



E-ISSN: xxxx-xxxx  
P-ISSN: xxxx-xxxx  
IJCCSL 2021; 1(1): 07-16  
© 2021 IJCCSL  
[www.criminallawjournal.org](http://www.criminallawjournal.org)  
Received: 08-11-2020  
Accepted: 12-12-2020

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## **Protections for the victims of trafficking in person under Malaysian anti-trafficking in person act, 2007: experience sharing in the contxt of Bangladesh**

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### **Abstract**

Trafficking in person is a dilemma common to almost all countries in the world. East and south Asian countries are mostly encountering the offenses relating to human trafficking. This paper mainly investigates the protections for the victims of trafficking in person under the Anti-Trafficking in Person and Anti-Smuggling of Migration Act, 2007 of Malaysia. Malaysia expands its preventive and prosecuting measures to combat trafficking in person as well as provides several protections for the victims of these crimes similar to other countries. The study further explores the situation of trafficking in person in Malaysia along with the situation of Asian regions. Furthermore, the researchers critically analyses the protection mechanism provided by the above Act and finds out several legal gap to be reconsidered for boosting up the law for effective prevention of the crime. In addition, the research comes up with few suggestions for further improvement of the Act. The aim of this study is to examine the weaknesses in the protections provided by the existing Act and address the researchers and policy makers of Bangladesh to pay adequate attention to this. It further aims to provide a number of protections to the learners, human rights activists, victims support centers for better understanding of the protective measures in Malaysia which may pave the way to compare with respective countries' "protection" procedures, especially in Bangladesh. The possible outcome of this paper is that the Act prescribes several protections for the victims that may be considered in the context of Bangladesh. This is a doctrinal research and follows qualitative method of research. Hence, researcher consults with the specific law mentioned above along with relevant international laws on human trafficking and their protections. In addition, researchers examine the scholarly works, articles, and reports on human trafficking in Malaysia and take statistical data and analyze to achieve the objectives of this paper.

**Keywords:** human trafficking, protection, forced labor, victims, vulnerable, rehabilitation, exploitation

### **1. Introduction**

According the UNODC global report 2018, 33 percent of the detected victims of trafficking are males and come from East Asia and the Pacific. However, it is reported that among the detected victims majorities are women from Japan, Malaysia, Mongolia, Myanmar, Philippines, and Singapore (UNODC, 2018) <sup>[21]</sup>. Sexual abuse, exploitation and Trafficking are among the most traumatic experience that a human being may come across. The majority of Asian children are struck by poverty, deprivation and lack of awareness of human rights protection. Moreover, cyclones, flood and river erosion render a large number of people. Hundreds of thousands Asian children including those of a orphans, homeless and destitute children. Bangladesh are pushed into street and life of hunger and disease, violence, fear and exploitation. These vulnerable children are in danger of being victims of sexual abuse, exploitation and Trafficking.

Malaysia facing these offences for several decades and trying to prevent through different legal measures. Eventually, for curving the human trafficking offences, Malaysia, like other South Asian countries, has legislated an especial Act known as the Anti-Trafficking in Person and Anti-Smuggling of Migration Act, 2007 in line with UN Trafficking in Persons Protocol 2003. By virtue of the US Embassy report, Malaysia still does not fully meet the minimum standards for the elimination of human trafficking. It, however, taken all initiatives for improvement of the situation by convicting a number of traffickers, unauthorized passport holders, granting more victims freedom of movement, funding NGOs including three NGO-run shelters, and opening its first trafficking-specific court. The government also amends its foreign worker levy and Private Employment Agency Act to shift debt burdens away from the migrant workers. This research analyses the protective measures prescribes by the Anti-Trafficking in Person and Anti-Smuggling of Migrants Act, 2007 (hereinafter referred to as

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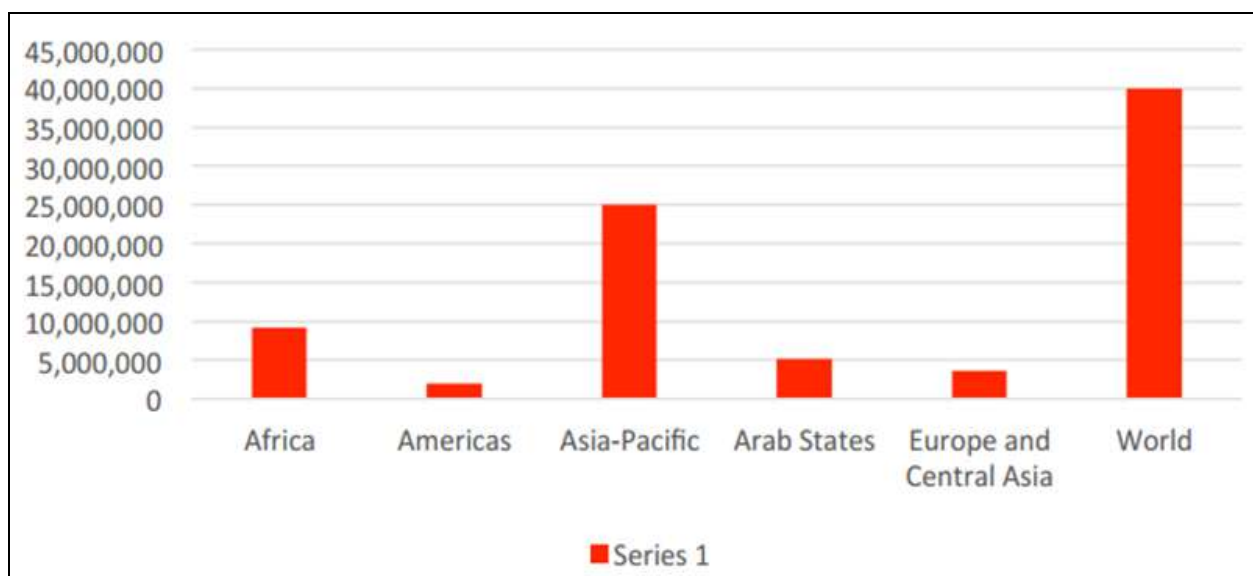
ATIPSOM, 2007) for combating human trafficking offences and protecting the victims in Malaysia which are quite relevant in the context of Bangladesh. In addition, the study explores the situation of human trafficking in Malaysia and describes the extent of this crime keeping the situation of Bangladesh in mind.

