



PROTECTION OF THE VICTIMS OF HUMAN
TRAFFICKING: A COMPARATIVE STUDY
BETWEEN BANGLADESH AND MALAYSIA

BY

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ABSTRACT

Human trafficking is now a global problem and a largest organized crime. It is a gross violation of human rights and the darkest episode in population mobility. Human trafficking takes away the freedom, liberty, and human dignity from an individual and makes them a slave under compulsion. The trafficked person commonly being subject to commercial sex and forced labor and other kinds of exploitations. The issue of human trafficking affects the victims physically, mentally, and psychologically on the one hand and damages the social norms and human values on the other. Bangladesh and Malaysia are facing a serious problem with this kind of crime where Bangladesh known as a source and Malaysia know as a source transit for human trafficking in this region. Both countries are trying to prevent the crime and protect the victims of these offenses by legislating special Acts. In this study, the researcher investigates the adequacy of the protection mechanism for the victims. It examines the available protections provided by the Acts of Bangladesh and Malaysia and explores the positive advancement of the Acts as well as the weaknesses and shortcomings in the protection regime. In doing this research, the researcher organizes the study into five chapters where the first chapter discusses about the problem of human trafficking while the second and third chapter focuses on the available protections in the Anti-Trafficking Acts of both countries. Chapter four elaborates the comparative discussion on the similarities, differences and scope of improvement in both Acts. The last chapter presents the findings for both Bangladesh and Malaysia along with significant suggestions. In developing the thesis, researcher follows doctrinal research method and comparative legal reach approach. The study employs the descriptive and analytical approach to achieve the objective of the research. The researcher collects information from both primary sources such as Acts, international conventions and secondary sources such as academic journals, books, reports, magazines, online databases. The findings of this research are both Acts provide certain protections which are good for the victims and at the same time the Acts also offer several protections which are found inadequate. Moreover, there are some aspects which are absent in both Acts, therefore, needs to incorporate into the Acts. The researcher suggests that both countries may consider the recommendations of this study for further development of the Acts in the area of victim protection.

خلاصة البحث

أصبح الآن تنقل البشر مشكلة عالمية وأكبر جريمة منظمة. إنه انتهاك فاضح لحقوق الإنسان وأكبر حدث مظلم في تنقل السكان. إن تنقل البشر يسلب الحرية والاستقلال والكرامة الإنسانية من فرد ويجعلها عبداً تحت الإكراه. وعادة ما يتعرض الشخص المنقول به لممارسة الجنس التجاري والعمل القسري ونوع آخر من الاستغلال. تؤثر قضية تنقل البشر على الضحايا جسدياً وذهنياً ونفسياً من ناحية وتدمر الأعراف الاجتماعية والقيم الإنسانية من ناحية أخرى. تواجه بنغلاديش وماليزيا مشكلة خطيرة في هذا النوع من الجرائم حيث تعرف بنغلاديش كمصدر وماليزيا كوجهة لتنقل البشر في هذه المنطقة. يحاول البلدان منع الجريمة وحماية ضحايا هذه الجرائم بتشريعات قوانين خاصة. في هذه الدراسة، يبحث الباحث في مدى كفاية تقنية الحماية للضحايا. ويدرس الباحث الحماية المتاحة التي يوفرها قانونا بنغلاديش وماليزيا ويستكشف التقدم الإيجابي في القوانين، فضلاً عن نقاط الضعف وأوجه القصور في نظام الحماية. في إجراء هذا البحث، ينظم الباحث الدراسة في خمسة فصول يناقش الفصل الأول فيها مشكلة تنقل البشر بينما يركز الفصل الثاني والثالث على الحماية المتاحة في قوانين مكافحة تنقل البشر في كلا البلدين. يوضح الفصل الرابع المناقشة المقارنة حول أوجه التشابه والاختلاف ونطاق التحسن في كلا القانونين. يعرض الفصل الأخير النتائج لكل من بنغلاديش وماليزيا بالإضافة إلى اقتراحات مهمة. في تطوير الأطروحة، يتبع الباحث أسلوب البحث العقائدي ونهج الوصول القانوني المقارن. تستخدم الدراسة المنهج الوصفي والتحليلي لتحقيق هدف البحث. يقوم الباحث بجمع المعلومات من المصادر الأساسية مثل القانون، الاتفاقيات الدولية والمصادر المرتبة الثانية مثل المجالات الأكاديمية، الكتب، التقارير، المجالات، قواعد البيانات على الإنترنت. نتائج هذا البحث كلاهما يوفران بعض الحماية الجيدة للضحايا وفي نفس الوقت تقدم القوانين أيضاً العديد من وسائل الحماية التي تعتبر غير كافية. وعلاوة على ذلك، هناك بعض الجوانب التي لا توجد في كلا القانونين، وبالتالي، تحتاج إلى إدراجها في القوانين. يقترح الباحث أن كلا البلدين قد ينظر في توصيات هذه الدراسة لمزيد من تطوير القوانين في مجال حماية الضحايا.

APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion; it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a thesis for the degree of Master of Comparative Laws.

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Muhamad Hassan Bin Ahmad
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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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Signature

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A COMPARATIVE STUDY BETWEEN BANGLADESH AND
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This work is dedicated to my beloved wife Farjana Haque Nepa and my lovely daughters Rezwana Tabassum Nawreen and Naiyyerah Mahroz Zareen

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Protocol to Prevent, Suppress and Punish Trafficking in PERSONs, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 2000.

Council of Europe Convention on Action against Trafficking in Human Beings, 2005

Universal Declaration of Human Rights (UDHR), 1948

International Covenant on Civil and Political Rights (ICCPR), 1966

Vienna Convention on Consular Relations (VCCR), 1963

Convention on the Rights of the Child (CRC), 1989

International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (ICPRMW), 1990

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The Constitution of People's Republic of Bangladesh, 1972
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The Local Government (Union Parishad) Act, 2009
The Federal Constitution of Malaysia, 1957
Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007
Immigration Act, 1959/63
The Criminal Procedure Code, 1935
The Law on Prevention and Suppression against Trafficking in Persons, 2008
United States Victims of Trafficking and Violence Prevention Act of 2000

LIST OF ABBREVIATIONS

BNWLA	Bangladesh National Women lawyers Association
BIPSS	Bangladesh Institute of Peace and Security Studies
CRC	Convention on the Rights of the Child
EU	European Union
ECOSOC	United Nations Economic and Social Council
ICCPR	International Covenant on Civil and Political Rights
ICPRMW	International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families
ILO	International Labour Organization
MOU	Memorandum of Understanding
NPA	National Action Plan
NGO	Non-Governmental Organization
UDHR	Universal Declaration of Human Rights
UP	Union Parishad (Village Council)
UN	United Nations
UNHCR	United Nations High commissioner for Refugee
UNICEF	United Nations Children's Fund
VCCR	Vienna Convention on Consular Relations

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE RESEARCH

Human trafficking is the most atrocious violation of human rights and the darkest episode of population mobility. It is one of the largest organized crime around the world which often known as modern- day slavery whereby victims lost their freedom and dignity under compulsion. In reality, there is a multi-billion dollar business behind this transnational organized crime. Statistics show that human trafficking, in the form of forced labour, generates 150 billion Dollar every year and about 24.9 million people are trapped in such human slavery out of which 16 million have exploited in private sectors such as domestic work, construction or agriculture, and 4.8 million have undergo sexual exploitation, forced labor around the world. Women and girls are disproportionately affected by forced labor, accounting for 99% of victims in the sex trade, and 58% in other sectors.¹ The cost of human trafficking takes an immense toll on individuals as well as communities. Furthermore, the report shows that the huge amount of profits annually earned by the traffickers across the globe who exploits the victims, mainly for sexual slavery and other kinds of exploitations.² The costs to human capital probably impossible to quantify. However, the problem of trafficking cuts across a range of development issues, from poverty to social inclusion, to justice and rule of law issues.

