

## **SAARC Trafficking Convention and Human Trafficking Crisis In Bangladesh: A Critical Appraisal**

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**Abstract:** *Human-trafficking is a global concern especially for third world countries like Bangladesh. It is alarming that the number of trafficking victims is mounting day by day which fuels tension on international peace and order. So it has become incumbent upon the world community to give watchful eyes on the ongoing trafficking crisis. Therefore, individual and joint steps of sovereign states are necessary to protect trafficking victims and suppress the brazen faces of wicked trafficking mafias. The SAARC Trafficking Convention, 2002 is a revolutionary step in the world history to combat human-trafficking crisis in South Asia. The Convention is an inspirational and standard setting instrument which seeks for regional co-operation among the SAARC Countries to prevent and reduce trafficking crisis. In this paper we have analyzed ongoing trafficking crisis in Bangladesh and South Asia on the basis of existing data and information. We have also analyzed the achievements and drawbacks of the SAARC Trafficking Convention in this regard.*

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### **I. Introduction**

Human trafficking is truly a global phenomenon and a crime which is mushrooming and affects nearly every part of the world, whether as sources of transit or destination country. According to UNODC, victims from at least 127 countries have been identified and it is estimated that more than 2.4 million people are being exploited by criminal at any given time. The ILO estimates that there are 2.4 billion people in the world at any given time involved in forced labor and subjected to exploitation as result of trafficking. An estimated 800000 women and children are trafficked each year across international borders, 80% ending in forced sex works. This estimate does not include those trafficked within their own countries or missing children. Human trafficking for Commercial Sexual Exploitation (CSE) is a gross violation of human rights and has been described as a modern form of slavery. The United Nations estimates that the trafficking of women and children for CSE in Asia has victimized over 30 million people. As per reports of the OECD, the human trafficking industry ranks among the top three highest grossing illegal criminal industries along with illegal drugs and arms. Study shows that over 160 countries across the world are known to be affected by human trafficking. This means that human trafficking is a dire global reality. Human trafficking statistics mentioned above would bleed the heart of every right thinking man.

#### **1.1. Methodology**

This research is mainly based on analytical approach. The causes and consequences of human trafficking have been explained from interdisciplinary view point. Comparative method has been approached in showing the basic position of implementation of the Convention in Bangladesh. Most of the data has been collected from secondary sources such as books, journals, magazines, newspaper etc. In this article we have analyzed the data of 18 years of trafficking in Bangladesh.

#### **1.2. Principle Findings**

Based on the study findings, it is clear that the government of Bangladesh demonstrated increased attention to the issue of human trafficking particularly trafficking in women and children and is adopting many positive legislative and other measures to ensure implementation of the Convention. The government is a party to the most of the core international and regional instruments that can be used to prevent and combat trafficking. Nevertheless, there remain some drawbacks in national legislative and institutional frameworks. The main deficiencies include:

- i. Comparatively weak administrative and enforcement system of anti-trafficking mechanism., e.g. insufficient number of trafficking arrest, prosecutions and convictions;
- ii. Inadequate integration of human rights, gender and child rights in national anti-trafficking laws and policies;
- iii. Lack of repressive state protection, prevention efforts in trafficking prone areas;

- iv. Lack of bilateral, regional, sub-regional and international co-operation with countries of origin, transit and destination and
- v. Lack of reliable baseline data on the nature, extent and causes of human trafficking.

## **II. Defining Human Trafficking**

Simply speaking, human trafficking refers to the illegal and immoral buying and selling of human beings as commodities to meet global demands for commercial sexual slavery or forced labor.

The SAARC Trafficking Convention also defines human trafficking. A comprehensive definition of trafficking is given by the UN Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000. It encompasses three things, namely:

- i. Activities that constitute human trafficking (recruitment, transportation, harboring, receipt of persons)
- ii. Means being used (force, coercion, abduction, fraud, deception, abuse of power or position of vulnerability) and
- iii. Purpose, which is exploitation (prostitution of others, sexual exploitation, forced labor or services, slavery or practices similar to slavery).

In Bangladesh The Prevention and Suppression of Human Trafficking Act,2012 defines “human trafficking” as the selling, buying, recruitment, receipt, transportation, transfer or harboring of any person for the purpose of sexual exploitation, labor exploitation or any other forms of exploitation whether inside or outside of Bangladesh by means of (a) threat or use of force or other forms of coercion or (b) abduction, fraud or deception, or of the abuse of any person’s socio-economic, environmental or other types of vulnerability or (c) of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. This definition covers both internal and cross-border human trafficking and trafficking of any human being and for any purpose.