## 2. Justification of the study

This study is relevant in the context of Bangladesh for for a number of reasons such as Malaysia is a big labor market for Bangladesh. Bangladeshi labors are 3<sup>rd</sup> largest legal migrants in Malaysia (The Daily Star, 2016) and approximately one-eighth of all the foreign workers as of (Nasa, 2017). It is also reported that a number of Bangladeshi labors try to enter Malaysia every year through the Sea and beyond as they are trafficked by the traffickers. Secondly, both Bangladesh and Malaysia try to curb human trafficking by upgrading domestic laws and international cooperation. Hence, the study will assist for the policy makers for further look into several issues with regard to preparing national policy for human trafficking as well as improving the Laws and Rules and their effective application. Finally, the study shows the protection mechanism of both countries in a comparative manner that will be conducive to understand the significant point that Bangladesh need to have.

## 3 Situation of human trafficking in Malaysia

Malaysia faces severe problem of human trafficking as a destination country where trafficked victims are forced in prostitution and forced labour (U.S. Department of State, 2018) [23, 14]. In this region destination countries for human trafficking are Australia, Japan, China, Malaysia and Thailand (Ismail, 2018) [9]. The majority of trafficked victims are foreign workers who migrated willingly, in most case, to Malaysia from south and southeast Asian countries such as Indonesia, Nepal, India, Thailand, China, the Philippines, Burma, Cambodia, Bangladesh, Pakistan, and Vietnam in search of greater economic opportunities, some of whom subsequently encounter forced labour or debt bondage at the hands of their employers, employment agents, or informal labour recruiters (Saad & Salman, 2014) [14]. Another report shows that a large number of victims estimated more than 2 million documented and undocumented migrant manual workers constitute 20 percent of the total work force in Malaysia (U.S. Department of State, 2017) [23]. Furthermore, International Labor Organization (ILO) 2017 report shows in (Figure 1.) that 25 million global trafficking victims have identified from the Asia and The Pacific region (ILO and Walk Free Foundation. (2017) [8]. In addition, human trafficking still an endemic problem in South-East Asia not only for social degradation but also for security of the region concerned (Trajano, 2018) [16].