¹ Global Estimates of Modern Slavery: Forced Labour and Forced Marriage, Geneva, September 2017. <http://www.ilo.org/global/publications>, (accessed 25 December 2017).

²Victor Ahiuma-Young, “Human traffickers earn over \$150bn annually-ILO”, ILO, July 1, 2017, <https://www.vanguardngr.com>,(accessed 25 December 2017).

Beside the global picture, the Asia-Pacific region is responsible for US\$51.8 billion of this market, with around 11.7 million victims which are about one-eighth time higher than that of in Europe comparing with Asia-Pacific region.³ According to Global slavery index in 2016, two-thirds of the estimated 45.8 million people in modern slavery are recognized in the Asia-Pacific and 66.4 percent regional proportion to the global total number.⁴ In South-Asia Internal and transnational human trafficking is a persistent problem. Again report shows that South Asia the home to the second largest number of internationally trafficked persons where around 150,000 people are trafficked annually.⁵ Furthermore, the estimation varies from thousands to millions in number and some report estimates that out of the global account around 225,000 of them are from South Asia.⁶ In addition, another report shows that there are approximately 30 million woman and children from Asia trafficked and as a result victimized by sexual slavery over the last three decades.⁷

Bangladesh is a South Asian country identified as the source of human trafficking and transit to the destination country for men, women, and children. The common purposes of such trafficking are sex trade, forced labor, domestic servitude, and debt bondage. According to the Global Slavery Index 2016 approximately 1,531,300 people are living in modern slavery in Bangladesh. It has ranked 10th among countries in terms of prevalence of human trafficking.⁸ In Bangladesh,

³Channing May, "Transnational Crime and the Developing World", Global Financial Integrity, (March 2017): xii, <http://www.gfintegrity.org>, (accessed 2 January 2018).

⁴ How many people are in modern slavery in Asia Pacific?, Global Slavery Index 2016, <https://www.globallslaveryindex.org>, (accessed 26 December 2017).

⁵ M. Bashir Uddin, "Human Trafficking in South Asia: Issues of Corruption and Human Security", *International Journal of Social Work and Human Services Practice*, Vol.2. No.1 Feb, (2014):18-27.

⁶ S. Huda, "Sex trafficking in South Asia Regional and national Perspectives", *International Journal of Gynaecology and Obstetrics*, 94, (2006): 374-381.

⁷ Association of Women's rights in Development, Friday File, 2002 (21 June): 82, Ibid.

⁸ 'Infographics: Bangladesh ranks 10th in Global Slavery Index 2016', August 10, 2017 < <https://www.thedailystar.net> >accessed 5 September 2018.

different human rights organizations reported that 10,000 to 20,000 woman and girls are trafficked annually to different destinations such as India, Pakistan, Bahrain, Kuwait, and the United Arab Emirates. According to the U.S. Department of State, Bangladesh does not fully maintain least standards in terms of protection of the victims and prosecution against traffickers. The Government of Bangladesh finds a decreasing number of victims and inadequate protection services in the last three years. The report shows that a significant decrease has occurred in terms of identification of the victims. In 2016 the Government identifies 355 people as victims of human trafficking which were a decrease from 1815 and 2899 in 2015 and 2014 respectively, therefore, the country still remains with tier two watch list in human trafficking index.⁹

In contrast, Malaysia is a South-East Asian and regional developing country presumed to be the destination and also a source and transit state for men, women, and children for human trafficking. In many incidences, it shows that people are trafficked to Malaysia. In addition, according to the U.S. report, the Government of Malaysia failed to ensure the international standard for combating and protecting the rights of the victims and protection efforts remained inadequate. In 2017 report Malaysia improves the position from Tier 2 Watch List to Tier 2 in the index.¹⁰ In further, report lights that in 2016 government identifies 3,411 potential trafficked victims where 305 a marked an increase in number compared to 2015.¹¹

Therefore, victims of this crime require, serious attention, extensive treatment, proper and adequate policy for rehabilitation and social reintegration. Uneducated and

⁹ Trafficking in Persons Report, US Department of State, Country narrative, Bangladesh, (Jun 27 2017): 80-82, <https://www.state.gov>, (accessed 1 May, 2018).

