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BASELINE STUDY

“Study on Exploring Strengths and Loopholes of National Laws and Policies on Child Protection for the Purpose of Harmonizing those with the United Nation’s Convention Against Torture (UNCAT) and United Nation’s Convention on the Rights of the Child (UNCRC)”

For the Project Titled:

Improving Child Protection and Rehabilitation of Children from Sexual Abuse and Exploitation in Bangladesh

For & on behalf of:

Save the Children International
Bangladesh

Prepared by Study Team led by:

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CHHAPTER- 1

INTRODUCTION AND OBJECTIVES OF THE STUDY

INTRODUCTION

The present baseline study has been conducted for the project titled “Improving Child Protection and Rehabilitation of Children from Sexual Abuse and Exploitation in Bangladesh”, designed by the Save the Children and supported by the European Commission. The project is developed in line with United Nation’s Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and United Nation’s Convention on the Rights of the Child (CRC) for ensuring child rights as well as for suppression of various forms of torture and ill-treatment against children in Bangladesh.

OBJECTIVES OF THE STUDY

The objective of the project includes both prevention and rehabilitation measures to empower children as well as to address and approach the key duty bearers and by doing so to reduce the cases of sexual abuse and exploitation in the short and long term. The present baseline survey was required to provide a practical ground for effective implementation of the project. The report of this study is expected to be the knowledge base of the existing situation which will be the basis of implementation, selection of final target groups, monitoring, evaluation and tracking progress. Furthermore, this study was designed in order to obtain an overall understanding of the scope, magnitude, and nature of the sexual violation, torture and ill-treatment in the legal context of Bangladesh. The study was also aimed at equipping project personnel with information and strategic options to address the targeted issues. Therefore, the present baseline study involves the following objectives:

- i) Analysis of legal framework of torture, sexual abuse and exploitation in Bangladesh;
- ii) Critical appraisal of legal framework of torture, sexual abuse and exploitation in Bangladesh in the light of UNCAT and UNCRC;
- iii) To explore the strengths and loopholes of laws and policies of Bangladesh on child protection;
- iv) Focus on national obligations of Bangladesh under UNCAT and UNCRC;
- v) To compare the national laws with the standards with the provisions of UNCAT and UNCRC; and
- vi) To identify challenges in harmonization of national laws and policies with UNCAT and UNCRC.

CHAPTER- 2

METHODOLOGY

The study team consulted and reviewed primary and secondary sources in conducting the research. The primary sources for review included the international legal instruments; national substantive and procedural laws and policies applicable for rights of children and for their protection from torture, sexual abuse and exploitation, reported judgments etc. Review of the secondary sources includes reviewing reports, articles, seminar papers, books, journals and other literatures relating to research theme.

The study combined both doctrinal explorations with empirical investigation. While collecting empirical information attention was given both to top-down and bottom-up perspectives of the actors who are involved in implementation of existing laws and policies and the stakeholders.

In identifying the challenges of harmonizing national laws, policies, and strategy related to children with international instruments e.g. UNCAT and UNCRC, a few key informant interviews have been taken from the practitioners and judicial officers in this field.

Following the interviews data/information was collated, codified, and rigorously analyzed before putting them into the write-up skeleton. As to report writing, apart from portraying an overall existing national and international legal framework on child protection, the team used an analytical framework for compliance and gap analysis between national and international instruments. As a whole, to conduct the study the following methodological approach was followed:

Literature Review:

The study team first reviewed the core instruments i.e. the UNCAT and UNCRC with particular focus on torture and sexual abuse and exploitation. Thereafter inventories of national and international relevant legal and policy documents were prepared. In addition

to the aforesaid documents the Study team reviewed the Initial Report and available Periodic reports of Bangladesh, which were submitted to the committee under the UNCRC as well as to concluding observations of the Child Rights Committee on the reports of Bangladesh. The team also studied many other previous research works on the issues relevant to this study.

Key Informant Interview (KII):

The study team has had some Key Informant Interviews of the stakeholders in the promotion and protection rights of children. The interviewees includes judicial officers, lawyers, prosecutors, personnel of law enforcement agencies, human rights activists, officers of different government bodies including National Human Rights Commission, Law Commission etc.

Data Collection (from primary and secondary sources):

The study team collected data both from primary and secondary sources. The team contacted with the Committee under the UNCAT to check with compliance of obligations of Bangladesh. The team contacted and visited offices of different ministries and government bodies including National Human Rights Commission, Ministry of Law, Justice and Parliamentary Affairs, Ministry of Foreign Affairs etc. The team also collected some relevant judgements from individual human rights lawyers. In addition to these the team collected data from different websites which are both primary and secondary sources depending on the hosting authority of these sites.

Limitation of the Research

The particular objective of this study was to explore national laws and policies. As a result, this study report may seem ‘too legal’ to the many. However, in identifying challenges in harmonization of national laws and policies with the provisions of UNCAT and UNCRC some political, economic, social, cultural, religious and institutional factors have been considered.

CHAPTER- 3

RIGHTS OF THE CHILDREN ENSHRINED IN UNCRC & UNCAT.

SHORT DESCRIPTIONS OF UNCAT

Background to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture) is an international human rights instrument under the review of the United Nations that aims to prevent torture around the world. The Convention requires states to take effective measures to prevent torture within their borders, and forbids states to transport people to any country where there is reason to believe they will be tortured. The text of the Convention was adopted by the United Nations General Assembly on 10 December 1984 and, following ratification by the 20th state party, it came into force on 26 June 1987. Therefore, the 26th June is now recognized as the International Day in Support of Torture Victims, in honour of the Convention.

Summary of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: The Covenant follows the structure of the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), with a preamble and 33 articles, divided into three parts:

Part I (Articles 1–16):

Part I (Articles 1–16) defines torture (Article 1), and commits parties to taking effective measures to prevent any act of torture in any territory under their jurisdiction (Article 2). These include ensuring that torture is a criminal offense (Article 4), establishing jurisdiction over acts of torture committed by or against a party's citizens (Article 5), ensuring that torture is an extraditable offense (Article 8), and establishing universal jurisdiction to try cases of torture where an alleged torturer cannot be extradited (Article

5). Parties must promptly investigate any allegation of torture (Articles 12 and 13), and victims of torture must have an enforceable right to compensation (Article 14). Parties must also ban the use of evidence produced by torture in their courts (Article 15), and are barred from deporting, extraditing or refouling people where there are substantial grounds for believing that they will be tortured (Article 3). Parties are also obliged to prevent other acts of cruel, inhuman or degrading treatment or punishment, and to investigate any allegation of such treatment within their jurisdiction (Article 16).

Part II (articles 17 – 24):

Part II (articles 17 – 24) governs reporting and monitoring of the Convention and the steps taken by the parties to implement it. It establishes the Committee against Torture (Article 17), and empowers it to investigate allegations of systematic torture (Article 20). It also establishes an optional dispute-resolution mechanism between parties (Articles 21) and allows parties to recognize the competence of the Committee to hear complaints from individuals about violations of the Convention by a party (Article 22).

Part III (Articles 25 – 33):

Part III (Articles 25 – 33) governs ratification, entry into force, and amendment of the Convention. It also includes an optional arbitration mechanism for disputes between parties (Article 30).

Definition of Torture under the UNCAT: Article 1 of the Convention against Torture (CAT) provides a definition of Torture under the convention:

Article 1 -Definition:

“For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

It is possible to extract from Article-1 three essential factors necessary for an act to be torture:

1. The infliction of severe mental or physical pain or suffering;
2. By or with the consent or acquiescence of the State authorities;
3. For a specific purpose, such as gaining information, punishment or intimidation.

The acts of Torture:

The act of torture in the Convention refers to the deliberate infliction of severe pain or suffering upon a person, which can be either mental or physical in nature and caused by either a single isolated act, or a number of such acts. The nature and degree of suffering experienced by an individual may be difficult to verify objectively. It may depend on many personal characteristics of the victim—for example sex, age, religious or cultural beliefs, or health. In other cases, certain forms of ill-treatment or certain aspects of detention which would not constitute torture on their own may do so in combination with each other. The scope of 'severe' encompasses prolonged coercive or abusive conduct which in itself is not severe, but becomes so over a period of time. The test to be employed for so doing is a subjective one that takes account of the circumstances of each case.

The UN Special Rapporteur on Torture, in his 1986 report, provided a detailed, although not exhaustive, catalogue of those acts which involve the infliction of suffering severe enough to constitute the offence of torture, including: beating; extraction of nails, teeth, etc.; burns; electric shocks; suspension; suffocation; exposure to excessive light or noise; **sexual aggression**; administration of drugs or detention in psychiatric institutions; prolonged denial of rest or sleep; prolonged denial of food; prolonged denial of sufficient hygiene; prolonged denial of medical assistance; total isolation and sensory deprivation;

being kept in constant uncertainty in terms of space and time; threats to torture or kill relatives; total abandonment; and simulated executions.

However, there are also many "**grey areas**" which either do not clearly amount to torture or about which there is still disagreement. Examples include:

- Judicial corporal punishment;
- Some forms of capital punishment;
- Solitary confinement;
- Certain aspects of poor prison conditions, particularly if experienced in combination;
- Disappearances, including their effect on the close relatives of the disappeared persons;
- Treatment inflicted on a child which might not be considered torture if inflicted on an adult.¹

Many of these areas may be considered as **other forms of ill-treatment**, which are distinguished in the Convention from torture by the degree of suffering involved and the need for a purposive element.

Different cultures, and indeed individuals within a particular culture, may have different perceptions of what amounts to torture. This can be relevant in two ways: On the one hand, it can mean that behaviour which is thought of as torture by a given culture or individual victim may not normally constitute torture in the eyes of the international bodies. On the other hand, it can mean that treatment which is consistently considered by the international community to amount to torture is not viewed as such by the person who has been subjected to it.²

¹ Ibid, p. 14

² Camille Giffard, "The Torture Reporting Handbook", Human Rights Centre, University of Essex, 2000, p. 14.

The Convention, like other conventions referring to torture, includes the prohibition of **"mental torture"** within the scope of the prohibition of torture.

Article 1 of the Convention does not refer specifically to **rape** as a form of torture. However, international case law and the reports of the UN Special Rapporteur evince a momentum towards considering, through legal process, the use of rape in the course of detention and interrogation as a means of torture. Rape can be resorted to either by the interrogator or by other persons associated with the interrogation of a detainee, as a means of punishing, intimidating, coercing, or humiliating the victim, or obtaining information, or a confession, from the victim or a third person. In human rights law, rape under these circumstances amounts to torture, as demonstrated by the finding of the European Court of Human Rights in the case of *Aydin v. Turkey*, 1997³.