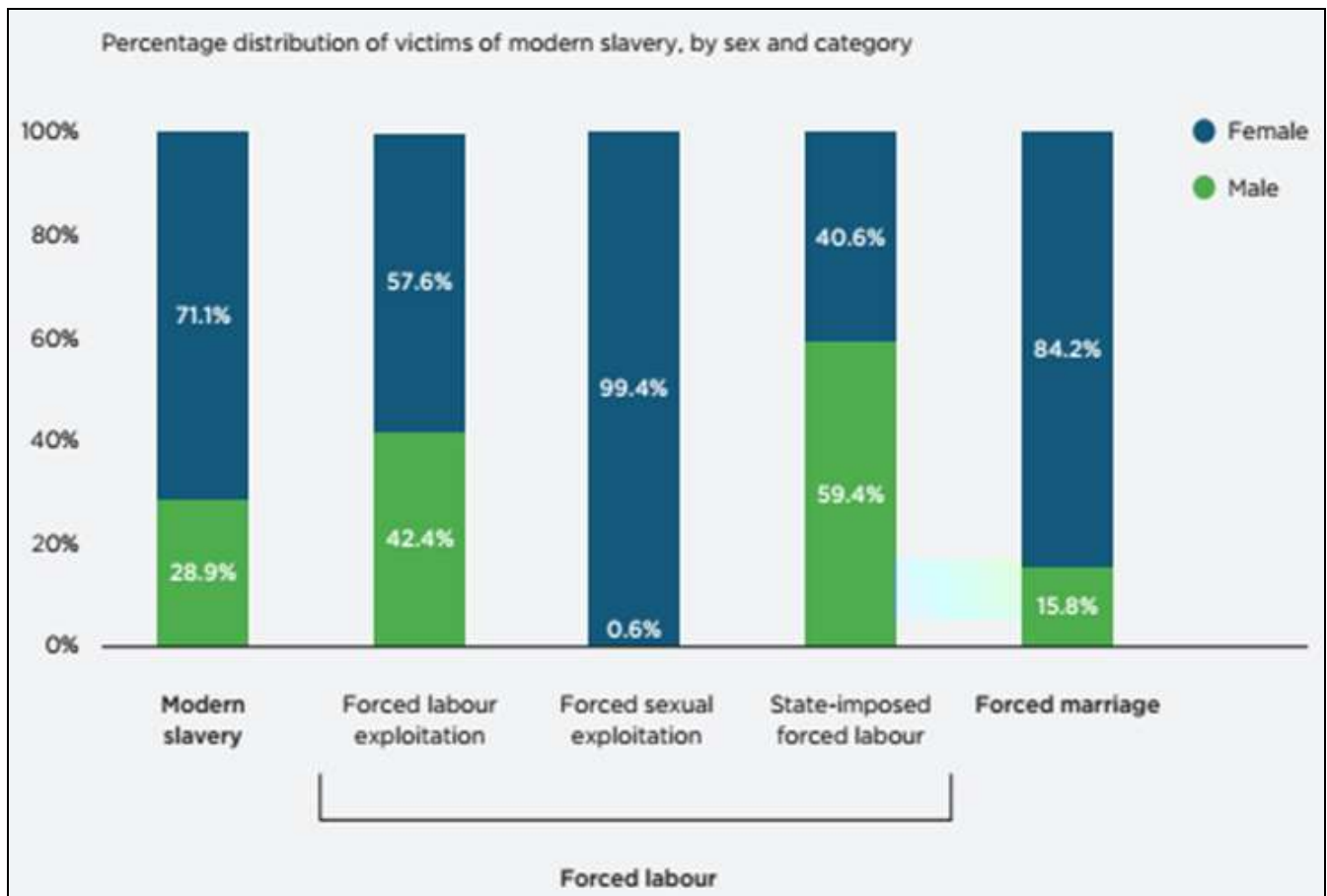


Source: ILO, 2017<sup>7</sup>

Fig 1: Number of victims of modern slavery by region

In 2016, the government detects approximately 3,411 potential trafficking victims, of which it identifies about 1,558 people as victims of human trafficking, a marked increase over the 305 victims confirmed in 2015 (U.S. Department of State, 2017) [23]. In 2017, the government identified 2,224 potential trafficking victims nationwide and confirmed 721 victims, compared to 3,411 potential trafficking victims and 1,558 confirmed victims in 2016 (U.S. Department of State, 2018) [24]. Nevertheless, number women are recruited every year for hotels and restaurants in Malaysia by way of lucrative job title such as “guest relation officer” and eventually forced to commercial sex trade. In this regard, women and girls from china known as “China Dolls” (Leen, 2011) [11]. In many cases migrants fall in forced labor condition by their employers or

employment agents due to failure to pay required fees. The global estimates of modern slavery: forced labour and forced marriage report 2017 by ILO shows that 71 percent of the female compared to 26 percent of Male are affected by such slavery through forced labor in the private economy including domestic work, sex industry and forced marriage. Women and girls are victimized 99 and 84 percent by forced sexual exploitation and forced marriage respectively (ILO Slavery report, 2017) [8]. Women trafficking in Malaysia for commercial sex and forced labor are an emerging issue for weak border security and smuggling (Rohim & Ahmad, 2017) [13]. Figure 2 shows the statistics on slavery by sex, forced labor and other category.



**Fig 2:** Modern slavery and sex of victim

The U.S. report shows foreign employees are recruited by subcontracting or contracting labour companies in Malaysia. These companies usually do not know about the condition of workplace as well as the condition of individual worker which at many times creates high possibility of labour exploitation in Malaysia (U.S. Department of State, 2017) <sup>[23]</sup>. However, in combating human trafficking Malaysia improves its position from tier 2 watch list to tier 2 in 2016. However, it further downgrades to Tier 2 Watch List in 2018 report. Therefore, still does not achieve the standard of prevention of these crimes. Nevertheless, the country gives significant effort to extensive investigations of suspected place and people, initiates proceedings in order to prosecute and convict the offenders.

The government also takes several initiatives to tackle the situation of human trafficking such as action against that person how to retain pass port other than their own in their possession. In addition, the government forms an interagency law enforcement taskforce and provides training for the officers on extensive investigation. Government of Malaysia further approves the national action plan for 2016-2020 which is also a significant development of Malaysian law (U.S. Department of State, 2017) <sup>[23]</sup>. It also shows that approximately 150,000 registered refugees are in vulnerable position due to not getting permission to work. In addition, there are more than 80, 000 Filipino Muslims residing in Sabah are with no legal documents. Furthermore, a lower number of Malaysian citizens mainly of Chinese ethnicity and from indigenous rural poor people are also trafficked to other destination such as Singapore, Hong Kong, Australia, French, South Africa, and United Kingdom for commercial sex trade (U.S. Department of State, 2017) <sup>[23]</sup>.

Furthermore, Malaysia signs a Memorandum of Understanding (MOU) on foreign employment in Malaysia with many countries and improves the contract with foreign workers as well as rights and privileges to reduce trafficking. In this regard from 2006 to 2016, it signs MOU with Bangladesh, Sri Lanka, India, Thailand, Vietnam, Cambodia, China, Pakistan, and Indonesia which covers all types of workers (U.S. Department of State, 2017) <sup>[23]</sup>. In 2007, the government of Malaysia legislates its main Act for combating human trafficking known as the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act, 2007 (ATIPSOM, 2007). The Act amended in 2010 in which the definition of trafficking has given a wider scope of application. In 2013, the National Anti-Trafficking Council started its function which applies the standard operating procedures regarding investigation and prosecution of the human trafficking offenses. The Government also adopts the 2016-2020 anti-trafficking action plan which is an extension of 2014-2015 anti-trafficking action plan of Malaysia for combating human trafficking (U.S. Department of State, 2018) <sup>[24]</sup>. In 2018 an anti-trafficking court has been established by the Government in Selangor which historically had the highest number of trafficking cases. In addition, government made the body of interagency law enforcement task force permanent. The Royal Malaysia Police and specialized anti-trafficking unit are continuing their anti-trafficking actions by increasing manpower. Furthermore, the government identified four smuggling networks operating at Kuala Lumpur International Airport (U.S. Department of State, 2018) <sup>[24]</sup>. Moreover, Government extends its effort by increasing number of prosecution and conviction against traffickers designed by the UN recommended principles and guideline on human rights

and human trafficking known as “3P” i.e. Prevention, Protection and Prosecution (Hamid, Aziz, Noorshuhadawati, & Amin, 2018) [6]. Although, Malaysia upgrades its status in respect of advancement for fighting against human traffickers, the problem demands more efforts to prevent human trafficking from several angles.

#### 4. Definition of human trafficking in person

The ATIPSOM, 2007 defines human trafficking in the Act along with explanation of the terms associated with human trafficking offenses. The Act states that: “trafficking in persons” means all actions involved in acquiring or maintaining the labour or services of a person through coercion, and includes the act of recruiting, conveying, transferring, harboring, providing or receiving a person for the purposes of this Act” (ATIPSOM, 2007(S.2). It refers to the offences such as acquiring labour or maintaining the labour, recruiting, conveying, transferring, harboring, providing or receiving a person through threat, use of force or other forms of coercion, abduction, fraud, deception, abuse of power, abuse of the position of vulnerability of a person to an act of trafficking in persons, or the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person for the purposes of exploitation (ATIPSOM, 2007(S.2).