¹⁰ U.S. Department of State, “Malaysia, 2017 Trafficking in Humans Report”, Office to Monitor and Combat Trafficking in Humans, 2017, <https://www.state.gov>, (accessed 1 May, 2018).

¹¹ Ibid.

vulnerable woman and children deprives of financial, legal and social support and opportunities easily become victims of trafficking. The organized gangs of traffickers target the poorest of the poor and disadvantaged children and women in the rural areas of the country. The trafficked victims are usually induced and defrauded by offering had some job offer in abroad or marriage offers or lucrative offer for visiting different places in a target country. Eventually, they become victims of trafficking and sexual exploitation and embrace a life of agony and torture at the end. This researcher evaluates the real scenario of this crime in the region highlighting the context of Bangladesh and Malaysia. It also examines the position of both countries under respective anti-human trafficking Acts in order to save the interest of victims. In further, the researcher compares between the two Acts in respect of protection mechanisms prescribed by these Acts. Finally, the researcher recommends for both country how to improve their laws and make it more functional and effective.

1.2 STATEMENT OF THE PROBLEM

Human trafficking is a severe problem in Bangladesh throughout the decades since its inception as an independent country. Bangladesh is known as a source country for human trafficking of man, woman, and children to other destination in the world. The grave condition of human trafficking in Bangladesh comes in various international reports and scholarly literature which shows that a large number of men, women and girl child trapped every year in human trafficking for commercial sexual slavery, forced labor and other kinds of exploitations. This offense growing rapidly in Bangladesh in the current decade and it takes a new dimension with Rohingya influx into Bangladesh. In addition, Bangladesh faces both internal and trans-boundary

human trafficking. Every year many girls traffic internally to the different prostitution in the different location inside the country.

On the contrary, Malaysia also facing a serious problem of such offenses as a destination country. Human trafficking group's push in, the people collected from several countries, into Malaysian territories such as land, sea, and airport. According to the statistic presented by several reports and literature a considerable number of people enter into Malaysia as an illegal immigrant and later send them to different hotels and bar for sexual exploitation or to the agricultural sites for labour exploitation and some of them send to other destinations. Furthermore, a large number of documented and uncommented Rohingya and Filipino Muslims impliedly create a big scope for human traffickers in Malaysia.

With the objective of combating human trafficking and ensure protections for the victims both Bangladesh and Malaysia legislates the Anti-Trafficking Acts known as Prevention and Suppression of Human Trafficking Act, 2012 and Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 of Bangladesh and Malaysia respectively. However, the Acts provide certain fundamental protections for the victims who are inadequate and ambiguous in terms of definition and clarification of certain terms, the absence of detail explanations and procedures for providing and receiving those protections and shortcomings in other protection mechanisms. Furthermore, the Acts also do not incorporate certain significant aspects; therefore, the Acts cannot perform effectively in regard to provide a better protection for the victims of human trafficking.

1.3 RESEARCH QUESTIONS

In order to conduct study properly the researcher formulates few questions which the study answers in this study such as:

1. What are the protections available for the victims of human trafficking under the Bangladesh and Malaysian laws?
2. What are the similarities and differences in protecting the victims of human trafficking between Bangladesh and Malaysia?
3. How to improve the Acts for better protection of the victims in both countries?

1.4 RESEARCH OBJECTIVES

There are some objectives of this research which the researcher achieves through analysis of the Act of both Bangladesh and Malaysia. The main objectives of the current research are as follows:

1. To examine the protections available to the victims of human trafficking under the Bangladesh and Malaysian laws.
2. To analyze the similarities and differences in protecting the victims of human trafficking between Bangladesh and Malaysia
3. To propose recommendations for improving the Acts for better protection of the victims in both countries.