The International Tribunal for the Former Yugoslavia has formulated the issue of rape in the context of torture as follows:

"...Rape causes severe pain and suffering, both physical and psychological. The psychological suffering of persons upon whom rape is inflicted may be exacerbated by social and cultural conditions and can be particularly acute and long lasting. Furthermore, it is difficult to envisage circumstances in which rape, by, or at the instigation of a public official, or with the consent or acquiescence of an official, could be considered as occurring for a purpose that does not, in some way, involve punishment, coercion, discrimination or intimidation. Accordingly, whenever rape and other forms of sexual violence meet the aforementioned criteria, then they shall constitute torture, in the same manner as any other acts that meet these criteria."⁴

The Purpose of the act of Torture:

In order to be torture under the UNCAT an act must be intentionally inflicted "...for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination

³ *Aydin v. Turkey*, 1997, Judgement of the European Court of Human Rights on 25 September.

⁴ *Prosecutor v. Delalic et al.*, Case No. IT-96-21-T, 16 November 1998, paras 495-496

of any kind..." at the "instigation" i.e. incitement, inducement, or solicitation in direct or indirect involvement and participation of a public official raising State responsibility.

Public Official:

It follows from the text of Article 1 that the definition of 'torture' does not apply to private acts of cruelty. International concern arises only where cruelty has official sanction. The element of **official sanction** is stated in very broad terms and also extends to officials who take a passive attitude, or who turn a blind eye to torture committed against opponents of the government in power, be it by unofficial groups or by the authorities.⁵ Failure to act in such cases could well be interpreted at least as acquiescence.⁶

Lawful Sanction:

Pain and suffering arising from, inherent in, or incidental to a lawful sanction falls outside the ambit of torture. In the view of the UN Special Rapporteur on Torture, the "lawful sanctions" exclusion must necessarily refer to those sanctions that constitute practices widely accepted as legitimate by the international community, such as deprivation of liberty through imprisonment, which is common to almost all penal systems. Deprivation of liberty is a lawful sanction, if provided that it meets basic internationally accepted standards. However, a procedurally correct sanction could still fall within the scope of Article 1 of the Convention. The administration of such punishments as stoning to death, flogging, and amputation cannot be deemed lawful simply because the punishment has been authorized in a procedurally legitimate manner.

Minimum standard:

The definition of torture under the UNCAR in no way affects the protection which can be derived from other international instruments or from national legislation of wider application. In other words, insofar as other international instruments or national laws give the individual better protection, he or she is entitled to benefit from it; however, other

⁵ Nigel S. Rodley, "The Treatment of Prisoners under International Law", 2nd ed., Oxford, 1999, p. 100.

⁶ Ibid

international instruments or national law can never restrict the protection which the individual enjoys under UNCAT.

SHORT DESCRIPTIONS OF UNCRC:

Background to the UN Convention on the Rights of the Child (UNCRC): The roots of the UNCRC can be traced back to 1923 when Eglantyne Jebb, founder of Save the Children, summarized the rights of children in five points. Her Declaration of the Rights of the Child was adopted by the League of Nations in 1924 and the five points subsequently became known as the Declaration of Geneva. Following World War II, and its atrocities, the United Nations (UN) concentrated on producing the Universal Declaration of Human Rights (U.D.H.R.), which was adopted in 1948. Although the rights of children were implicitly included in this Declaration, it was felt by many to be insufficient and that the special needs of children justified an additional, separate document. In November 1959, the UN General Assembly adopted the second Declaration of the Rights of the Child, 1959. This consisted of ten principles and incorporated the guiding principle of working in the best interests of the child. However, this 1959 Declaration was not legally binding and was only a statement of general principles and intent. Ten years in the making, the UN Convention on the Rights of the Child (UNCRC) was adopted by the UN General Assembly in 1989, exactly thirty years after the 1959 Declaration. On 2 September 1990 it entered into force as international law.

Summary of the UN Convention on the Rights of the Child (UNCRC): The United Nations Convention on the Rights of the Child (UNCRC) is a comprehensive, internationally binding agreement on the rights of children, adopted by the UN General Assembly in 1989. It incorporates children's:

- **civil and political rights** (like their treatment under the law);
- **social, economic and cultural rights** (like an adequate standard of living); and
- **protection rights** (from abuse and exploitation).

There are four main sections to the UNCRC:

- the **Preamble**, which sets out the major underlying principles of the UNCRC and provides a context for it;
- the **substantive articles**, which set out the rights of all children and the obligations of governments (Part I, Articles 1-41);
- the **implementation provisions**, which define how compliance with the UNCRC is to be monitored and fostered (Part II, Articles 42-45); and
- the **conditions** under which the UNCRC comes into force (Part III, Articles 46-54).

The Preamble:

The Preamble of the UNCRC acknowledges the family as the fundamental unit of society and the natural environment for the growth and well-being of children. The Preamble also states that the family should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.

The Substantive Articles:

Each of the substantive articles, Articles 1-41, details a different type of right. A common approach to the UNCRC is to group these articles together under the following themes:

1. **Survival rights:** include the child's right to life and the needs that are most basic to existence, such as nutrition, shelter, an adequate living standard, and access to medical services.
2. **Development rights:** include the right to education, play, leisure, cultural activities, access to information, and freedom of thought, conscience and religion.
3. **Protection rights:** ensure children are safeguarded against all forms of abuse, neglect and exploitation, including special care for refugee children; safeguards for children in the criminal justice system; protection for children in employment;

protection and rehabilitation for children who have suffered exploitation or abuse of any kind.

4. **Participation rights:** encompass children's freedom to express opinions, to have a say in matters affecting their own lives, to join associations and to assemble peacefully. As their abilities develop, children are to have increasing opportunities to participate in the activities of their society, in preparation for responsible adulthood.

General Principles:

Within the UNCRC, four articles are accorded special emphasis, as they are basic to the implementation of all other rights. These four articles are often referred to as 'general principles'. These are:

- **Article 2** which states that all the rights guaranteed by the UNCRC must be available to all children without discrimination of any kind;
- **Article 3** which states that the best interests of the child must be a primary consideration in all actions concerning children;
- **Article 6** which states that every child has the right to life, survival and development; and
- **Article 12** which states that the child's view must be considered and taken into account in all matters affecting him or her.

Summary of the rights under the Convention on the Rights of the Child: The Convention defines in Article 1 a 'child' as a person below the age of 18 years, unless the laws of a particular country set the legal age for adulthood younger. The Committee on the Rights of the Child, the monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18. This convention set out the following rights for all children:

Article 2 (Non-discrimination):

The Convention applies to all children without any discrimination and guarantees that no child should be treated unfairly on any basis.

Article 3 (Best interests of the child):

The best interests of children must be the primary concern in making decisions that may affect them.

Article 4 (Protection of rights):

Governments have a responsibility to take all available measures to make sure children's rights are respected, protected and fulfilled.

Article 5 (Parental guidance):

Governments should respect the rights and responsibilities of families to direct and guide their children.

Article 6 (Survival and development):

Children have the right to live. Governments should ensure that children survive and develop healthily.

Article 7 (Registration, name, nationality, care):

All children have the right to a legally registered name, officially recognised by the government. Children have the right to a nationality and to be cared for by their parents, as far as possible,.

Article 8 (Preservation of identity):

Children have the right to an identity – an official record of who they are. Governments should respect children's right to a name, a nationality and family ties.

Article 9 (Separation from parents):

Children have the right to live with their parent(s), unless it is bad for them; and to stay in contact with both parents, unless this might hurt the child when his or her parents do not live together.

Article 10 (Family reunification):

Families whose members live in different countries should be allowed to move between those countries so that parents and children can stay in contact, or get back together as a family.

Article 11 (Kidnapping):

Governments should take steps to stop children being taken out of their own country illegally.

Article 12 (Respect for the views of the child):

Children have the right to say what they think should happen and have their opinions taken into account, when adults are making decisions affecting them.

Article 13 (Freedom of expression):

Children have the right to get and share information, as long as the information is not damaging to them or others.

Article 14 (Freedom of thought, conscience and religion):

Children have the right to think and believe what they want and to practise their religion.

Article 15 (Freedom of association):

Children have the right to meet together and to join groups and organisations.

Article 16 (Right to privacy):

Children have a right to privacy and the law should protect them from attacks against their way of life, their good name, their families and their homes.

Article 17 (Access to information; mass media):

Children have the right to get information that is important to their health and well-being.

Article 18 (Parental responsibilities; state assistance):

Both parents share responsibility for bringing up their children and should consider the best for each child. Governments have responsibility to provide support services to parents.

Article 19 (Protection from all forms of violence):

Children have the right to be protected from being hurt and mistreated, physically or mentally and be cared for and protected from violence, abuse and neglect by their parents, or anyone else who looks after them.

Article 20 (Children deprived of family environment):

Children who cannot be looked after by their own family have a right to special care and must be looked after properly.

Article 21 (Adoption):

Children have the right to care and protection if they are adopted or in foster care.

Article 22 (Refugee children):

Children have the right to special protection and help if they have been forced to leave their home and live in another country.

Article 23 (Children with disabilities):

Children who have any kind of disability have the right to special care and support so that they can live full and independent lives.

Article 24 (Health and health services):

Children have the right to good quality health care, to safe drinking water, nutritious food, a clean and safe environment and information to help them stay healthy.

Article 25 (Review of treatment in care):

Children who are looked after by their local authorities, rather than their parents, have the right to have these living arrangements looked at regularly to see if they are the most appropriate.

Article 26 (Social security):

Children have the right to help from the government if they are poor or in need either through their guardians or directly.

Article 27 (Adequate standard of living):

Children have the right to a standard of living, good enough to meet their physical and mental needs. Governments should help families and guardians with regard to food, clothing and housing.

Article 28: (Right to education):

All children have the right to a free primary education.

Article 29 (Goals of education):

Children's education should develop each child's personality, talents and abilities to the fullest. It should encourage children to respect others, human rights and their own and other cultures.

Article 30 (Children of minorities/indigenous groups):

Minority or indigenous children have the right to learn about and practice their own culture, language and religion. The right to practice one's own culture, language and religion applies to everyone.

Article 31 (Leisure, play and culture):

Children have the right to relax and play, and to join in a wide range of cultural, artistic and other recreational activities.

Article 32 (Child labour):

The government should protect children from work that is dangerous or might harm their health or their education.

Article 33 (Drug abuse):

Governments should use all means possible to protect children from the use of harmful drugs and from being used in the drug trade.

Article 34 (Sexual exploitation):

Governments should protect children from all forms of sexual exploitation and abuse. This provision in the Convention is augmented by the Optional Protocol on the sale of children, child prostitution and child pornography.

Article 35 (Abduction, sale and trafficking):

The government should take all possible measures to make sure that children are not abducted, sold or trafficked.

Article 36 (Other forms of exploitation):

Children should be protected from any activity that takes advantage of them or could harm their welfare and development.

Article 37 (Detention and punishment):

No one is allowed to punish children in a cruel or harmful way. Children who break the law should not be put in prison with adults, should be allowed to keep contact with their families, and should not be sentenced to death or life imprisonment.

Article 38 (War and armed conflicts):

Governments must do everything to protect and care for children affected by war. Children under 15 should not be forced or recruited to take part in a war or join the armed forces.