The Act further, clarifies certain offenses which are relevant to the human trafficking such as fraud or fraudulent travel or identity document, exploitation, coercion, and conveyance etc. As regards the false travel document, the Act declares that: “Fraudulent travel or identity document” means a travel or identity document that-(a) has been made, or altered in a material way, by a person other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a country; (b) has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or (c) is being improperly used by a person other than the rightful holder” (ATIPSOM, 2007(S.2).

The Act refers to a document which makes or alters through a material means by any unauthorized person illegally and provides travel documents for a country without having legal capacity to do so. In addition, it also refers to those documents as false travel documents which are taken through wrongful way, by means of falsification, or under compulsion. The Act further, explains that: “Any person who makes, obtains, gives, sells or possesses fraudulent travel or identity document for the purpose of facilitating an act of trafficking in persons commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years, and shall also be liable to a fine of not less than fifty thousand ringgit but not exceeding five hundred thousand ringgit” (ATIPSOM, 2007(S.18). Therefore, any person prepare, collect, provide, sell, or processes the above mentioned false travel document shall commit a crime and shall be liable to imprisonment for ten years, and shall at the same time face pecuniary punishment of a minimum of 50,000 ringgit and maximum 500,000 ringgit (ATIPSOM, 2007(S.18).

The Anti-Trafficking Act, 2007 further, explains that “exploitation means all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs” (ATIPSOM, 2007(S.2). Thus the term “exploitation” covers all the possible abuses, mistreatments in terms of

slavery, servitude, labour and sexual abuses and exploitations. Furthermore, section 2 of the Act defines “coercion” which is a major element of human trafficking offenses. The Act declares that: “coercion” means- (a) threat of serious harm to or physical restraint against any person; (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (c) the abuse or threatened abuse of the legal process” (ATIPSOM, 2007(S.2). Therefore, this section describes the nature of coercion. It is a form of threat to life which brings immediate danger against the life of the person coerced and there is no alternative but to follow the coercer. In addition, it also covers a plan that creates belief that failure to do so will be a life threat for the person or any threat by way of legal means. All these means come under the meaning of coercion within the context of this Act.

Recruitment of persons (women, men and child) contains in the definition for the purpose of exploitation in any kind whatsoever shall be an offence under this Act. However, the term does not explain as to what recruitment refers to or what are the ways of recruiting person in the trafficking activities. Section 19 gives an idea of recruitment and states that: “Any person who knowingly recruits, or agrees to recruit, another person to participate in the commission of an act of trafficking in persons, commits an offence and shall, on conviction be punished, with imprisonment for a term not exceeding ten years, and shall also be liable to fine” (ATIPSOM, 2007(S.19). The Act declares those recruitments as a crimes and recruiters as criminals where a person with the knowledge about misuse of the recruitment, enroll other person to join the trafficking activities shall commit an offence under this Act and the Act imposes 10 years imprisonment and monetary punishment at the same time. In further, the term ‘harboring’ in the definition also does not clarify by the interpretation clause of the Act. Nevertheless, section 22 of the Act explains that: (1) “Any person who-(a) harbours a person; or (b) prevents, hinders or interferes with the arrest of a person, knowing or having reason to believe that such person has committed or is planning or is likely to commit an act of trafficking in persons, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years, and shall also be liable to fine. (2) In this section, “harbour” means supplying a person with shelter, food, drink, money or clothes, arms, ammunition or means of conveyance, or assisting a person in any way to evade apprehension” (ATIPSOM, 2007(S.22(2).

The Act describes in detail meaning of harbour for the purpose of this Act and make it as a human trafficking offence and prescribes punishment of imprisonment for a term not exceeding ten years and at the same time fine. On the contrary the Act does not define child trafficking separately. However, it contains the term “trafficking in person” which refers to all type of person whether man, women, or children. In addition, child is defined as a person under the age of eighteen years and the law covers all the offences against child under the term “exploitation” which covers slavery, servitude, force labour or services and all kinds of commercial or other sexual exploitations. However, in order to prove whether there is an offence of human trafficking occurring or not it will depend on the prosecution to prove three elements such as (i) exploitation, (ii) trafficked person, and (iii) trafficking in person (Hamid, 2016) [5].

## 5. Available protections under the anti-trafficking in person and anti-smuggling of migrant Act, 2007

In order to prevent and prosecute the criminals of human trafficking in person and provide effective and adequate protection to the victims of this crime in line with the international convention of transnational organized crime and other relevant international human rights instrument, Government of Malaysia enacted the Anti-Trafficking Act 2007. This is the basic Act of the country for combating human trafficking offences and provides protection to the vulnerable victims. In this point, researcher discusses the available protections under this Act for the victims. However, before passing of the Anti-Trafficking Act, 2007 human trafficking offenses were tried by the criminal law of the country which was supported by eleven different laws of Malaysia. After enactment of the main law for preventing offenders and protecting victims, the law is still supplemented by those laws such as the Federal Constitution of Malaysia 1957, the Immigration Act 1959/63, Malaysian Maritime Enforcement Agency Act 2004, Customs Act 1967, Evidence Act 1950, Court of Judicature Act 1964, Child Act 2001, Penal Code, Anti-Money Laundering and Anti-Terrorism Financing Act 2001, Prevention of Crime Act 1959, Extradition Act 1992 and Mutual Assistance in Criminal Matters Act 2002 (Mokhtar & Hamid, 2016)<sup>[5]</sup>.

However, as regards the prevailing law for combating human trafficking the main law that is the ATIPSOM, 2007 shall prevail. Section 5 of the Act declares that: "The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other written law relating to trafficking in persons and smuggling of migrants. In the event of any conflict or inconsistency between the provisions of this Act and those of any other written laws, the provisions of this Act shall prevail and the conflicting or inconsistent provisions of such other written laws shall, to the extent of the conflict or inconsistency, be deemed to be superseded" (ATIPSOM, 2007(S.5). Therefore, due to the scope of this study, the researcher focuses only the main law i. e. ATIPSOM, 2007. Before starting the main law, it is necessary to consider the Federal Constitution of Malaysia as because Constitution is the supreme law of the land. The Federal Constitution of Malaysia, 1957, declares that "This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void" (Federal Constitution of Malaysia, 1957, (Art.4 (1)). The constitution pronounces its supremacy, therefore, any laws which are inconsistent with it shall be null and void. The issue of human trafficking has never been mentioned in the constitution, but there are two Articles which directly mention a few kinds of offenses which are often found in human trafficking activities. As the supreme law of the land, it provides two basic protection for the victims of slavery and forced labor in general and human trafficking in particular as because these offenses usually occur in human trafficking.