## **III. A Brief History of Human Trafficking Crisis in Bangladesh**

Apocalyptic days are gone by but some serious problems haunting it since its inception; human trafficking crisis is one of the vicious one. It is alarming that Bangladesh has become a fertile breeding ground for national, international trafficking mafias and their local perpetrators. Recently many mass-grave have been discovered in Malaysia, Thailand and Myanmar who are suspected to be the victims of trafficking from Bangladesh and neighboring countries and witnesses heinous brutality. Today Bangladesh is primarily a source country for persons who are trafficked to other South Asian countries (Malaysia, Brunei, and Palau), Middle Eastern countries (Bahrain, Iraq, Jordan, Lebanon, Kuwait, Oman, Qatar, Saudi Arabia, UAE) and Europe (Finland, Greece, Ireland).

*The following table is an attempt to provide a scenario of human-trafficking crisis in Bangladesh.*

No. of Trafficked person	Frequency / Time Frame	Destination	Source
13,220 children	1992-1997	Various countries	BNWLA, 1997
300,000 children	-----	Indian brothels	BNWLA, 1997
200,000 children	-----	Pakistani brothels	BNWLA, 1997
4,500(women & children)	Annually	Pakistan	BNWLA, 1997
200-400	Monthly	----	BNWLA, 2000
24,000-48,000	Annually	----	BNWLA, 2000
200,000	1990-1999	----	Rape of Minors
200,000	----	Pakistan, India, Middle East	Rape of Minors
500	Daily	Pakistan, via India	BNWLA, 1998
200,000	1990-1997	----	Centre for Women & Children Report, 1998
1% of 500,000 foreign CSWs	-----	India	Centre for Women & Children Report, 1998
13	Daily	----	Central Social Welfare Board, 1997; BNWLA, 1997
4,000 or more	Annually	----	The Daily Ittefaq, 1990;
50	Daily	----	UBINIG, 1995
Approx. 6,000 Annually	Annually		UBINIG, 1995
27,000	-----	Indian brothels	Centre for Women & Children Report, 1998
10-15,000	-----	India	UN Special Rapporteur 2001
25,000 women & children	Annually	-----	The Protection Project2002
10-15,000(women)	Annually	India	The Financial Express19 Nov2005
13,000 children	2000-2005		IOM, 2005
10,000 -29,000(children)	Annually		ECPAT International,2006

20,000-25,000 person	Annually	India, Pakistan, Bahrain, Kuwait, and the United Arab Emirates	The Bangladesh Observer, 15 May 2006
40,000 children	-----	Pakistan	Unknown(published in 2009)
27,000(women &children)		India	Unknown(published in 2009)
400 women and children	Monthly		UNICEF, 2009
200,000 girl and women	-----	Pakistan	LHRL(Pakistan) 2009
300,000 children &women	2000-2009	India	Unknown(published in 2009)
25,000 women & children	Annually	Various Countries	BNWLA, 1Jun, 2010
25,000 children & women	Annually	Various countries	Unknown(published in 2011)
13,000 children	2007-2011	Various Countries	Bangladesh today, 2011
20,000 children &women	Annually	-----	The women & children affairs 2011
200,000women	2001-2011	Pakistan	The Daily Star, 7Jan 2012
500,000women	2001-2011	India	The Daily Star, 7Jan 2012
70-80 women & children	Daily	Various Countries	Unknown(published in 19 Jan 2012)
1 million	1983-2013	Various Countries	The New Nation 21Jun2013
3,00,000children&women	2003-2013	India	Unknown(published in 9July 2013)
1 million	1993-2013	Various Countries	Unknown(published in 9July 2013)
2,00,000	-----	Pakistan	Unknown(published in 9July 2013)
More than 2 lac	2003-2013	Pakistan	(Unofficial statistic)The Daily Star, 7Oct, 2013
More than 5 lac	2003-2013	India	(Unofficial statistics)The Daily Star, 7Oct, 2013
25000	Jan-Mar 2015	Various countries	UNHCR
25 children (almost a child per day)	May'15	-----	Unknown published in 2015
1,568	May-June 2015	Indonesia, Malaysia and Thailand	The Daily Star, 6Jun 2015

#### IV. Causes of Trafficking

The factors responsible for human trafficking have been categorized into two groups. The first group; the ‘push factors’, includes the conditions which are responsible for trafficking of people from one country to another country. The second group refers to the “pull” factors that support the demand for trafficked victims. These factors include extreme poverty, over population, rapid urbanization, unemployment, social upheaval, inequality, discrimination, gender based violence, discriminatory socio-cultural practices such as early marriage for girls, dowry demand, negative attitude toward female, fraudulent practices in marriage, easy divorce, frustration, socialization which devalues females, misinterpretation of religion regarding women, globalization, export-oriented growth model and consumerism, lack of shelter for distressed women, lack of social security and safety, lack of legal awareness, weak governance, inefficiency of the law enforcing agency, inadequate government policies and perceptions of widespread public corruption including police officials. Bangladesh’s relatively porous borders with India and Myanmar, the feminization of labor migration and a previously gender based migration policy are considered contributors as well.