Article 39 (Rehabilitation of child victims):

Children who have been neglected, abused or exploited should receive special help to physically and psychologically recover and reintegrate into society.

Article 40 (Juvenile justice):

Children who are accused of breaking the law have the right to legal help and fair treatment in a justice system that respects their rights. Governments are required to set a minimum age of criminal responsibility for children and provide minimum guarantees for the fairness and quick resolution of proceedings relating to them.

Article 41 (Respect for superior national standards):

If the laws of a country provide better protection of children's rights than the articles of CRC, those laws should apply.

Article 42 (Knowledge of rights):

Governments should make the Convention known to adults and children. Adults should help children learn about their rights too.

CHAPTER- 4

PROTECTION AGAINST CHILD SEXUAL ABUSE AND EXPLOITATION ENUMERATED IN UNCRC AND UNCAT

Definitions of Child Sexual Abuse and Sexual Exploitation: Neither the United Nations' Convention against Torture nor the United Nations' Convention on Rights of Child has defined child sexual abuse or exploitation. However, Articles 34 and 35 of the United Nations Convention on the Rights of the Child (CRC) require states to protect children from all forms of sexual exploitation and sexual abuse. This includes outlawing the coercion of a child to perform sexual activity, the prostitution of children, and the exploitation of children in creating pornography. States are also required to prevent the abduction, sale, or trafficking of children.

Child Sexual Abuse:

Child sexual abuse is a form of child abuse in which an adult or older adolescent uses a child for sexual stimulation. Forms of child sexual abuse includes asking or pressuring a child to engage in sexual activities (regardless of the outcome), indecent exposure (of the genitals, female nipples, etc.) to a child with intent to gratify their own sexual desires or to intimidate or groom the child, physical sexual contact with a child, or using a child to produce child pornography. Under the law, "child sexual abuse" is an umbrella term describing criminal and civil offenses in which an adult engages in sexual activity with a child or exploits a child for the purpose of sexual gratification. A child sexual abuse offense where the perpetrator is related to the child, either by blood or marriage, is a form of incest described as intra-familial child sexual abuse. Child sexual abuse includes a variety of sexual offenses, including:

Sexual assault – a term defining offenses in which an adult touches a minor for the purpose of sexual gratification; for example, rape (including sodomy), and sexual penetration with an object.

Sexual exploitation – a term defining offenses in which an adult victimizes a minor for advancement, sexual gratification, or profit; for example, prostituting a child, and creating or trafficking in child pornography.

Sexual grooming – defines the social conduct of a potential child sex offender who seeks to make a minor more accepting of their advances, for example in an online chat room.

Child sexual abuse is outlawed nearly everywhere in the world, generally with severe criminal penalties, including in some jurisdictions, life imprisonment or capital punishment. An adult's sexual intercourse with a child below the legal age of consent is defined as statutory rape, based on the principle that a child is not capable of consent and that any apparent consent by a child is not considered to be legal consent.

Sexual Exploitation of Children:

Like UNCAT and UNCRC no other international instrument defines sexual exploitation, and opinions differ on the distinction between sexual exploitation and sexual abuse. In the context of the Optional Protocol of the UNCRC on Sale of Children etc (OPSC) sexual exploitation clearly includes child prostitution and child pornography, which includes the production of child pornography or participation of children in pornographic performances. Another practice that could be considered “sale for the purposes of sexual exploitation” is the so-called temporary marriage still practised in some parts of the world. Some types involve girls given in marriage to men –often older men – in exchange for money. These marriages may be for a few weeks or for several months, after which the girls are abandoned by their husbands and deprived of the rights acquired by marriage. The term sexual exploitation also includes some practices that are neither prostitution nor sale. They include sexual slavery and sexual relations between an adult and a child under his or her control without compensation of any kind being given to the child. Such

practices would include sexual relations between a child in detention and a police officer or prison officer, a child domestic servant and his or her employer, or a child confined in a home for orphans or children with disabilities and staff members in the home.

However, a declaration of the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm in 1996, defined Commercial sexual exploitation of children (CSEC) as:

‘sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons. The child is treated as a sexual object and as a commercial object.’

CSEC includes the prostitution of children, child pornography, child sex tourism and other forms of transactional sex where a child engages in sexual activities to have key needs fulfilled, such as food, shelter or access to education. It includes forms of transactional sex where the sexual abuse of children is not stopped or reported by household members, due to benefits derived by the household from the perpetrator.

Forms of sexual exploitation:

Prostitution of children under the age of 18 years, child pornography and the (often related) sale and trafficking of children are often considered to be crimes of violence against children. They are considered to be forms of economic exploitation akin to forced labour or slavery. According to the International Labour Organization, sexual exploitation of children includes all of the following practices and activities:

- "The use of girls and boys in sexual activities remunerated in cash or in kind (commonly known as child prostitution) in the streets or indoors, in such places as brothels, discotheques, massage parlours, bars, hotels, restaurants, etc."
- "The trafficking of girls and boys and adolescents for the sex trade"
- "Child sex tourism"
- "The production, promotion and distribution of pornography involving children"
- "The use of children in sex shows (public or private)"

The UNCRC has a Optional Protocol on the sale of children, child prostitution and child pornography. Bangladesh has signed and ratified this Optional Protocol too. This Protocol gave definitions of some form of sexual exploitation of children. The Article 2 of the protocol is the relevant article for such definition:

Article 2 - Definition of the terms ‘Sale of Children’, ‘Child Prostitution’ and ‘Child Pornography’:

For the purposes of the present Protocol:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Protection against child sexual abuse and exploitation enumerated in UNCAT: The UNCAT does not specifically provide any right for the children and any right for protection from sexual abuse and exploitation. It only termed the victims as ‘person’ which includes a child as well. Therefore, all the rights enumerated in UNCAT are also applicable for the children. As a result, UNCAT ensures the rights of child from being a subject to torture, cruel, inhuman and degrading treatment or punishment. However, there is question whether sexual abuse and exploitation are addressed by the UNCAT. The act of torture in the Convention, as we know, refers to the deliberate infliction of severe pain or suffering upon a person, which can be either mental or physical in nature and caused by either a single isolated act, or a number of such acts. Whenever any act of sexual abuse and exploitation is committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity inflicts severe pain or suffering, either physical or mental, upon a child, it constitutes an act of torture as defined in the UNCAT. This view has been established and supported by

judicial interpretation in different cases mentioned earlier. Like an adult, a child, therefore, become entitled to get the protections as provided in the Convention against Torture. Thus the rights and protection enumerated in the different Articles of the UNCAT provides protection to the children from sexual abuse and exploitation when such abuse and exploitation amount to torture under the UNCAT.

Protection against child sexual abuse and exploitation enumerated in UNCRC: There are several articles in the UNCRC that deal with sexual abuse and exploitation. These articles includes protection of children from kidnapping (Article 11), Sexual exploitation (Article 34), abduction, sale and trafficking (Article 35), other forms of exploitation (Article 36), detention with adults (Article 37). These articles have been reproduced and compared with the national legal and other instruments in Chapter 9.

In addition to the aforementioned articles the UNCRC has a Optional Protocol on the sale of children, child prostitution and child pornography. Bangladesh has signed and ratified this Optional Protocol too. This Protocol has gave detailed protection of children from sexual exploitation for financial gain. Some of these articles have also been reproduced and compared with the national legal and other instruments in Chapter 9.

CHAPTER- 5

IMPLEMENTATION MECHANISMS OF UNCRC & UNCAT

The Implementation Mechanisms of UNCAT: The Committee against Torture formed under UNCAT is entrusted with monitoring implementation of the rights under the Convention Against Torture. The Committee constitutes a new United Nations body, entrusted with the specific supervision of a multilateral instrument for protection against torture and other inhuman treatment. The Convention sets out a number of obligations designed to strengthen the sphere of protection of human rights and fundamental freedoms, while conferring upon the Committee against Torture broad powers of examination and investigation calculated to ensure their effectiveness in practice.

Functions of the Committee:

The Committee normally holds two regular sessions each year. Special sessions, however, may be convened by decision of the Committee itself at the request of a majority of its members or of a State Party to the Convention. The Committee may invite specialized agencies, United Nations bodies concerned, regional intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council to submit to it information, documentation and written statements, as appropriate, relevant to the Committee's activities under the Convention. It submits an annual report on its activities to the States Parties and to the General Assembly of the United Nations. By virtue of article 20 of the Convention, the Committee is empowered to receive information and to institute inquiries concerning allegations of systematic practice of torture in the States Parties.

Reporting by the States Parties:

Pursuant to article 19 of the Convention, each State Party shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures taken to give effect to its undertakings under the Convention. The first report must be submitted within

one year after the entry into force of the Convention for the State concerned; thereafter supplementary reports shall be submitted every four years on any subsequent developments. Further reports and additional information may also be requested by the Committee. For the examination of the reports, the Committee invites representatives of the States Parties to attend the meetings when their reports are considered. It may also inform a State Party from which it decides to seek further information that it may authorize its representative to be present at a specified meeting. Such a representative should be able to answer questions which may be put to him by the Committee and clarify, if need be, certain aspects of the reports already submitted by his State. After its consideration of each report, the Committee, in accordance with article 19, paragraph 3, of the Convention, may make such general comments on the report as it may consider appropriate.

Inter-State Complaints:

The conduct, with respect to the States Parties, of proceedings relating to the inter-State complaints mentioned in article 21 of the Convention is subordinated to the recognition by those States of the competence of the Committee. With respect to those States which have deposited the declaration specified in article 21, the Committee may receive and consider communications in which a State Party alleges that another State Party is not discharging its obligations under the Convention.

Individual complaints:

Like many other international instruments relating to human rights, the Convention on Torture gives private individuals, in certain circumstances, the right to lodge with the Committee complaints regarding the violation of one or more of its provisions by a State Party. For the Committee to be able to admit and examine individual communications against a State Party, its competence in that regard must however have been expressly recognized by the State concerned. Individual complaints are always examined by the Committee in closed meeting.

The Implementation Mechanisms of UNCRC: There is a Committee und the UNCRC to monitor the implementation of the rights provided in the Child Rights Convention. Each State Party is required to submit a report two years after ratification of the Convention. Progress reports are required every five years after that. The Committee may also request a complementary report or additional information between these periods⁷. The implementation mechanism of the UNCRC and the Committee on the Rights of the Child is described below:

The Constitution of the Committee on the Rights of the Child:

The Committee is composed of 18 independent experts who are elected in their personal capacity to four-year terms by States Parties. An equitable geographical distribution and representation of the principal legal systems is taken into consideration in their selection. Each State Party has the right to nominate one person from its country to serve on the Committee. Although the Convention only requires that Committee members be of ‘high moral standing’ and competent in the fields covered by the Convention, other possible criteria could include: demonstrated expertise in the field of human rights, particularly children’s rights; the ability to devote sufficient time to the work of the Committee; representation from a wide variety of professional backgrounds; experience of working with non-governmental organisations; awareness and sensitivity to cultural differences; and fluency in one of the three working languages (English, French or Spanish) of the Committee. The work of Committee members is not remunerated.