### 5.1 Place of refuge

The ATIPSOM, 2007 provides protection for the victims by giving accommodation in a place of refuge. The Act declares that: "The Minister may declare any house, building or place, or any part thereof, to be a place of refuge for the care and protection of trafficked persons and may, in like manner, declare that such place of refuge ceases to be a place of refuge. The Minister may, from time to time, direct the

separation of different categories of trafficked persons, among others, according to age and gender either at the same place of refuge or at different places of refuge"(ATIPSOM, 2007(S.42). Nevertheless, the Act does not explain about the functional structure of the shelter home or place of refuge, management of the home, functions, and activities of the home, an environment of the place, house or building, and procedures of handling the victims. These are the vital issues that require detail explanation for better application of the Act. Section 2 only states that "place of refuge" means a place declared by the Minister under subsection 42(1) of this Act without any explanation. In addition, the Act uses the term "premises" which refers to the "house, building, factory, land, tenement, easement of any tenure, whether open or enclosed, whether built on or not, whether public or private, and whether maintained or not under statutory authority" (ATIPSOM, 2007(S.2).

Furthermore, the Act uses the term 'may' instead of 'shall' which refers that the responsibility of the concerned authority given by this section is directive rather than mandatory to do that. In the absence of proper guideline, it is quite impossible to receive proper and adequate protection by the victims of human trafficking in person. However, section 7 describes the functions and powers of the Council established under section 6 where the council has responsibilities, among others, to formulate protective program for trafficked persons, to make policies to prevent and combat trafficking in persons and to monitor the immigration patterns in Malaysia. Again it is not clear that what will be the standard of formulating protective home, what necessary elements will cover under protective home program, who will administer these places of refuge, what the responsibility of those officers working in a place of refuge. What are the procedures to be followed by the victims of human trafficking in getting this protection and so on?

However, the Act criminalizes the offence of removing or helping a trafficked person to escape from place of refuge. The Act provides that: "Any person who-(a) removes a trafficked person from a place of refuge without lawful authority; (b) Knowingly assists or induces, directly or indirectly, a trafficked person to escape from a place of refuge; or (c) Knowingly harbors or conceals a trafficked person who has so escaped, or prevents him from returning to the place of refuge, commits an offence" (ATIPSOM, 2007(S.56). Section 56 of the Act states that if any person takes away a trafficked person from a place of refuge without legal capacity and with full knowledge about the consequences shall commit an offence and be subjected to punishment prescribed in the Act (ATIPSOM, 2007(S.56).

### 5.2 Appointment of protection officer

With the intent of protecting victims of human trafficking, the government appoints social welfare officers subject to the condition of this Act. The Act expresses that: (1) "The Minister, after consultation with the Minister charged with the responsibility for women, family and community development may appoint such number of Social Welfare Officers or any other public officers to exercise the powers and perform the duties of a Protection Officer under this Act subject to any condition as may be specified" (ATIPSOM, 2007(S.43(1)). The Act empowers the Minister to appoint social welfare officer, protection officer, or any other public officer for the welfare of the victims. However, in doing so Minister shall consult with other relevant Ministry such as women, family and community development, or other

ministry for the better protection of the victims (ATIPSOM, 2007(S.43). In addition, it says that any person may be appointed as protection officer by the minister who he thinks competent or fit to exercise the powers and perform the duties of a protection officer under this Act (ATIPSOM, 2007(S.43). The Act at the same time provides certain responsibility in protecting the victims of trafficking whether men, women or children. A protection officer shall be responsible for care and protection of the trafficked person at the place of refuge, carry out an enquiry and cause to prepare a report of the trafficked person as requires under this Act. In addition, the officer has power to supervise the trafficked person upon order by the Magistrate or direction by the Minister, and such other powers, duties and functions as the Minister may prescribe (ATIPSOM, 2007(S.43).

However, the Act provides ambiguous expression that the officer will take care and protection of the trafficked person without giving explanation about care and protection. Therefore, what are the things or issues of the victims that needs to be taken care of and what are the aspects that may come under the expression of protection that may be guided by the Act? In a general sense, care contains activities that remove physical, mental, psychological trauma and regain confidence and hope to live while protection refers to activities which can save their life from injury, damage, and risk. The term "care" means the provision of what is necessary for the health, welfare, maintenance, and protection of someone or something in other way it is a serious attention or consideration applied to doing something correctly or to avoid damage or risk. In the dictionary it is the process of protecting someone or something and providing what that person or thing needs (Cambridge Dictionary, 2008). In contrast, the term "protection" means the action of protecting, or the state of being protected. It also refers to a person or thing that protects someone or something. In other words, it means a legal or other formal measure intended to preserve civil liberties and rights and the condition or state of being kept safe from injury, damage, or loss. Therefore, the law requires to set a list of care and protection that the law is intending to provide for the interest of the victims of human trafficking.

### 5.3 Temporary Custody

The Act provides temporary protection of the victims through an interim protection order by the magistrate. If any person finds with reasonable suspicion that the person or persons are being trafficked then such person or persons whether men, women or child shall be sent to the place of refuge through proper court order. This is a kind of a protection of identification of the victims and rescues them from exploitation of any kind by the traffickers. The Act states that: (1) "An enforcement officer may, on reasonable suspicion that any person who is found or rescued is a trafficked person, take that person into temporary custody and produce him before a Magistrate within twenty-four hours, exclusive of the time necessary for the journey to the Magistrate's Court, for the purpose of obtaining an interim protection order; (2) The Magistrate shall make an interim protection order for the person to be placed at a place of refuge for a period of twenty-one days for the purpose of carrying out an investigation and enquiry under section 51; (3) The enforcement officer shall, upon obtaining the order issued under subsection (2), surrender the trafficked person to a Protection Officer to place that trafficked person at the place of refuge specified in the

order" (ATIPSOM, 2007(S.44).