1.5 HYPOTHESIS

Provisions in the Acts relating to the protection of the victims of human trafficking in Bangladesh and Malaysia are inadequate. Therefore, there is a need to analyze critically the existing protections available under the Acts of both countries in order to find out the viable improvements.

1.6 LITERATURE REVIEW

There are a lot of literature available on human trafficking as it is the global, regional and national problem in the current world. Many books written, thesis and dissertation

made, national and international periodic report published and scholarly article written in this significant area of Human Trafficking worldwide. However, each of the research focuses on a specific issue of trafficking which varies from the perspectives of the author's intention and need. Thus, all those scholarly works are not relevant to the current study as it is confined to the protection of victims of human trafficking under the anti-trafficking law of Bangladesh and Malaysia. Therefore, the number of articles and reports addressing this issue in both jurisdictions. The researcher has reviewed some of those works and report focusing on the protection mechanisms and challenges for ensuring the rights of the trafficked victims under the law of both countries.

Fahmida (2017), in her study titled "Human Trafficking: Review of the Respective Act and Its Enforcement in Bangladesh", mainly focuses the worse internal and external situation of human trafficking in Bangladesh in different purposes, especially for sexual exploitation. The Author also discussed the relevant laws of Bangladesh which protect the rights of the citizen of Bangladesh in general. The paper further addresses the Human Trafficking Suppression and Prevention Act 2012 and focuses on the overall prevention, prosecution and protection mechanisms for combating human trafficking offenses and providing better protection for the trafficked victims of Bangladesh. The paper further emphasizes on the protection of the witnesses for the protection of the victims because it is found in thoroughly studies of the cases that victims are unwilling to file a case and witnesses do not present in the court because of threat by the traffickers, therefore justice suffering with delay and most of the time cases are withdrawn before the trial. Thus the rights of the victims are frustrating in Bangladesh. The author also talked about the necessity and significance of other types of support for the victims for their leading of future life in

terms of proper medical treatment, counseling, and rehabilitation and integration into the society as normal human being. Nevertheless, the article pointed out the specific protection of the trafficked victims which is the objective of the current research.¹²

Suwendu (2015), in his article titled “Human Trafficking in Bangladesh: An Overview”, points out that Bangladesh is one of the source and transit countries for human trafficking. He referring to the Sultana’s work “Scenario of Human Trafficking in Bangladesh”¹³ where mentioned that around four hundred women and children are trafficked out every month from Bangladesh and most of these abducted for forced labor or forced prostitution. The study has focused firstly on global human trafficking scenario and then focused on the grave situation of Bangladesh regarding human trafficking. He further, pointed out the major cause of human trafficking in Bangladesh are poverty, lack of awareness, illiteracy, poor governance, gender discrimination, social exclusion. The paper further stated that Bangladesh has still needed more afford to address equally for both sex trafficking and labor trafficking.¹⁴ The paper, however, does not address the issues of victim’s protection.

Kumar (2015) on the other hand focuses in his study on “Bangladesh Border Vicinity for Human Trafficking: An Indian Viewpoint” the significance of border security for the people residing in border vicinity, especially in the enclaves which are regarded as most vulnerable sits for human trafficking. Such security according to his opinion can provide them protection from being trafficked. The study also expressed the major issues regarding cross- border human trafficking and emphasized on the role

¹²Fahmida Sarwar Eshita, “Human Trafficking: Review of the Respective Act and Its Enforcement In Bangladesh”, Proceedings of 50th IASTEM International Conference, Dhaka, Bangladesh, 1st-2nd April 2017, <<http://www.worldresearchlibrary.org>>(accessed 26 December 2017).

¹³Nargis Sultana, Scenario of Human Trafficking in Bangladesh. Dhaka, June 6, 2015.