The Functions of the Committee on the Rights of the Child:

The Committee meets in Geneva three times a year for a period of four weeks for each session. The Committee is responsible for examining the progress made by States Parties

⁷Parts II (articles 42 to 45) and III (articles 46 to 54) of the UNCRC illustrate the provisions pertaining to accession, ratification, monitoring and reporting on the progress made by States Parties against all the articles of the UNCRC. According to article 43, a high-level Committee of experts is formed to examine the progress made by States Parties. This Committee is widely known as the United Nations Convention on the Rights of the Child Committee.

in fulfilling their obligations under the Convention and the Optional Protocols. A small permanent Secretariat at the Office of the High Commissioner for Human Rights in Geneva is responsible for providing support and advice to the Committee. The Committee on the Rights of the Child holds a general discussion every September in Geneva on a specific article of the UN Convention on the Rights of the Child or related subject. These meetings provide an opportunity to foster a deeper understanding of the contents and implications of the UNCRC.

Reporting to the Committee and the Role of States Parties:

States Parties to the UNCRC are required to submit an initial report two years after ratification and progress reports every five years.⁸ States Parties to the Optional Protocols are also required to submit an initial report two years after ratification, but then progress reports are included in the progress reports on the implementation of the Convention. The report is examined and discussed by the Committee, preferably with government representatives who are directly involved at the national level with the implementation of the Convention. At the end of the dialogue, the Committee prepares Concluding Observations which reflect the main points of discussion and indicate concerns and issues which would require specific follow-up action at the national level.

Alternative Reporting:

The Committee on the Rights of the Child may invite specialised agencies, UNICEF and ‘other competent bodies’ to provide expert advice on the implementation of the Convention.⁹ The term ‘other competent bodies’ includes non-governmental organisations. The Convention expressly gives NGOs a role in monitoring its implementation. Any complementary information received by the Committee is then reviewed in the presence of these organisations during the pre-sessional working group composed of a few Committee members. The working group prepares a list of issues to be submitted in advance to the

⁸ Article 44 of UNCRC

⁹ Article 45 (a) of UNCRC

government. Governments are requested to respond to these questions in writing before the plenary session where State reports are discussed with the State representatives.

Examination and Consideration of the Reports by the Committee:

There are several ways in which Alternative and State Party reports are considered in the Committee.

Pre-sessional working group: Prior to the Committee session at which the State Party's report is reviewed, the pre-sessional working group of the Committee convenes a private meeting with UN agencies and bodies, NGOs and other competent bodies such as National Human Rights institutions and youth organisations which have submitted Alternative reports to the Committee. The pre-sessional working group of the Committee is an opportunity to conduct a preliminary review of the State Party report and to examine supplementary and alternative information. The working group meets three times a year to identify, in advance, the main questions to be discussed with those States Parties which will appear before the Committee during the following session. The working group normally meets in Geneva during a five-day period directly following a plenary session of the Committee. As it is a working group, not all members of the Committee may be present. The end result of the pre-sessional working group's discussion on a State report is a 'list of issues'. The list of issues is intended to give the government a preliminary indication of the issues which the Committee considers to be priorities for discussion. It also gives the Committee the opportunity to request additional or updated information in writing from the government prior to the session.

The plenary session on State Party reports: The State Party report should be sent electronically to the Secretariat of the Committee at the Office of the High Commissioner for Human Rights in Geneva. The Committee then schedules it for examination at the next available session. Priority is given, however, to the examination of initial reports. The Committee tries to examine all reports within one year of receipt based on the order in which they are received. The Committee invites nine States Parties as an average to present their reports at each session, with one day (two meetings of three hours each)

devoted to public examination of each report. In addition, the Committee generally devotes between two and three hours towards the end of the session, in private, to its discussion of each set of Concluding Observations.

Concluding Observations: After the discussion with the State Party, the Committee delivers Concluding Observations which include suggestions and recommendations. The Concluding Observations usually contain the following aspects: introduction; positive aspects (including progress achieved); factors and difficulties impeding the implementation; principal subjects for concern; suggestions and recommendations addressed to the State Party.

The Role of N.G.O. Group:

The NGO Group for the UN Convention on the Rights of the Child has been in existence since 1983 when the drafting of the Convention began. The NGO Group's mission is to facilitate the promotion, implementation and monitoring of the Convention. The NGO group ensures effective interaction between national and international NGOs and the Committee on the Rights of the Child. The main activities of the NGO Group focus on supporting national NGOs and coalitions from over 160 countries in reporting on the UNCRC and its Protocols.

Implementation mechanism of the optional protocol on sale of children, child prostitution and child pornography: The implementation mechanism of the Optional Protocol on Sale of Children, Child Prostitution and Child Pornography has been described in Article 12 of the Protocol which requires each State Party to submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol within two years following the entry into force of the present Protocol for that State Party. Following the submission of the comprehensive report, each State Party shall include any further information with respect to the implementation of the present Protocol in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the

Convention. Other States Parties to the Protocol are required to submit a report every five years. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

CHAPTER- 6

STATUS OF UNCAT AND UNCRC AS INTERNATIONAL LAW IN BANGLADESH

Generally, the application of international law in domestic spheres revolves around theoretical discussion of the relationship between international law and municipal law, which is usually explained by two competing theories: dualism and monism. Bangladesh adheres to the principle of dualism i.e. international law does not upon ratification become automatically effective and cannot be directly invoked in its courts. It requires incorporation into domestic legislation in the form of a new law or amendment of existing legislation to ensure conformity with the Convention.

Despite accessing into the UNCAT on 5 October, 1998 and subsequent ratification and also ratification of CRC in 1990, the Government of Bangladesh until recently did not undertake any comprehensive review of its legislation regarding children. Hence, the Committee on the Rights of the Child in its 1993, 2003 and 2009 Concluding Observations¹⁰ on the Initial¹¹ and Periodic State Reports¹² of Bangladesh expressed its concern about “the unclear status of the Convention in the domestic legal framework and the insufficient steps to bring existing legislation into full conformity with the Convention.”¹³ It recommended to “take all effective measures to harmonise its domestic legislation fully with the provisions and principles of the Convention.”¹⁴ However, the Committee against Torture could not pass any such comment or recommendation regarding implementation of obligations under convention against torture as Bangladesh has not submitted any report to this committee.

¹⁰ Concluding Observations of the Committee on the Rights of the Child, Bangladesh, U.N. Doc. CRC A/53/41 (1998), CRC/C/15/Add.221 (2003) and CRC /C/BGD/CO/4 (2009)

¹¹ Initial Report of States Parties due in 1992: Bangladesh;07/12/95, CRC/C/3/Add.38.

¹² Periodic State Reports 1997, 2001. Recently, Bangladesh submitted its combined third and fourth report (2007).

¹³ Concluding Observations (1998), para.12

¹⁴ Concluding Observations (2003), para. 13

In the absence of comprehensive legislative reform being undertaken by the Government of Bangladesh, the question arises whether the CRC and CAT can be relied upon in Court. In this regard reference may also be made to the decision in *Hussain Muhammad Ershad vs Bangladesh and others*¹⁵ per Bimalendu Bikash Roy Choudhury, J.

“2. True it is that Universal Human Rights norms, whether given in the Universal Declaration or in the Covenants, are not directly enforceable in national Courts. But if their provisions are incorporated into the domestic law, they are enforceable in national Courts.(.....) The national Courts should not, I feel, straightaway ignore the international obligation, which a country undertakes. If the domestic laws are not clear enough or there is nothing therein, the national Courts should draw upon the principles incorporated in the international instruments. But in the cases where the domestic laws are clear and inconsistent with the international obligation of the State concerned, the national Courts will be obliged to respect the national laws, but shall draw the attention of the law makers to such inconsistencies.”

In the *State vs Metropolitan Police Commissioner*¹⁶ the High Court Division of the Supreme Court of Bangladesh quoting several Articles from CRC recommended that “the Legislature should consider amending the Children Act, 1974 or formulating new laws giving effect to the provisions of the UNCRC, as is the mandate of that Convention upon the signatories.”

However, after the enactment of *Paribarik Shahingshata (Protirodh of Shuroksha) Ain*, 2010 two international human rights instrument got more binding force in the courts of Bangladesh. In the long title and the preamble of this Act it has been very specifically stated that the purpose of this law is to protect women and children from domestic violence in order to establish their right to equality as a signatory State of the UNCRC and CEDAW. As a result, if any provision of the Paribarik Shahingshata Ain, 2010 is found inconsistent with the provisions of UNCRC and CEDAW the appropriate courts of Bangladesh may exercise its power declaring the provision of this Act unfair, unreasonable and thus invalid.

¹⁵ *Hussain Muhammad Ershad vs Bangladesh and others*, 21 BLD (AD) 6931

¹⁶ *State vs Metropolitan Police Commissioner*, 60 DLR 660

CHHAPTER- 7

OBLIGATIONS OF BANGLADESH AS A STATE PARTY TO

UNCRC & UNCAT.

Obligations of Bangladesh under United Nations' Convention against Torture:

Bangladesh is a state party to this convention. It accessed into this convention on 5 October, 1998, but has not submitted any report yet. Bangladesh has a declaration that the government will apply Article 14 paragraph 1 of the Convention inconsonance with existing laws and legislation of the country. As a state party Bangladesh has the following obligations to give effect to the Convention:

Prevention, Non-derogability, Non-justification (Article 2)

- i) To take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
- ii) Not to invoke any exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, as a justification of torture.

Duty not to expel individuals at the risk of torture (non- refoulment), all relevant considerations assessed (Article 3)

- iii) Not to expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. For the purpose of determining whether there are such grounds, to take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Definition as crime, appropriate punishment (Article 4)

- iv) To ensure that all acts of torture, attempts to commit torture, and participation in torture are offences under its criminal law.
- v) To make the aforesaid offences punishable by appropriate penalties which take into account their grave nature.

Obligations under UNCRC: Bangladesh has signed and ratified the Child Rights Convention in 1990. However it has reservations on Article nos. 14(1) i.e. on right to freedom of thought, conscience and religion and on Article 21 i.e. on the system of adoption. Bangladesh declared that the state shall apply Article 21 subject to the existing laws and practices in Bangladesh. As a State party to the UNCRC Bangladesh has following obligations:

Under Article 2:

- i) To respect and ensure the rights set forth in the UNCRC to each child within its jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
- ii) To take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Under Article 3

- iii) To ensure that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
- iv) To ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
- v) To ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent

authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Under Article 4

- vi) To undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the Child rights Convention. With regard to economic, social and cultural rights, to undertake such measures to the maximum extent of its available resources and, where needed, within the framework of international co-operation.