The Act explains the procedure for granting of a temporary custody under this Act. First of all an enforcement officer think that there is a reasonable suspicion about any person who might be a trafficked victims, such officer shall rescue him or her and put into temporary custody in a place of refuge and produce the person before Magistrate for interim order of protection. If the court is satisfied may grant a temporary order for protection of the victims (ATIPSOM, 2007(S.44). After getting the court order the enforcement officer shall hand over the victim or suspected victims to the protection officer at the place of refuge specified in the order. Therefore, if any victim or victims of human trafficking can make a contact with the enforcement officer or police in general they will be provided a short protection and make an arrangement through proper diplomatic channel to return to their country.

### 5.4 Medical Treatment

The Act provides physical, mental and psychological health protection through giving medical treatment during the stay in the place of refuge or protection home of any kind. If the condition of the victim or victims is serious in nature the enforcement officer takes him to the hospital before presenting him to the Magistrate for interim order. The Act provides that: (1) "Where an enforcement officer who takes a person into temporary custody under subsection 44(1) is of the opinion that the person is in need of medical examination or treatment, the enforcement officer may, instead of taking that person before a Magistrate, present him to a medical officer; (2) If at the time of being taken into temporary custody, the person is a patient in a hospital, the enforcement officer may leave that person in the hospital" (ATIPSOM, 2007(S.45). This section empowers the enforcement officer and medical officer to provide medical treatment to the victims after getting a temporary protection order from the court. However, depending on the circumstance, victims can get priority for medical treatment. The Act gives the discretion in the hand of the enforcement officer that if he thinks fit for any medical examination is necessary, he may order the medical officer to do those examinations (ATIPSOM, 2007(S.45).

As regards the medical treatment the law is following the diagnosis report of the medical officer. The medical officer shall conduct an examination of the person. However, if the medical officer requires by an enforcement officer for doing certain additional tests which is necessary to understand the condition of the person. The medical officer may provide necessary treatment as he thinks fit according to the diagnosis report. Therefore, it is not certain for the victims that they will get all types of medical treatment unless approved by the enforcement officer. Thus the protection seemed to be provided at the will of the enforcement personnel and not the real need of the victim. In a case where the victim is a child the medical officer recommends that the child should be hospitalized then the enforcement officer will approved him to be hospitalized. The Act declares that: "A medical officer before whom a person is presented under section 45-(a) Shall conduct or cause to be conducted an examination of the person; (b) May in examining the person and if so authorized by an enforcement officer, administer or cause to be administered such procedures and tests as may be necessary to diagnose the person's condition; or (c) May provides or causes to be provided such treatment as he considers necessary as a result of the diagnosis" (ATIPSOM,

2007(S.46). Section 47 of the ATIPSOM, 2007 stated that “where a person taken into temporary custody under subsection 44(1) is a child and the medical officer who examines him is of the opinion that his hospitalization is necessary for the purpose of medical care or treatment, an enforcement officer may authorize that person to be hospitalized” (ATIPSOM, 2007(S.47)). If the person sent to the custody is hospitalized, the officer shall provide the necessary security and protection of the person (ATIPSOM, 2007(S.48)).

### 5.5 Protection Order

The Act authorizes the Magistrate to issue a temporary protection order on the production of the suspected victims of human trafficking in person under section 44 (2) of this law. In order to provide protection in the temporary custody, the enforcement officer needs to determine whether the suspected person men, women or child is a victim under this Act or not. The enforcement officer should complete his investigation within the stipulated time given by the Act. Section 51 states that when a protection order is declared by the Magistrate, the enforcement officer within twenty-one days from the date of such order ascertains whether the person has been trafficked or not in considering his background and previous record (ATIPSOM, 2007(S.51(1&2)). After the completion of the investigation as to whether the person is trafficked or not, both officer shall jointly prepare a report and submit before the court i.e. the Court of Magistrate along with the person kept in the custody with a view to satisfy the Court that the person is a victim of human trafficking within the scope of this Act. Magistrate, thereafter, reads and scrutinizes the report which has been submitted under section 51(2) by both officers mentioned above. Upon the satisfaction of the report that the person is a trafficked victim and needs to care and protection for his good self, Magistrate may issue a protection order. As regards the duration of stay in the place of refuge, the protection order will clarify that on the basis of status or citizenship of the victim or victims of the human trafficking in person in Malaysia. The Act provides guideline that if the person trafficked is a citizen or permanent resident of Malaysia then he will be allowed to stay in the place of refuge for a period of three months from the date of the protection order (ATIPSOM, 2007(S.51(3)(a)(i)).

In contrast, if it finds that the victim or victims is or are not the citizen or permanent resident of Malaysia rather than a foreign nationality, the Magistrate may order to keep this victim into the place of refuge for three months from the date of granting the order. After the expiry of three months he will be released and sent to the immigration officer for taking necessary steps to return the person to his country of origin according to the immigration law of Malaysia. However, upon the application of an enforcement officer or a protection officer, the Magistrate may at any time extend or withdraw the protection order under this section. In addition, Magistrate will extend the duration of stay in the place of refuge for a foreign national only for the purposes of completing the recording of his evidence under section 52 or for any exceptional circumstances as determined by him (ATIPSOM, 2007(S.51(3)(a)(i)).