#### V. Key Contribution of the SAARC Convention

The adoption of the SAARC Trafficking Convention, 2002 was a landmark achievement and a significant step in combating human trafficking. It is the first regional treaty of Asia to address human trafficking. The Convention increased political awareness and co-operation among the South Asian countries to prevent and combat human trafficking.

#### VI. Drawbacks of the Convention

In spite of having distinctive features the SAARC Anti-Trafficking Convention, 2002 has some latent drawbacks. Followings are the main loopholes of the Convention:

- i. The scope of the Convention is very narrow. It does not encompass all sorts of human trafficking comprehensively. It does not cover forced labor, domestic servitude, illicit adoption, organ removal and non-commercial sexual exploitation.
- ii. The Convention fails to distinguish sufficiently between trafficking and voluntary migration. In fact the Convention contains provisions that encourage state parties to adopt measures that can adversely affect the freedom of movement women and children.
- iii. Trafficking offences and associated serious crimes are committed under the disguise of legal entities such as fake companies or charitable organizations. But the Convention contains no provision for ensuring accountability of legal person.
- iv. The Convention lacks an expertise treaty monitoring body to oversee the state compliance under the Convention. As stipulated by Article 8.3 a RIF established in July 2007 composed of exclusively of government officials, monitors the Convention, but their sole obligation is to facilitate and periodically report on implementation.

## **VII. Legal Framework to Combat Trafficking**

### **7.1. International Commitments**

With regard to Bangladesh's international treaty commitment, Bangladesh is a party to six out of seven core human rights treaties that are related to the prevention and suppression of human trafficking. Bangladesh is a long standing party to ILO Forced Labor Convention and the Abolition of Forced Labor Convention. The government ratified the CEDAW and CRC Optional Protocols, ILO Convention on the Worst Forms of Child Labor. Bangladesh has actively participated in human rights and trafficking related conferences. It has ratified the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.

### **7.2. Regional Initiatives**

Bangladesh is one of the first countries to ratify the SAARC Trafficking Convention and the SAARC Convention on Child Welfare. It is also a party to other regional arrangements including the 1998 Bangkok Accord and Plan of Action to combat Trafficking in Women, the 2001 South Asian Strategy against Commercial Sexual Exploitation of Children and Child Sexual Abuse, The 2002 Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Crime, The 2005 South Asian Forum Against Human Trafficking in South Asia. In 2008 the government also participated in an IOM facilitated process together with Nepal and the Maldives.

### **7.3. National Legal framework**

In Bangladesh, apart from the Constitutional guarantees there are several laws prohibiting the offences of trafficking and related offences.

#### **7.3.1. Constitutional Safeguards**

The Constitution of the People's Republic of Bangladesh (1972) guarantees a cluster of fundamental rights (Article-27-44). It expressly prohibits all forms of forced labor (Art.34). It guarantees equality before law and equal protection of law (Art.27). Freedom from discrimination (Art.28), life and personal liberty (Art.32), legal rights (Art. 31, 33,35), fundamental freedoms including freedom of movement, assembly, association and thought (Art. 36-39), employment rights (Art. 29,40) and minority religious rights (Art.41). Art. 28(4) authorize the state to adopt affirmative measures for the advancement of women and children. Non-enforceable fundamental principles promote women's rights and gender equality (Art.9, 10). The state is also responsible for providing the basic necessities for life (Art.15), free and compulsory education (Art.17), equality of opportunity (Art.19) and preserving public health and morality (Art.18). In plain terms, the Constitution provides for an obligation for the state to prevent violation of human rights in any form, including in the form of human trafficking.