Obligations under the Optional Protocol: Bangladesh is also a state party to the Optional Protocol on sale of children, child prostitution and child pornography, 2000. It has signed and ratified this optional protocol in the year 2000 without any reservation. The obligations of Bangladesh as a state party to the Optional Protocol are mentioned below under the relevant Articles:

Under Article 1:

- i) To prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Under Article 3

- ii) To ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:
 - (a) In the context of sale of children as defined in article 2 of the Convention:
 - (i) Offering, delivering or accepting, by whatever means, a child for the purpose of: a. Sexual exploitation of the child; b. Transfer of organs of the child for profit; c. Engagement of the child in forced labour;
 - (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
 - (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
 - (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

- iii) Subject to the provisions of the national law of Bangladesh to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.
- iv) To make such offences punishable by appropriate penalties that take into account their grave nature.
- v) Subject to the provisions of the national law to take measures, where appropriate, to establish the liability of legal persons for aforesaid offences.
- vi) To take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Under Article 4

- vii) to take such measures as may be necessary to establish jurisdiction of Bangladesh over the offences referred to in article 3, paragraph 1 of the UNCRC, when the offences are committed in the territory of Bangladesh or on board, a ship or aircraft registered in Bangladesh.
- viii) to take, if necessary, such measures as may be necessary to establish jurisdiction of Bangladesh over the offences referred to in article 3, paragraph 1 of the convention, in the following cases:
 - (a) when the alleged offender is a national of Bangladesh or a person who has his habitual residence in this territory;
 - (b) when the victim is a national of Bangladesh.
- ix) To take such measures as may be necessary to establish jurisdiction over the aforementioned offences when the alleged offender is present in Bangladesh and Bangladesh does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

Under Article 5

- x) To consider that the offences referred to in article 3, paragraph 1 of the protocol, to be included as extraditable offences in any extradition treaty existing between States Parties and include as extraditable offences in every extradition treaty subsequently concluded, in accordance with the conditions set forth in such treaties.
- xi) To consider, if necessary, the present Protocol to be a legal basis for extradition in respect of such offences if Bangladesh makes extradition conditional on the existence

of a treaty receives a request for extradition from another State Party with which Bangladesh has no extradition treaty.

- xii) To recognize such offences as extraditable offences between themselves on the existence of a treaty with a State party subject to the conditions provided by the law of the requested State.
- xiii) To treat, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.
- xiv) To take suitable measures to submit the case to competent authorities of Bangladesh for the purpose of prosecution if an extradition request is made with respect to an offence described in article 3, paragraph 1, and if Bangladesh does not extradite on the basis of the nationality of the offender.

Under Article 6

- xv) To afford other state parties the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.
- xvi) To carry out obligations under paragraph 1 of article 6 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, like other States Parties to afford one another assistance in accordance with domestic law.

Under Article 7

- xvii) Subject to the provisions of the national law of Bangladesh to take measures to provide for the seizure and confiscation, as appropriate, of goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol; and proceeds derived from such offences; to execute requests from another State Party for seizure or confiscation of such goods or proceeds; and to take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Under Article 8

- xviii) To adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under this Protocol at all stages of the criminal justice process particularly by: (a) recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses; (b) informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases; (c) allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law; (d) providing appropriate support services to child victims throughout the legal process; (e) protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims; (f) providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; (g) avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims
- xix) To ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.
- xx) To ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.
- xxi) To take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.
- xxii) To adopt, in appropriate cases, measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

Under Article 9

- xxiii) To adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present

Protocol with particular attention to protect children who are especially vulnerable to such practices.

- xxiv) To promote awareness in the public at large, including children, through information about the preventive measures and harmful effects of the offences referred to in this Protocol. In fulfilling obligations under article 9 Bangladesh shall encourage the participation of the community.
- xxv) To take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.
- xxvi) To ensure that all child victims of the offences described in this Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.
- xxvii) To take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Under Article 10

- xxviii) To take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.
- xxix) To promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.
- xxx) To promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.
- xxxi) To promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

CHAPTER- 8

National Legal Instruments for the Protection of Children from Torture, Sexual Abuse and Exploitation

The Constitution of the People's Republic of Bangladesh in its chapter on fundamental rights dealt protection from torture. On the other hand, there are some laws in force in Bangladesh for prosecuting cases relating to sexual offences. Some other laws are relevant for proper trial of such cases like the Code of Criminal Procedure, 1898, the Evidence Act, 1872, the Children Act, 1974 etc. There are some other laws, which in indirect ways provide protection toward children from being victim of abuse and exploitation. These are the Guardians and Wards Act, 1890, the Child Marriage Restraint Act, 1929, the Bangladesh Sromo Ain, 2006 etc. These national legal instruments for the protection of children from sexual abuse and exploitation briefly discussed here. However, for the benefit this study, these laws clustered in two groups:

First, laws enacted prior to being party to the UNCAT and UNCRC; and

Secondly, laws enacted after being party to the UNCAT and UNCRC.

Clustering the laws in such groups will assist us in examining adherence of Bangladesh in legislation to its obligations under UNCAT and UNCRC after its ratification of these two instruments.

Laws enacted prior to being party to the UNCAT and UNCRC:

Constitution of the People's Republic of Bangladesh, 1972: Article 35 of the Constitution of Bangladesh provides protection from torture, inhuman or degrading punishment or treatment. The Constitution of Bangladesh does not have any specific provision relating to sexual abuse and exploitation. However, some of its Articles can be extended to provide legal protection to the child from sexual abuse and sexual exploitation. Article 14 of the Constitution prohibits all sorts of exploitations and Article 15 of the same ensures the right to social security that is to say to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered

by orphans. Article 17 of the Constitution provides for adopting effective measures for the purpose of establishing a uniform mass-oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law. Article 18(2) provides that the State shall adopt effective measures to prevent prostitution and gambling. Although discrimination has been prohibited Article 28 of the Constitution provides that the state shall not be prevented from making special provision in favor of children. Article 31 of the Constitution guarantees every citizen the right to enjoy the protection of law wherever they may be. The implication of this provision is that to enjoy the protection of law it is not essential for a citizen to be on the territory of Bangladesh. In other words, the state is obliged to ensure the protection of law internally and extraterritorially. Therefore, the obligation of Bangladesh state for repatriation of trafficked victims is very much implied in this fundamental right provision of the Constitution of Bangladesh. Article 34(1) prohibits all forms of forced labor.

The Penal Code, 1860 (Act No. XLV of 1860): The Penal Code is the major substantive penal law of Bangladesh. It broadly defines and also penalizes almost all kinds of general offences. There are specific sections relating to sexual offences committed with women and children. However, nowadays, because of many new enactments many of penal provisions of the Penal Code relating to sexual offences became almost abundant. Although, the definitions of sexual offences given in the Penal Code has been referred and relied on by the new enactments.

Under Section 90 of the Penal Code consent is not consent if it is given by a person who is under 12 years of age. Kidnapping if a male under 14 years of age and a female under 16 years of age from the lawful guardianship is an offence under section 361 of the code, and kidnapping or abducting a person under the age of 10 is also an offence under section 364 A of the Penal Code.

Procurement of a minor girl is an offence under section 366 A of the Code. Life of the child begins in the womb of the mother. The child has a right to remain secure there unless the life of the mother demands it. In a competition between the two, mother wins her life at the cost of the child. Provisions relating to abortion are available in sections 312-316 of the Penal Code. Section 317 speaks of abandonment of children by parent. Offences

connected with prostitution have been described in Sections 366B, 372 and 373 of the Penal Code. Kidnapping or Trafficking children are offences under Sections 369, 372 and 373 of the Penal Code.

The Divorce Act, 1869 (Act No. IV of 1869): In this Act ‘minor children’ means in the case of sons of fathers domiciled in Bangladesh, boys who have not completed the age of 16 years and in the case of daughters of fathers domiciled in Bangladesh, girls who have not completed the age of 13 years, in other case it means unmarried children who have not completed the age of 18 years.

The Evidence Act, 1872 (Act 1 of 1872): Rule of Estoppel under section 115 of the Act does not apply to a child. Under section 118 of the Act all persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions, due to tender years, extreme old age, disease whether of body or mind or any other cause of same kind. The tender age of a witness does not *ipso facto* render him or her incompetent to appear as a witness to give testimony. This section vests the court with the discretion to decide whether an infant is or not disqualified to be a witness by reason of understanding or lack of understanding.

The Majority Act, 1875 (Act No. IX of 1875): By section 3 of the Act, a person is deemed to have attained majority when he completes the age of 18 years but if a guardian of the person or property or both of a minor under the Guardians and Wards Act 1890 or the Court of Wards assumes Superintendence of the minor before the age of 18 years, the age of majority is extended to 21 years. Section 2 of this Act excludes its application in respect of certain matters viz. marriage, dower, divorce and adoption. In these matters, Personal Law (i.e. Hindu Law. Muslim Law etc.) will apply.

The Guardians and Wards Act, 1890 (Act No. VIII of 1890): In this Act ‘minor’ means a person who is generally below eighteen. ‘Guardian’ means a person having the care of the person of a minor or of his property or of both his person and property ‘ward’ means a minor for whose person or property or both, there is a guardian. On the application of the person desirous of being, or claiming to be, the guardian of the minor or any relative of the friend of the minor or the collector of the district or other local area within which the minor ordinarily resides or in which he has property, and if the court is satisfied that it is

for the welfare of a minor, the court may make an order for appointing a guardian of the minor's person or property or both or for declaring a person to be such a guardian.

The Code of Criminal Procedure 1898 (Act No. 5 of 1898) By section 199 of the criminal procedure Code it has been provided that a court shall not take cognizance of an offence of adultery under section 497 of the Penal Code or enticing or taking away or detaining a married woman with criminal intent under section 498 of that code except on the complaint of the husband of the woman. The first proviso to section 199 enacts that where such husband is under 18 years, some other person may, with the leave of the court, make a complain on his behalf.

Under Section 514B of the Code when the person required by any court or officer to execute a bond is a minor, such Court or officer May accept, in lieu thereof, a bond executed by a surety sureties only. Under Section 562 of the code, the court can release certain convicted first offenders under 21 years of age on probation of good conduct instead of sentencing them to punishment. Section 118 of the Code provides for execution of bond by the securities of the minor.

The Code of Civil Procedure, 1908 (Act V of 1908): Order 32 of the Code deals with the minor's capacity for prosecuting or defending a suit through a person who is called in such suit the next friend or guardian-ad-litem of the minor. The term "next friend" means a person through whom a minor, is represented in a litigation. Guardian-ad-litem of the minor defendant is appointed by the court. No application on behalf of the minor can be filed by a person who is neither a natural guardian nor a certificated guardian nor a guardian-ad-litem of the minor. Compromise or consent decree can be passed under Order 23 of the Code if the next friend or guardian-ad-litem gives written consent therein on behalf of the minor.

The Limitation Act, 1908 (Act No. IX of 1908): Under section 6 of the Limitation Act, where a person entitled to institute a suit or make an application for the execution of a decree is a minor at the time from which the period of limitation is to be reckoned, he may institute the suit or make the application with the same period after the minority has ceased.