### 5.6 Rescue and Return

The law provides protection for the victim or victims through rescue and safe return to their country of origin through certain legal procedures. Section 44 (1) empowers the

enforcement officer to keep any person with reasonable suspicion to be a trafficked person in to a place of refuge and produce him before the Magistrate within 24 hours subject to the fitness of the person or persons for securing an interim protection order for such victim or victims (ATIPSOM, 2007(S.44(1)). After hearing of the report of investigation by the enforcement and protection officers, if it appears that the victim is a foreign national, the Magistrate may order the officers to keep the person in the place of refuge for a period not exceeding three months from the date of the order and after the expiry of three months the person shall be released and sent to the immigration officer for taking further steps to return such victim or victims of human trafficking to their country of origin according to the provisions of the Immigration Act of Malaysia. Section 54 (1) (b) stated that “in the case of a trafficked person who is a foreign national who has valid documents and is employed, release that person, or in any other case as may be prescribed, release that person to an immigration officer to be returned to his country of origin in accordance with any laws relating to immigration” (ATIPSOM, 2007(S.54 (1) (b)). However, if it is discovered that the person is not a trafficked one but a foreign nationality, Magistrate may release the person and send to the Immigration department for necessary action according to the Malaysian Immigration Act, (ATIPSOM, 2007(S. 51 (3) (a) (ii) & (b) (ii)).

It is pertinent to mention here that the Anti-Trafficking Act, 2007 refers to the provisions of the Immigration Act, 1959 for safe return or repatriation of the victims to their country of origin at the decision of the magistrate under section 51 of the Trafficking Act, 2007. Therefore, it is relevant to discuss some of the provisions of Immigration Act which is helpful to understand the reasons and process of return of a victim. Section 6 of the immigration Act explains the requirements of entry into Malaysian territory and said that a person can only enter Malaysia if he is in possession of a valid travel document with entry permit lawfully issued that document along with the endorsement of his name and the name of his company who is a permit holder lawfully (Immigration Act, 1959/63 (S.6)). Therefore, any person is found without having such documents and lawful requirements he may become either victim of trafficking or illegal immigrant in Malaysia under this law. In addition, section 8 of the Immigration Act, 1959 declares them as illegal migrant or prohibited migrant in Malaysia where sub-section (e) and (f) stated that: “any prostitute, or any person who is living on or receiving, or who, prior to entering Malaysia, lived on or received, the proceeds of prostitution or any person who procures or attempts to bring into Malaysia prostitutes or women or girls for the purpose of prostitution or other immoral purposes shall be treated as prohibited immigrants” (ATIPSOM, 2007(S.8)). Furthermore, section 46 of the Immigration Act, 1959 outlining the repatriation of certain kinds of persons from Malaysia states that any person residing in Malaysia who is not a citizen shall be repatriated to their country of origin. Therefore, it is clear that after the expiry of three months for a victim in the place of refuge and the person who are not proved as a trafficked victim may fall under the above position as mentioned in the Immigration Act, 1959 (ATIPSOM, 2007(S.8)). In this situation, victims of human trafficking can get only protection through a safe return by the immigration authority of Malaysia. Furthermore, the Immigration Act, 1959 criminalized the act of harboring which is at the same time come under the ATIPSOM 2007.

### 5.7 Protection for internally trafficked persons

The Act further provides protection for its citizen or permanent resident who become the victim of human trafficking internally. Under section 44 it is the duty of an enforcement officer to take any person whether its own citizen or a foreigner, into the temporary place of refuge who is reasonably be suspected as the victim of human trafficking in order to obtain an interim protection order from the Magistrate's Court. After proving the fact that the victim is a citizen of Malaysia or permanent resident in Malaysia, the Magistrate may order to keep this person in the shelter home for a period not exceeding three months from the date of the order. The order of staying in the place of refuge followed by release order after the expiry of the said three months (ATIPSOM, 2007(S. (S.51 (3) (a) (i) & (b) (i)). However, if the family of the victim comes to know that their family members are kept in the place of refuge during this three months, they can apply to the Court to transfer that person from custody to the parent, guardian or relatives (ATIPSOM, 2007(S.53(1). In doing so, "the parent, guardian or relative of the trafficked person shall serve a copy of the application to the Protection Officer" (ATIPSOM, 2007(S.53(2). In order to take appropriate decision, protection officer will prepare a convincing report considering the background of the trafficked person and his family and submit it to the Magistrate. If the Magistrate is convinced by the report and hearing on it he may handover the victim under the care of the parent, guardian or any other relative of the victim along with necessary stipulations and time (ATIPSOM, 2007(S.53).

### 5.8 Protection of privacy

The ATIPSOM 2007 also gives protection of privacy of the trafficked victim or victims by imposing restriction on media reporting and publication. Section 58 of the Act deals with protection of privacy of those victims. It pronounces that: (1) "Notwithstanding any written laws to the contrary, any mass media report regarding-(a) any step taken in relation to a trafficked person or smuggled migrant in any proceedings be it at the pre-trial, trial or post-trial stage; (b) any trafficked person in respect of whom custody or protection is accorded under Part V; or (c) any other matters under this Act" (ATIPSOM, 2007(S.58). It further, expresses that: "A picture of- (a) any trafficked person or smuggled migrant in any of the matters mentioned in subsection (1); or (b) any other person, place or thing which may lead to the identification of the trafficked person or smuggled migrant, shall not be published in any newspaper or magazine or transmitted through any electronic medium. Any person who contravenes subsection (1) or (2) commits an offence" (ATIPSOM, 2007(S.58(2).

The picture of the victim relating to person, location or anything that indicates the identity of the trafficked person is prohibited to publish in any printing or any electronic media. The Act makes these activities prohibited, therefore, if any person contravenes this rules will commit an offence and shall be liable for prescribed punishment. This is a very crucial protection for the victims which ATIPSOM 2007 provides in Malaysia. The publication of such news and images causes serious hurdle for them to be rehabilitated and reintegrated into the society. The news also causes psychological harm to the affected person. It may further, open many unknown mishaps and various types of harassments especially, the news of a missing women (kidnapped) and children may damage the reputation of the person in the society. Thus, in

such situation, it is quite impossible for them to go back into their locality and start a fresh life. Even if they return to the society, they will be humiliated in each and every stage of their life because of social miss behavior to them.