¹⁴Suwendu Biswas, “Human Trafficking in Bangladesh: An Overview”, *Foreign Affairs Insights and Review (FAIR)*, 5th November 2015, <<http://fairbd.net>>.

of the judiciary of India and Bangladesh. the author finally conclude the study by remarking that the existing laws and infrastructures are not adequate in combating the emerging trends of such organized crime. The initiatives of the government and NGOs are not achieving expected result for various reasons such as lack of clarity of the law and proper understanding of the law by the law enforcement officials and non-availability of the information for persecuting and protecting of the victims.¹⁵ Therefore, research finds that there is a less attention given on the human rights of the victims which is significant side by side with prosecution and prevention processes.

RuhAfza (2003) in her scholarly work titled “Human Trafficking in Bangladesh: An Overview” investigates the global trafficking industry as it is the fastest growing criminal enterprise, hence, light on the global supply and demand. The study addresses various dimensions of the human trafficking with reference to Bangladesh and discussed the national and regional initiatives for combating and protection of human trafficking in person. Finally, the paper concludes that since this crime is a national and transnational in nature, therefore, the initiatives that are taken by the government do not cause the significant change of the situation of human trafficking in Bangladesh in terms of combating, prosecuting and protecting trafficked victims.¹⁶

Chowdhury (2013) in his article titled “Trafficking in Person in Bangladesh” addresses regarding the hidden connection between government officials, corrupt recruiting agencies, village level brokers, and regional gangs and so on with the human traffickers. He points out that lack of the adequate mechanism for investigation and prosecution is facilitated the human trafficking in Bangladesh. The article further

¹⁵Awkash Kumar, “Bangladesh Border Vicinity for Human Trafficking: An Indian Viewpoint”, January 2016, pp.33-41, <file:///C:/Users/Hp/Downloads/>,(accessed 2 January 2018).

¹⁶Ruh Afza Ruhi, “Human Trafficking in Bangladesh: An Overview”, *Asian Affairs*, Vol. 25, No. 4, 2003: 45-56.

looks into the protection measures taken by the Bangladesh government and found that there is no systematic procedure for identifying the victims among the vulnerable population or to refer victims to trafficking to protective services. The paper further notes that in terms of providing protection for the victims, the protection facilities and arrangements are still insignificant which on the other hand influence the traffickers in practice.¹⁷

Rosy (2013) in her M. Phil thesis titled “Trafficking in Women in Bangladesh: Experiences of Survivors and Challenges to Their Reintegration” mainly focuses on the reintegration process maintained by Bangladesh Women Layers Association herein referred to BNWLA and difficulties in this regard. Right to lead a good life, right to reunification in family and community are the logical rights of the victims of human trafficking, however, found one of the grounds for violence against trafficked survivors in Bangladesh. The research discusses the process of rescue, providing shelter and reintegration activities for trafficked victims adopted by BNWLA. It further, focuses on the difficulties of reintegration such as social discrimination, wrongful discussion, and comment about the victim, which caused demoralization for the living, causing serious psychological disorder toward life that sometime leads to suicide. The research ultimately examines that there is no clear procedures for peaceful reintegration of the trafficked victims in the law. The law does not provide protection properly and adequately for the reintegration of the trafficked victims in Bangladesh.¹⁸

Shanjida and Anisuzzaman (2015) in their article “Human Trafficking in South Asia: Application of Anti Trafficking Laws and The States’ Duty to Protect Human

¹⁷Mohammad Barad Hossain Chowdhury, “Trafficking in Person in Bangladesh”, Resource Materials Series No.89,(March 2013): pp. 55-61, <<http://www.unafei.or.jp/english>>,(accessed 2 January 2018).

¹⁸Sabiha Yeasmin Rosy, “Trafficking in Women in Bangladesh: Experiences of Survivors and Challenges to Their Reintegration”, (M. Phil Thesis, University of Bergen Norway, 2013).