The Child Marriage Restraint Act, 1929 (Act No. XIX of 1929): In this Act, ‘child’ means a person who, if a male is under 21 years of age, and if a female, is under 18 years of age and ‘minor’ means a person of either sex who is under 18 years of age. Section 3 of the Act provides punishment of male adult below 21 years of age marrying a child. Section 4 of the Act provides punishment for male adult above 21 years of age marrying a child marriage. Section 6 prescribes punishment for parent or guardian concerned in a child marriage.

The Dissolution of Muslim Marriages Act, 1939 (Act No. VIII of 1939): Section 2 of the Act provides that a woman is entitled to obtain a decree for the dissolution of her marriage on the ground that she, having been given in marriage by her father or other guardian before she attained the age of 15 years, repudiated the marriage before attaining the age of 18 years, provided that the marriage has not been consummated. Nothing in this Act, affects any right which a married woman may have under Muslim Law to her dower or part thereof, on the dissolution of her marriage.

The Children Act, 1974 (Act No. XXXIX of 1974): This Act regulates the law relating to the custody, protection and treatment of children and trial and punishment of youthful offenders. In this Act the term ‘child’ has been defined as a person under the age of 16 years and also a person who is sent to certified institute or approved home or committed by a court to be custody of a relative or other fit person in spite of the fact that he has attained the age of 16 years during the period of his detention. The Act provides for establishment of Juvenile courts. The powers conferred on a juvenile court are sometimes exercisable by the High Court, the Court of Session and Courts of Magistrates of the First Class. The manner of trial of youthful offenders is specified in this Act.

Part V of the Children Act provides care and protection of destitute and neglected children. Under section 32 of the Act, a probation officer, not below the rank of Sub-Inspector of Police or any authorized person, may bring before a Juvenile Court a child who has no home, settled place of abode or visible means of subsistence, or no parent or guardian or who is found begging or is found doing any act under circumstances contrary to the well being of the child, or is found destitute or is under the care of parent or guardian who habitually neglects or cruelly ill-treats the child, or is found in the company of any reputed criminal or prostitute or is likely to fall into bad association or to enter upon

a life of crime. On being presented before the Juvenile Court, the Court after taking such evidence as it thinks fit, may order him to be sent to a Certified Institution or approved house or to the care of a relative.

Part VI of the Children Act deals with some offences in respect of children such as penalties for cruelty to child, for employing children for begging, for being drunk while in charge of child, for giving intoxicating liquor or dangerous drugs are sold, for inciting child to bet or borrow, for taking on pledge or purchasing articles from child, for allowing child to be in brothel, for causing or encouraging seduction, for exploitation of child employees, for abetting escape of child or youthful offenders. Part VII of this Act deals with youthful offenders, Part VIII determines measures for detention etc. of children and youthful offenders, and Part IX provides for maintenances and treatment of committed children.

Laws enacted after being party to the UNCAT and UNCRC

The Nari O Shishu Nirjatan Daman Ain, 2000: Nari O Shishu Nirjatan Daman Ain, 2000 is the most used law relating to protection of children from sexual abuse and exploitations. This law has established a new Tribunal named Nari o Shishu Nirjatan Daman Tribunal for the trial of offences covered by it.

National Human Rights Commission Act: This is the law by which the present National Human Rights Commission (NHRC) of Bangladesh has been established. This institution has specific function according to this Act which includes making recommendation to the Government of Bangladesh to comply with its undertakings under different international human rights treaties including the UNCAT and the UNCRC.

The Paribarik Shaningshata (Protirodh o Shurokkha) Ain, 2010: This law is specifically made for protecting women and children from domestic violence which includes sexual violence which may occur or be occurred by the persons with whom the victim women and children have family relation.

The Manob Pachar Protirodh o Daman Ain, 2012: The Manob Pachar Protirodh o Daman Ain, 2012 (the Trafficking in Person Prevention and Repression Act) has been enacted repealing the Suppression of Immoral Traffic Act, 1933 and two sections of the Nari o Shishu Nirjatan Daman, Ain 2000. This law too has provided for establishment of new Tribunal for the trial of offences under this law including offences relating to sexual abuse and exploitation.

The Pornography Niyontron Ain, 2012: This law has been enacted in response to influx of pornography through different audio visual devices and internet to protect women and children from being victim of such sexual abuse and exploitation through spread of pornography.

CHAPTER-9

Strengths and Loopholes of National Laws and Policies

This Chapter in tabular form compares the provisions of UNCAT and UNCRC with the national policy and legal instruments. In two separate tables for these two conventions an attempt has been made to explore strength and loopholes of national policy and legal instruments in comparison with the provisions of the UNCAT and UNCRC. The first table relates to the UNCAT and the second one relates to UNCRC.

Table: Strength and loopholes of national policy and legal instruments in comparison with the provisions of the UNCAT:

Provisions of UNCAT	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
Torture Article- 1 “For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession,	Constitution	Article- 35 (4) No person accused of any offence shall be compelled to be a witness against himself. Article- 35 (5) No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.	The constitutional provisions and other legislations provide some provisions which seem consistent with those of the UNCAT. Legislations in Bangladesh are quite consistent with UNCAT. But, in practice, there are hundreds incidents of torture by state authority. So, the main focus would
	The Code of Criminal Procedure, 1898	Section-164 Any Metropolitan Magistrate, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the Government may, if he is not a police-officer record any statement or confession made	

Provisions of UNCAT	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”		to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial. Such statements shall be recorded in such of the manners hereafter prescribed for recording evidence as is, in his opinion best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and such statements or confession shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried. A Magistrate shall, before recording an such confession, explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and when he records an confession, he shall make a memorandum at the foot of such record to the following effect:- “I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that	be the implementation of the national legislations.

Provisions of UNCAT	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
		this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.” Explanation: It is necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.	
	The Evidence Act, 1872	Section- 24 A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.	

Provisions of UNCAT	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
		Section- 25 No confession made to a police-officer shall be proved as against a person accused of any offence. Section- 26 No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.	

Table: Strength and loopholes of national policy and legal instruments in comparison with the provisions of the UNCAT:

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
Definition	The Constitution	No definition of child has been given.	There are several articles of the Constitution of Bangladesh relating to children but no specific definition of child has given in the Constitution.
Article 1:	National Child Policy 2011	Article 2.1 “child” means a person below the	Though National Child Policy has included all persons

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.		age of eighteen years.	under the age of 18 as children but a provision of the policy does not have the force of a law.
	The Children Act 1974	Section 2(f) “child” means a person under the age of sixteen years, and when used with reference to a child sent to a certified institute or approved home or committed by a Court to the custody of a relative or other fit person means that child during the whole period of his detention notwithstanding that he may have attained the age of sixteen years during that period.	The Government of Bangladesh (GoB) has been working to make a new law on children to replace the existing one but it is still in a dilemma in determining the age of the child.
	The Nari O Shishu Nirjaton Daman Ain, 2000 [Women and Children Repression Prevention Act]	Section 2(k) Child means person not above the age of 16 years.	Excluded male children of 16 to 18 years
	Paribarik Sahingshata (Protirod O Shuraksha) Ain 2010 [Domestic Violence (Prevention and Preservation) Act]	Section 2 (18) “child” means a person who has not completed the age of eighteen years...”	Meets the standard of UNCRC
	Manab Pachar Protirodh O Daman Ain 2012 [The Prevention and	Section 2(14) “child” means any person below	Meets the standard of UNCRC

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
	Repression of Trafficking in Person Act]	the age of eighteen years...”	
	Pornography Niyontron Ain, 2012 [Pornography Control Act]	Section 2 (Umo) ‘Child’ means the child as defined in section 2 (f) of the Children Act, 1974.	Excluded male children of 16 to 18 years
Kidnapping, Abduction, Trafficking and Sale of Children	The Constitution	Article 32 Protection of Right to Life and Personal Liberty.	Applicable for all persons, not for children only.
Article 11: 1) States Parties shall take measures to combat the illicit transfer and non-return of children abroad. Article 35: States Parties shall take all appropriate national ... measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.	Jatiyo Nari Unnayan Neeti, 2011 [National Women Development Policy]	Article- 18.1: বাল্য বিবাহ, কন্যা শিশু ধর্ষণ, নিপীড়ন, পাচারের বিরুদ্ধে আইনের কঠোর প্রয়োগ করা। Article- 19.4: নারী পাচার বন্ধ ও ক্ষতিগ্রস্তদের পুনর্বাসন করা। Article- 19.7: নারী ও কন্যা শিশু নির্যাতন ও পাচার সম্পর্কীয় অপরাধের বিচার ছয় মাসের মধ্যে নিষ্পত্তি করার লক্ষ্যে বিচার পদ্ধতি সহজতর করা।	These articles are very explicit as national policy but lack force of law.
	Jatiyo Shishu Neeti, 2011 [National Child Policy]	Article-7.4: কিশোর কিশোরীদের প্রতি সহিংসতা, বিয়ে, পাচার, বাণিজ্যিকভাবে যৌন কাজে বাধ্য করা এবং অন্যান্য সকল ক্ষতিকর কাজ থেকে রক্ষার মাধ্যমে তাদের সুরক্ষার অধিকার নিশ্চিত করা হবে।	Do not address specific needs of the adolescent children exhaustively

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
Article 1 of Optional Protocol on the Sale of children, Child prostitution and Child pornography: state party shall prohibit the sale of children¹⁷... as provided for by the present protocol.	The Penal Code, 1860	Section- 359: Kidnapping is of two kinds: kidnapping from Bangladesh, and kidnapping from lawful guardianship. Section 360: Whoever conveys any person beyond the limits of Bangladesh without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from Bangladesh. Section-361: Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship. Explanation:-The words "lawful guardian" in this section includes any person lawfully entrusted with the care or custody of such minor or other person. Exception.-This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose. Section -362:	Some sections became redundant because of enactment of new laws like Nari O Shishu Nirjatan Daman Ain, 2000, Manab Pachar Protirodh o Daman Ain, 2012 and their non-obstanti clauses.

¹⁷Article 2 of OPSC defines “sale of children” as any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
		Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person. Section- 363: Whoever kidnaps any person from Bangladesh or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Section - 364A: Whoever kidnaps or abducts any person under the age of ten, in order that such person may be murdered or subjected to grievous hurt, or slavery, or to the lust of any person or may be so disposed of as to be put in danger of being murdered or subjected to grievous hurt, or slavery, or to the lust of any person shall be punished with death or with imprisonment for life or with rigorous imprisonment for a term which may extend to fourteen years and shall not be less than seven years. Section -366: Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from	

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
		any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid. Section – 367: Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Section – 368: Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that for which he conceals or detains such person in confinement. Section – 370: Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Section – 371 Whoever habitually imports, exports, removes, buys, sells,	

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
		traffics or deals in slaves, shall be punished with imprisonment] for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine. Section 372¹⁸ “whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution of illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.” Section 373¹⁹: Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person	

¹⁸ Explanations of Section 372:

I: When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

II: For the purposes of this section "illicit intercourse" means sexual intercourse between person not united by marriage or by any union or tie which, though not amounting to a marriage, is recognized by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

¹⁹ Explanation of Section 373:

I: Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

II: 'Illicit intercourse' has the same meaning as in section 372.