### 5.9 Protection from criminal conviction

The ATIPSOM 2007 provides protection and immunity for the trafficked victims from criminal prosecution because they are already suppressed and exploited by the traffickers and there is hardly scope to convict the trafficked person unless they commit any criminal offences. If they are convicted by the court for their illegal entry into the territory of Malaysia that will be a case of double jeopardy since they are in the course of suppression and exploitation in any kind whether sexual or forced labour by the human traffickers in the one hand and again they will suffer if the court convicts them for their illegal presence. The Act declares that: "A trafficked person shall not be liable to criminal prosecution in respect of- (a) his illegal entry into the receiving country or transit country; (b) his period of unlawful residence in the receiving country or transit country; (c) his procurement or possession of any fraudulent travel or identity document which he obtained, or which he supplies, for the purpose of entering the receiving country or transit country, where such acts are the direct consequence of an act of trafficking in persons that is alleged to have been committed." (ATIPSOM, 2007(S.25). This provision gives immunity for the victims of human trafficking from criminal conviction. The rationale behind the concession is that these people are already victimized by the traffickers. Therefore, the law gives them a chance for survival even if their entry is found illegal and they stay in Malaysia and also possess false and fraudulent travel documents (ATIPSOM, 2007(S.25).

Furthermore, the Act penalizes the offenders and gives sentence of punishment prescribed under this law. In addition, the court determines the compensation to be paid by the offenders for loss or damage caused by the human trafficking journey of the victim. Section 66A deals with this matter that the court may order for compensation to the person convicted for any offense under this Act to the victims. However, in pronouncing the order the court obliges to follow the 426 (1A), (1B), (1C), (1D) of the Criminal procedure Code, 1935 (Criminal Procedure Code, 1935 (S.426). In the same way, when the court determines the method of payment of such compensation, it follows the instruction provided under section 432 of the Criminal Procedure Code, 1935 (Criminal Procedure Code, 1935 (S.432). However, the order of payment of compensation under this section shall not prevent the commencement of any civil action in Court against the convicted person (ATIPSOM, 2007(S.66A(4).

### 5.10 Protection of witnesses

The ATIPSOM 2007 gives protection for the informer or witnesses in order to handle human traffickers by prosecuting, preventing and protecting the victims of this heinous crime. However, it is evident that law enforcement agencies in many jurisdictions use informer or witnesses to detect the offenders and the agencies and provide adequate protection for informer or witnesses. Section 26 of the Act declares that "no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery" (ATIPSOM, 2007(S.26(1). It further, states that: "if any book, document or paper which is in evidence or liable to inspection in any civil or criminal proceedings whatsoever



contains any entry in which any informer is named or described or which may lead to his discovery, the court before which the proceedings are held shall cause all such entries to be concealed from view or to be obliterated so far as is necessary to protect the informer from discovery” (ATIPSOM, 2007(S.26(1)). Furthermore, the section discusses the statement of the informer whether true or false in a trial that “if in a trial for any offence under this Act, the Court, after full enquiry into the case, is of the opinion that the informer wilfully made in his complaint a material statement which he knew or believe to be false or does not believe to be true, or if in any other proceedings the court is of the opinion that justice cannot be fully done between the parties without the discovery of the informer”(ATIPSOM, 2007(S.26(3)). However, in this the Court may order to submit the original copy of the complaint and may permit enquiry and also require full disclosure about the informer. In addition, the Act declares that: “any person who gives the information referred to in this section, knowing that the information is false, commits an offense” (ATIPSOM, 2007(S.26(3).(4).

## 6. Conclusion and Recommendations

Sexual exploitation mainly evolved from clandestine manners leave all rights of human beings into serious vulnerability especially for the children and women. Child sexual abuse, child sexual exploitation surfaced into the last decade of the 20th century as two of the most neglected forms of child abuse. The commercial sexual exploitation of children and women appears to be more dangerous affecting the lives of the millions of children dating back to the rise of bourgeoisie development that always pursues all these as object. At the same time economic growth rate with a narrow view of capitalism on maximizing the profit has created immense poverty round the world. Nevertheless, there is an urgent need of overhauling to prevent unfiltered rise of sexual abuse, exploitation and trafficking in the present day world for the sake of upholding human rights. This requires enormous persuasion for implementation of the most holistic child rights convention (CRC) by the UN.

However, in deteriorating situation of human trafficking in Malaysia, it needs to make a combined effort through improving the Act and enforcement mechanism and translate those into effective practice in the country. The study also highlights the initiatives taken by the Malaysian government and the legal and policy structure to combat the human trafficking offences that may be considered within the context of Bangladesh. It also explores the essential definition of human trafficking in person under the ATIPSOM 2007. Although there is no special provision in the Act that defines human trafficking, there are some terms of law which define the human trafficking and interpretation of the terms which fills the gap. It further examines the protections given by this ATIPSOM 2007 for the victims of human trafficking. All the points mentioned in the discussion are somewhat relevant to the laws of Bangladesh with regard to prevention of trafficking in person in Bangladesh. Thus, Bangladesh may consider the relevant and useful part of the discussion for further improvement of the existing laws. Furthermore, the study discusses the positive aspect as well as shortcomings in each type of protection in terms of adequacy or appropriateness as the real support to the victims of this crime.

As regards the place of refuge, the Act empowers the government for declaring certain place as place of refuge.

However, regarding formation, functions, and administration, the Act does not provide any clear instruction. Therefore, researcher finds that there is a need for making detail rules about it. As regards the protection order, the Act makes a good way to administer protestation mechanism. The Act empowers the court within this process and enforcement officer follows the court order on the temporary protection order. This is a significant development for the protection of victims. In addition, in terms of temporary custody study find the duration is enough for identification of the victims but not enough for proper treatment and recovery of the victims. In terms of medical treatment, positive approaches are found in the Act. However, the full treatment depends on to the will of the enforcement officer. If the officer wishes only then the victim will get those medical treatments, therefore, there is need to consider this situation. As regards the repatriation, the Act provides protection and after completing legal process the victim is sent to the immigration department for return. The process of return by immigration department is safe and effective. In addition, in terms of protection of internal trafficked person, protection of privacy, and protection of informer and witnesses and protection from criminal convictions, the Act makes significant advancement in protecting the victims of human trafficking and in combating the traffickers.

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