#### **7.3.2. The Penal Code (1860)**

This Code does not directly address human trafficking but specifies a number of offences that can be used to prosecute trafficking related activities. Relative provisions include: parental abandonment of a child (section 317), wrongful restraint and confinement (section 339, 340), criminal force and assault (section 350, 351), kidnapping (section359), abduction (section 362), slavery (section 371), forced labor (section 374), procurement and importation of minor girl (section 366A, 366B), selling or buying a minor person for prostitution or any unlawful or immoral purpose (section 372, 373), rape (section 375) and other unnatural offences (section 364-A). Punishments for those offences range from seven years imprisonment to a sentence of death.

#### **7.3.3. The Emigration Ordinance (1982)**

The Emigration Ordinance and its associated Rules (2002) prohibit unlawful emigration (section 20) and fraudulently inducing emigration (section 21). The Ministry of Expatriate Welfare and Overseas Employment is revising the Ordinance for its effective enforcement.

#### **7.3.4. The Prevention and Suppression of Human Trafficking Act (2012)**

This is the most comprehensive legislation in Bangladesh which encompass almost every form of human trafficking including protection against forcing anyone into prostitution, or any kind of exploitation and torture, forced labor and services, debt bondage, servitude, forcing anyone into begging or making a person crippling by forced amputation for profit.

According to the Act human-trafficking and related crimes will be non-bailable and non-compoundable offence. It calls for the establishment of tribunal for the purpose of speedy trial of cases which is accorded with

wide power to establish judicial accomplishment. This is the first law in Bangladesh and to some extent in South Asia, to include labor trafficking.

#### **7.3.5. Supplementary Legislation**

Other laws that can be used to combat exploitative labor practices include the Bangladesh Labor Act (2006) prohibiting some forms of hazardous work for children under 18 years of age; the Children's Act (1974) (sections 42 & 44) prohibiting the sexual and labor exploitation of children. Additionally, laws, such as the Child Marriage Restraint Act (1929), the Muslim Family Laws Ordinance (1961), the Dowry Prohibition Act (1980), the Births and Deaths Registration Act (2004), and the Pornography Control Act, 2012 assist in preventing human trafficking.

#### **7.4. Enforcement of Anti-trafficking Laws**

In order to enforce anti-trafficking laws government has taken several efforts. In 2004, the government established a National Anti-trafficking Police Monitoring Cell that gathers information and send regular update to the Ministry of Home Affairs. In 2008 the government established a specialized anti-trafficking Police Investigation Unit to complement the monitoring cell. Other law enforcement agencies include, i) Border Guard Bangladesh (BGB) ii) The Ansar and Village Defence Party iii) The Bangladesh Coast Guard and iv) The Bangladesh Rapid Action Battalion(RAB).

### **VIII. Recommendations**

From in-depth study and analysis of International and national legal instrument relating to human trafficking we would like to suggest following recommendations to prevent and combat human trafficking crisis in Bangladesh and SAARC countries:

#### **8.1. Strengthening the National Legal Framework**

In order to enhance domestic legal framework government has to ratify remaining international conventions relating to human trafficking specially the UN Trafficking Protocol and the Migrant Workers Convention, The Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country, the ILO Minimum Age Convention which is important in relation to protecting children from labor trafficking.

#### **8.2. Undertaking Right-Based Strategy in Repatriation**

In Bangladesh stringent compliance of law gets upper hand rather than the protection of human rights of trafficked victims. It may be suggested that government would uphold the interest and dignity of the victim by properly repatriating them and ensuring exemplary punishment of the culprit. In order to ensure greater conformity with international legal and human rights standard a national repatriation law or policy and bilateral agreements should apply to all trafficked persons. At the regional level, SAARC countries should establish a regional voluntary fund for the rehabilitation and reintegration of trafficked victims.

#### **8.3. Enhancing Anti-trafficking Training and Protection Measures**

All the wings (police, public prosecutors, the judicial officers) of the criminal justice system should be provided with systematic and adequate trainings. Besides anti-trafficking training empowerment and recruitment agencies must be periodically monitored. Corruption among police and border officials must be investigated in order to ensure that cases of trafficking don't figure as illegal migration.

#### **8.4. Strengthening Law Enforcement Measures**

Human-trafficking is a trans-boundary offence. It often goes unreported because of the unwillingness of victims of trafficking to take recourse of law enforcement agencies to avoid hassle and stigma. So it may be suggested that access to justice is a condition precedent for combating human trafficking crisis effectively which requires substantive and procedural fairness in criminal justice system.

#### **8.5. Problem Assessment and Strategy Development**

An effective anti-trafficking move requires long-term strategy. It must be based on a sound assessment of the problem and of the existing capacity to respond. So it may be recommended that, a long-sighted vision has to be aimed for and necessary financial and institutional support should ensure for effective implementation of the strategy.