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
		or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.	
	Nari O Shishu Nirjatan Daman Ain, 2000	Section-5: (১) যদি কোন ব্যক্তি পতিতাবৃত্তি বা বেআইনী বা নীতিবিগর্হিত কোন কাজে নিয়োজিত করার উদ্দেশ্যে কোন নারীকে বিদেশে হইতে আনয়ন করেন বা বিদেশে পাচার বা প্রেরণ করেন অথবা ক্রয় বা বিক্রয় করেন বা কোন নারীকে ভাড়া বা অন্য কোনভাবে নির্যাতনের উদ্দেশ্যে হস্তান্তর করেন, বা অনুরূপ কোন উদ্দেশ্যে কোন নারীকে তাহার দখলে, জিম্মায় বা হেফাজতে রাখেন, তাহা হইলে উক্ত ব্যক্তি মৃত্যুদণ্ড বা যাবজ্জীবন কারাদণ্ড বা অনধিক বিশ বতসর কিম্বা অনুন দশ বতসর সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অর্থদণ্ডেও দণ্ডনীয় হইবেন। (২) যদি কোন নারীকে কোন পতিতার নিকট বা পতিতালয়ের রক্ষণাবেক্ষণকারী বা ব্যবস্থাপকের নিকট বিক্রয়, ভাড়া বা অন্য কোনভাবে হস্তান্তর করা হয়, তাহা হইলে যে ব্যক্তি উক্ত নারীকে অনুরূপভাবে হস্তান্তর করিয়াছেন তিনি, ভিন্নরূপ প্রমাণিত না হইলে, উক্ত নারীকে পতিতাবৃত্তিতে নিয়োজিত করার উদ্দেশ্যে বিক্রয় বা হস্তান্তর করিয়াছেন বলিয়া গণ্য হইবেন এবং তিনি উপ-ধারা (১) এ উল্লিখিত দণ্ডে দণ্ডনীয় হইবেন। (৩) যদি কোন পতিতালয়ের রক্ষণাবেক্ষণকারী বা পতিতালয়ের ব্যবস্থাপনায় নিয়োজিত কোন ব্যক্তি কোন নারীকে ক্রয় বা ভাড়া করেন বা অন্য কোনভাবে কোন নারীকে দখলে নেন বা জিম্মায় রাখেন, তাহা হইলে তিনি, ভিন্নরূপ প্রমাণিত না হইলে, উক্ত নারীকে পতিতা হিসাবে ব্যবহার করার উদ্দেশ্যে ক্রয় বা ভাড়া করিয়াছেন বা দখলে বা জিম্মায় রাখিয়াছেন বলিয়া গণ্য হইবেন এবং উপ ধারা (১) এ উল্লিখিত দণ্ডে দণ্ডনীয় হইবেন। Section- 6: (১) যদি কোন ব্যক্তি কোন বেআইনী বা নীতিবিগর্হিত উদ্দেশ্যে কোন শিশুকে বিদেশে	Sections 5 and 6 have been repealed by the enactment of Manab Pachar Protirodh o Daman Ain, 2012 and proceeding initiated under these sections shall be treated as proceeding taken under the new Act. However, it is not very clear under which sections the offences under sections 5 and 6 of the Nari o Shishu Nirjatan Daman Ain, 2012 will fall.

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		হইতে আনয়ন করেন বা বিদেশে প্রেরণ বা পাচার করেন অথবা ক্রয় বা বিক্রয় করেন বা উক্তরূপ কোন উদ্দেশ্যে কোন শিশুকে নিজ দখলে, জিম্মায় বা হেফাজতে রাখেন, তাহা হইলে উক্ত ব্যক্তি মৃত্যুদণ্ডে বা যাবজ্জীবন সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অর্থদণ্ডেও দণ্ডনীয় হইবেন। (২) যদি কোন ব্যক্তি কোন নবজাতক শিশুকে হাসপাতাল, শিশু বা মাতৃসদন, নার্সিং হোম, ক্লিনিক, ইত্যাদি বা সংশ্লিষ্ট শিশুর অভিভাবকের হেফাজত হইতে চুরি করেন, তাহা হইলে উক্ত ব্যক্তি উপ-ধারা (১) এ উল্লিখিত দণ্ডে দণ্ডনীয় হইবেন। Section- 7 যদি কোন ব্যক্তি ধারা ৫-এ উল্লিখিত কোন অপরাধ সংঘটনের উদ্দেশ্যে ব্যতীত অন্য কোন উদ্দেশ্যে কোন নারী বা শিশুকে অপহরণ করেন, তাহা হইলে উক্ত ব্যক্তি যাবজ্জীবন কারাদণ্ডে বা অন্যান্য চৌদ্দ বৎসর সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অর্থদণ্ডেও দণ্ডনীয় হইবেন।	
	Manab Pachar Protirodh o Daman Ain, 2012	৬। (১) কোন ব্যক্তি ধারা ৩ এ উল্লিখিত কোন কার্য করিলে উহা মানব পাচার অপরাধ বলিয়া গণ্য হইবে। (২) মানব পাচার অপরাধ সংঘটনকারী কোন ব্যক্তি অনধিক যাবজ্জীবন কারাদণ্ডে এবং অন্যান্য ৫(পাঁচ) বৎসর সশ্রম কারাদণ্ডে এবং অন্যান্য ৫০(পঞ্চাশ) হাজার টাকা অর্থদণ্ডে দণ্ডিত হইবেন। ৭। কোন সংঘবদ্ধ গোষ্ঠীর একাধিক সদস্য গোষ্ঠীর সকল সদস্যের সাধারণ অভিপ্রায় সাধনের উদ্দেশ্যে কোন আর্থিক বা অন্য কোনো বস্তুগত বা অবস্তুগত মুনাফা অর্জনের নিমিত্ত এই আইনের অধীন কোন অপরাধ সংঘটন করিলে উক্ত গোষ্ঠীর প্রত্যেক সদস্য উক্ত অপরাধ সংঘটনের দায়ে অভিযুক্ত হইবে এবং অপরাধ সংঘটনকারী ব্যক্তি মৃত্যুদণ্ডে বা যাবজ্জীবন কারাদণ্ডে বা অন্যান্য ৭(সাত) বৎসর সশ্রম কারাদণ্ডে এবং অন্যান্য ৫(পাঁচ) লক্ষ টাকা অর্থদণ্ডে	This Act is quite comprehensive law providing all types of protections to the Children who are or may become victims of offences described in it. However, this Act repealed sections 5 and 6 of the Nari o Shishu Nirjatan Daman Ain, 2010. In the Nari o Shishu Nirjatan Daman Ain there was provision for filing case directly to the Tribunal established under this Act when Police do no record such case but in the Manab Pachar Protirodh o Daman Ain no such provision has been made. It may result in less filing of cases

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		দণ্ডিত হইবেন। ৮। (১) কোন ব্যক্তি মানব পাচার অপরাধ সংঘটনে প্ররোচনা প্রদান করিয়া, ষড়যন্ত্র করিয়া এবং প্রচেষ্টা চালাইয়া অথবা সজ্ঞানে কোন মানব পাচার অপরাধ সংঘটন বা সংঘটিত করিবার সুযোগ সৃষ্টির উদ্দেশ্যে তাহার সম্পত্তি ব্যবহার করিবার অনুমতি প্রদান করিয়া অথবা কোন দলিল-দস্তাবেজ গ্রহণ, বাতিল, গোপন, অপসারণ, ধ্বংস বা তাহার স্বত্ত্ব গ্রহণ করিয়া নিজেকে উক্ত অপরাধের সহিত জড়িত করিলে উক্ত ব্যক্তি অনধিক ৭ (সাত) বৎসর এবং অনূন্য ৩ (তিন) বৎসর সশ্রম কারাদণ্ডে এবং অনূন্য ২০ (বিশ) হাজার টাকা অর্থদণ্ডে দণ্ডিত হইবেন। (২) কোন ব্যক্তি এই আইনের আওতাধীন কোন অপরাধ সংঘটনে সহযোগী (abettor) হইলে উক্ত ব্যক্তি সংশ্লিষ্ট অপরাধের জন্য ধার্যকৃত দণ্ডের সমপরিমাণ দণ্ডে দণ্ডিত হইবেন। ৯। কোন ব্যক্তি বেআইনিভাবে অন্য কোন ব্যক্তিকে তাহার ইচ্ছার বিরুদ্ধে কাজ করাইলে অথবা শ্রম বা সেবা প্রদান করিতে বাধ্য করিলে বা ঋণ-দাস করিয়া রাখিলে বা বলপ্রয়োগ বা যে কোন প্রকার চাপ প্রয়োগ করিলে অথবা করিবার হুমকি প্রদর্শন করিয়া শ্রম বা সেবা আদায় করিলে তিনি অপরাধ করিয়াছেন বলিয়া গণ্য হইবেন এবং উক্তরূপ অপরাধের জন্য তিনি অনধিক ১২ (বার) বৎসর এবং অনূন্য ৫ (পাঁচ) বৎসর সশ্রম কারাদণ্ডে এবং অনূন্য ৫০ (পঞ্চাশ) হাজার টাকা অর্থদণ্ডে দণ্ডিত হইবেন। ১০। (১) কোন ব্যক্তি মানব পাচারের অপরাধ সংঘটনের অভিপ্রায়ে বা যৌন শোষণ বা নিপীড়নসহ এই আইনের ধারা ২(১৫) এ বর্ণিত অন্য কোন শোষণের উদ্দেশ্যে অন্য কোন ব্যক্তিকে অপহরণ, গোপন অথবা আটক করিয়া রাখিলে তিনি অপরাধ করিয়াছেন বলিয়া গণ্য হইবেন এবং উক্তরূপ অপরাধের জন্য	as Police of Bangladesh at times found unwilling to record cases to hide the real crime rate in their working area.

