hazardous industrial work
- Commercial Sexual Exploitation
- Forced domestic labour
- Engaged in Biri Churi Factory in India
- Dex tourism
- Begging
- Camel Jockey
- Others

If Others, please specify

*b) What are major consequences usually faced by trafficked persons?*

- Physical and mental abuse
- Psychologically traumatized
- Infected with HIV/AIDS/STIs
- Permanent physical/mental disability
- Temporary physical/mental disability
- Separated from family for ever

- Physical and mental growth highly compromised in case of children
- Others

If Others, please specify

## 7. Prospects and problems in combating child trafficking

### a) What are the major obstacles in combating trafficking?

- Lack of awareness on human and legal rights
- Lack of education that creates obstacle in awareness raising for prevention of trafficking
- Gaps and loopholes in the existing laws
- Lack of proper implementation of laws
- Ignorance and negligence of law enforcement agencies
- Political and administrative influence in the legal process
- Due to legal and procedural complication it is difficult to repatriate trafficked persons from other countries
- Lack of instance of exemplary punishment
- Lack of victim and witness protection measure
- Lack of proper rehabilitation support
- Complicated legal procedure
- Difficulties in identifying traffickers
- Others

If Others, please specify

### b) What are the way outs of the problems in combating trafficking in women and children?

- Create mass awareness on rights related issues
- Ensure education for mass people to make them enable to protect their rights
- Reform the existing laws to eliminate the gaps and loopholes of the laws
- Train the law enforcers and judicial people to ensure proper legal action against traffickers
- Initiative on the part of the government to repatriate trafficked persons from other countries at the shortest possible time
- Government should make necessary arrangements so that trafficked persons can stay at a govt. or non-govt. safe shelter home outside of jail
- Government in collaboration with NGOs should create rehabilitation services for released and repatriated trafficked persons

Bilateral agreement should be in place between countries like Bangladesh and India to simplify repatriation and extra territorial prosecution etc.

Others

If Others, please specify

## **8. Adequacy of existing laws, provisions and policies**

*A. Do you think there are adequate and proper laws against this crime? Yes/No*

*If yes what are major positive features of these laws?*

1.

2.

*B. What are the major gaps, loopholes and anomalies in existing laws? Please give detailed comments.*

1.

*C. Do you think there are adequate international laws and/or legal instruments to combat trafficking and commercial sexual exploitation of women and children? Yes/No*

*If yes, what are major positive features of these laws/instruments?*

1.

*If no, what are the shortcomings in these laws and interments?*

1.

## **9. State of implementation of laws**

*A. Do you think that the laws are implemented in proper manner?*

Yes

No

Not willing to response

*B. What are the major difficulties in implementing laws?*

1.

10. Status of policies relating to women and child protection

A. Do you know about women policy?

Yes

No

B. Do you know about child policy?

Yes

No

C. Do you know about National Plan of Action against the Sexual Abuse and Exploitation of Children including Trafficking?

Yes

No

D. Do you think the existing policies are adequate for protection of women and children?

Yes

No

11. What according to you should be the role of citizens in protecting women and children from being trafficked?

Comments: -----  
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## ANNEXURE - IV

### Guideline for Conducting Focus Group Discussion (FGD) with Professional Groups [Lawyers, Police Officers & Journalists]

- Inquire whether the participants know the International Laws relating to Women and Child Trafficking?
- What are their views about the implementation these Laws?
- What initiatives should be taken by the Government?
- How to initiate reforms of the existing laws related to Trafficking in Women and Children?
- How to raise awareness of the mass people on the issue of Trafficking?
- How to eliminate gaps, loopholes and anomalies in the existing laws related to Trafficking?
- What do you think it needs special attention of all levels including GO-NGO and Private Sector?
- To inquire whether the existing laws, their provisions and policies are adequate to combat Trafficking in Women and Children?
- To inquire whether the participants are satisfied that the existing laws are well enough to combat Trafficking in Women and Children.
- What do the participants think about the role of the citizens to combat Trafficking in Women and Children?
- To inquire whether the participants think about the status of implementation of the existing laws?
- What do the participants think are necessary to ensure proper implementation of those laws?
- What do the participants think about the efficiency of the law enforcing agencies?

## ANNEXURE - V

### **Guideline for Conducting Focus Group Discussion (FGD) with Survivor Women and Children**

- ❖ Inquire if the women and children participants know about trafficking.
- ❖ Whether the women and children participants know that trafficking is a heinous crime. Whether they are aware of their rights to justice.
- ❖ How the children would like to have justice
- ❖ Let the children know about the provisions of punishment for trafficking in children then ask what kind of punishment
- ❖ Inquire if the women and children participants know about their rights and protection.
- ❖ How women and children would like to see the implementation of their rights and protection as stipulated nationally and internationally.
- ❖ Try to know what are the things women and children like and dislike most?
- ❖ Association of which people women and children like and dislike most?
- ❖ What are the things women and children afraid of?
- ❖ How women and children would like adults and organizations to help them?
- ❖ Try to know how women and children can help other children from being trafficked?
- ❖ Inquire whether the women and children participants know about the international laws related to child rights and protection?
- ❖ How they like to see implementation of these laws?
- ❖ Women and children's opinion in ensuring their participation for ensuring their of their rights and protection