### **8.6. Adopting Preventive Measures**

Poverty and ignorance is the root cause of the human-trafficking in Bangladesh. In order to combat trafficking crisis effectively government has to reduce extreme poverty at minimum level. Proper education, training and employment opportunity for all has to be guaranteed. In addition to this government should develop bilateral and multilateral agreements with other SAARC countries to promote safe labor migration and to protect the rights of migrant workers.

### **8.7. International, Bilateral and Regional Co-operation**

In order to suppress human-trafficking effectively co-operation among the SAARC countries is a must. It may be suggested that, government has to develop extradition treaty, practice of reciprocity and diplomatic harmony with other SAARC countries.

### **8.8. Comprehensive Review and Amendment of the SAARC Trafficking Convention**

In terms of regional initiatives South Asian countries are to lobby for the comprehensive review and amendment of the Convention. We would like to propose following amendments of the Convention:

- i. The SAARC Trafficking Convention, 2002 do not cover all forms of trafficking comprehensively within its umbrella. So, it is necessary to redefine the term “trafficking” exhaustively.
- ii. It should ensure the comprehensive integration of human rights, gender and child rights perspective as part of the Convention’s guidelines principles and operative provisions.
- iii. Use of information and communication technology for the purpose of trafficking should be made punishable.
- iv. The Convention needs to clarify the responsibilities of the origin, transit and recipient countries with respect to extradition and prosecution of traffickers as well as rescue, recovery, protection, repatriation and social integration of the victims and prevention of trafficking.
- v. It requires recognition of the provisions of a commonly agreed modality on speedy repatriation to expedite the process and ensure bilateral and regional cost sharing.
- vi. Along with SAARC Annual TIP report on progress of the implementation of the Convention, the Convention needs to create provision, recognition and facilitation of alternative report by the civil society.
- vii. Right-based and victim friendly strategy is the center of anti-trafficking movement. So it may be suggested that, the Convention needs to contain provision which will pressurize the member states to protect and repatriate the victims of trafficking rather than stigmatizing them. It should also contain provision regarding witness protection.
- viii. In order to achieve the foresighted objectives of the Convention a permanent and systematic monitoring body is necessary which will act as a watchdog ensuring member states obligation under the Convention.
- ix. The Convention needs to have directives on shared database of state parties on victims and traffickers with access of the concerned authorities and civil societies.
- x. As human-trafficking is a trans-boundary offence cordial co-operation among the member states is a must for effectively handling of trafficking crisis. Therefore it may be suggested the Convention must contain provisions which will guarantee regional co-operation among member states.
- xi. The Convention lacks provision ensuring accountability of legal persons engaged in trafficking offence. So it may be suggested that though criminal remedies cannot be enforced civil remedies like torts, claims and compensation and other administrative liability ought to be created and enforced against traffickers or employers.
- xii. Trafficking ought to be considered as organized crime rather than a single offence and existing principles of substantive criminal law such as common intention, common object and conspiracy etc. must be used in cases of trafficking.

The recommendations mentioned above are not exhaustive; the framers of the Convention and expertise analysis can contribute a lot to make the Convention a unique weapon to combat human trafficking in the South Asian region.

## **IX. Conclusion**

Human trafficking crisis is posing lurking danger all over the world the flame of which despicably engulfing marginalized peoples of the third world countries like Bangladesh. Bangladesh is one of the trafficking prone areas in the South Asian region. Contemporary influx of trafficking victims insinuates serious concern at home and abroad. The SAARC Trafficking Convention, 2002 is an ambitious coalition to fight human trafficking crisis of South Asia. But recent deterioration of the situation underscores its role and

deflected its ambition to tackle human trafficking. Bangladesh has made remarkable progress in economy but disparity between rich and poor is widening day by day. Still the national and international trafficking mafias haunting marginalized peoples of the country indiscriminately in the disguise of offering them better jobs and livelihood. Therefore, the government has to revitalize state policy and give much emphasis on the elimination of extreme poverty, job creation, education, health etc. which would help to reduce social upheavals and human trafficking crisis. Moreover, the unfortunate trafficking victims should provide humanitarian and legal assistance both in the source country and the country of transit so that they can return to their normal life and forget the trauma and mental agony mounted on them. Furthermore, national and international trafficking mafias and their local collaborators should be brought to the book and prosecuted. Most importantly, enhancement of national and international legal frameworks addressing human trafficking issues, trans-boundary co-operation, increasing social awareness are equally significant to prevent and reduce human trafficking crisis aptly.

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