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		তিনি অনধিক ১০ (দশ) বৎসর এবং অনূ্যন ৫ (পাঁচ) বৎসর সশ্রম কারাদণ্ডে এবং অনূ্যন ২০ (বিশ) হাজার টাকা অর্থদণ্ডে দণ্ডিত হইবেন। (২) মানব পাচারের অপরাধ সংঘটনের অভিপ্রায়ে কোন ব্যক্তি কোন নবজাত শিশুকে কোন হাসপাতাল, সেবা-সদন, মাতৃ-সদন, শিশু-সদন, বা উক্ত নবজাত শিশুর পিতা-মাতার হেফাজত হইতে চুরি করিলে বা অপহরণ করিলে তিনি অপরাধ করিয়াছেন বলিয়া গণ্য হইবেন এবং উক্তরূপ অপরাধের জন্য তিনি অনধিক যাবজ্জীবন কারাদণ্ডে এবং অনূ্যন ৫ (পাঁচ) বৎসর সশ্রম কারাদণ্ডে এবং অনূ্যন ৫০ (পঞ্চাশ) হাজার টাকা অর্থদণ্ডে দণ্ডিত হইবেন। ১১। কোন ব্যক্তি জবরদস্তি বা প্রতারণা করিয়া বা প্রলোভন দেখাইয়া কোন ব্যক্তিকে পতিতাবৃত্তি অথবা অন্য কোন প্রকারের যৌন শোষণ বা নিপীড়নমূলক কাজে নিয়োগ করিবার উদ্দেশ্যে বিদেশ হইতে বাংলাদেশে আনয়ন করিলে বা বাংলাদেশের অভ্যন্তরে স্থানান্তরিত করিলে তিনি অপরাধ করিয়াছেন বলিয়া গণ্য হইবেন এবং উক্তরূপ অপরাধের জন্য তিনি অনধিক ৭ (সাত) বৎসর এবং অনূ্যন ৫ (পাঁচ) বৎসর সশ্রম কারাদণ্ডে এবং অনূ্যন ৫০ (পঞ্চাশ) হাজার টাকা অর্থদণ্ডে দণ্ডিত হইবেন। ১২। (১) কোন ব্যক্তি পতিতালয় স্থাপন বা পরিচালনা করিলে অথবা তাহা স্থাপন বা পরিচালনা করিতে সক্রিয়ভাবে সহায়তা বা অংশগ্রহণ করিলে তিনি অপরাধ করিয়াছেন বলিয়া গণ্য হইবেন এবং উক্তরূপ অপরাধের জন্য তিনি অনধিক ৫ (পাঁচ) বৎসর এবং অনূ্যন ৩ (তিন) বৎসর সশ্রম কারাদণ্ডে এবং ইহার অনূ্যন ২০ (বিশ) হাজার টাকা অর্থদণ্ডে দণ্ডিত হইবেন। (২) কোন ব্যক্তি, যিনি (ক) ভাড়াটিয়া, ইজারাদার (lessee) ,	

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
		দখলদার বা কোন স্থান দেখাশোনার দায়িত্বে নিয়োজিত ব্যক্তি, জানিয়া-গুনিয়া উক্ত স্থান বা এর কোনো অংশবিশেষ পতিতালয় হিসাবে ব্যবহার করিবার অনুমতি প্রদান করিলে; অথবা (খ) কোন বাড়ির মালিক, ইজারা-দাতা (lessor) অথবা জমির মালিক অথবা উক্ত মালিক বা ইজারা-দাতার কোন প্রতিনিধি উক্ত বাড়ি অথবা উহার কোন অংশবিশেষ পতিতালয় হিসাবে ব্যবহৃত হইবে তাহা জানা সত্ত্বেও উক্ত বাড়ি বা জমি ভাড়া প্রদান করিলে; তিনি অপরাধ করিয়াছেন বলিয়া গণ্য হইবেন এবং উক্তরূপ অপরাধের জন্য তিনি অনধিক ৫ (পাঁচ) বৎসর এবং অন্যান্য ৩ (তিন) বৎসর সশ্রম কারাদণ্ডে এবং অন্যান্য ২০ (বিশ) হাজার টাকা অর্থদণ্ডে দণ্ডিত হইবেন। ১৩। কোন ব্যক্তি রাস্তায় বা জনসাধারণের ব্যবহার্য স্থানে অথবা গৃহ অভ্যন্তরে বা গৃহের বাহিরে পতিতাবৃত্তির উদ্দেশ্যে মুখের ভাষায় বা অংগভঙ্গি করিয়া বা অশালীন ভাব-ভঙ্গি দেখাইয়া অন্য কোন ব্যক্তিকে আহবান করিলে তিনি অপরাধ করিয়াছেন বলিয়া গণ্য হইবেন এবং উক্তরূপ অপরাধের জন্য তিনি অনধিক ৩ (তিন) বৎসর সশ্রম কারাদণ্ডে অথবা অনধিক ২০ (বিশ) হাজার টাকা অর্থদণ্ডে অথবা উভয় দণ্ডে দণ্ডিত হইবেন।	
Protection from all forms of violence especially from sexual abuse & exploitation and Child prostitution, Child pornography	Constitution	Article- 14: It shall be a fundamental responsibility of the State of emancipate the toiling masses- the presents and workers- and backward sections of the people from all forms of exploitation.	This provision is a fundamental principle of state policy. Not enforceable by the Court.

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
Article 19.1: States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.	Jatiyo Nari Unnayan Neeti, 2011 [National Women Development Policy]	Article- 18.1: বাল্য বিবাহ, কন্যা শিশু ধর্ষণ, নিপীড়ন, পাচারের বিরুদ্ধে আইনের কঠোর প্রয়োগ করা। Article- 18.6: শিক্ষা প্রতিষ্ঠানসহ বিভিন্ন ক্ষেত্রে যেমন রাস্তাঘাটে কন্যা শিশুরা যেন কোনরূপ যৌন হয়রানী, পর্নোগ্রাফী, শারীরিক ও মানসিক নির্যাতনের শিকার না হয় তার জন্য প্রয়োজনীয় ব্যবস্থা নিশ্চিত করা। Article- 19.1: পারিবারিক ও সামাজিক পর্যায়ে এবং কর্মক্ষেত্রে নারীর প্রতি শারীরিক, মানসিক ও যৌন নিপীড়ন, নারী ধর্ষণ, যৌতুক, পারিবারিক নির্যাতন, এসিড নিষ্ক্ষেপসহ নারীর প্রতি সকল প্রকার সহিংসতা দূর করা।	Lacks force of law.
	Jatiyo Shishu Neeti, 2011 [National Child Policy]	Article- 6.7.1: সকল প্রকার সহিংসতা, ভিক্ষাবৃত্তি, শারীরিক, মানসিক ও যৌন নির্যাতন এবং শোষণের বিরুদ্ধে শিশুদের সুরক্ষা নিশ্চিত করার পদক্ষেপ গ্রহণ করা হবে। শিশুদের উপর সহিংসতা, নির্যাতন বন্ধ করার লক্ষ্যে কার্যকর ও জনসচেতনতামূলক কর্মসূচি গ্রহণ করা হবে। Article- 7.4: কিশোর কিশোরীদের প্রতি সহিংসতা, বিয়ে, পাচার, বাণিজ্যিকভাবে যৌন কাজে বাধ্য করা এবং অন্যান্য সকল ক্ষতিকর কাজ থেকে রক্ষার মাধ্যমে তাদের সুরক্ষার অধিকার নিশ্চিত করা হবে। Article- 8.4: শিক্ষা প্রতিষ্ঠানসহ বিভিন্ন ক্ষেত্রে যেমন রাস্তাঘাটে কন্যা শিশুরা যেন কোনরূপ যৌন হয়রানী, পর্নোগ্রাফী, শারীরিক ও মানসিক নির্যাতনের শিকার না হয় তার জন্য প্রয়োজনীয় ব্যবস্থা নিশ্চিত করা।	Lacks force of law.
	Penal Code, 1860	Section 317 Exposure and abandonment of child under twelve years by parent or person having care of it.	Has not included incest by which at times children are sexually exploited by their family members.
	Children Act, 1974	Section 34	Many of these

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
		Penalty for cruelty to child. Section 35 Penalty for employing children for begging. Section 36 Penalty for being drunk while in charge of child. Section 37 Penalty for giving intoxicating or dangerous drug to child. Section 38 Penalty for permitting child to enter places where liquor or dangerous drugs are sold. Section 39 Penalty for inciting child to bet or borrow Section 40 Penalty for taking on pledge or purchasing articles from child Section 41 Penalty for allowing child to be in brothel Section 42 Penalty for causing or encouraging seduction. Section 43 Young girls exposed to risk of seduction Section 44 Penalty for exploitation of child employees. Section 45 Penalty for abetting escape of	sections become redundant because of new legislation. Other sections are rare in use.

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
		child or youthful offender Section 46 Penalty for publication or report or pictures relating to child.	
	Domestic Violation Act	Section 3 Domestic violence shall include sexual repression	
Article 34: Sexual abuse and exploitation	Constitution	Article 18(2): The State shall adopt effective measures to prevent prostitution and gambling.	This provision is a fundamental principle of state policy. Not enforceable by the Court.
States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:	Jatiyo Nari Unnayan Neeti, 2011 [National Women Development Policy]	Article- 18.1: বাল্য বিবাহ, কন্যা শিশু ধর্ষণ, নিপীড়ন, পাচারের বিরুদ্ধে আইনের কঠোর প্রয়োগ করা। Article- 18.6: শিক্ষা প্রতিষ্ঠানসহ বিভিন্ন ক্ষেত্রে যেমন রাস্তাঘাটে কন্যা শিশুরা যেন কোনরূপ যৌন হয়রানী, পর্ণোৎসাহী, শারীরিক ও মানসিক নির্যাতনের শিকার না হয় তার জন্য প্রয়োজনীয় ব্যবস্থা নিশ্চিত করা। Article- 19.1: পারিবারিক ও সামাজিক পর্যায়ে এবং কর্মক্ষেত্রে নারীর প্রতি শারীরিক, মানসিক ও যৌন নিপীড়ন, নারী ধর্ষণ, যৌতুক, পারিবারিক নির্যাতন, এসিড নিষ্ক্ষেপসহ নারীর প্রতি সকল প্রকার সহিংসতা দূর করা।	Lacks force of law.
(a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices;	Jatiyo Shishu Neeti, 2011 [National Child Policy]	Article- 6.7.1: সকল প্রকার সহিংসতা, ভিক্ষাবৃত্তি, শারীরিক, মানসিক ও যৌন নির্যাতন এবং শোষণের বিরুদ্ধে শিশুদের সুরক্ষা নিশ্চিত করার পদক্ষেপ গ্রহণ করা হবে। শিশুদের উপর সহিংসতা, নির্যাতন বন্ধ করার লক্ষ্যে কার্যকর ও জনসচেতনতামূলক কর্মসূচি গ্রহণ করা হবে। Article- 7.4: কিশোর কিশোরীদের প্রতি সহিংসতা, বিয়ে, পাচার, বাণিজ্যিকভাবে যৌন কাজে বাধ্য করা এবং অন্যান্য সকল ক্ষতিকর কাজ থেকে রক্ষার মাধ্যমে তাদের সুরক্ষার	Lacks force of law.

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
(c) The exploitative use of children in pornographic performances and materials.		অধিকার নিশ্চিত করা হবে। Article- 8.4: শিক্ষা প্রতিষ্ঠানসহ বিভিন্ন ক্ষেত্রে যেমন রাস্তাঘাটে কন্যা শিশুরা যেন কোনরূপ যৌন হয়রানী, পর্নোগ্রাফী, শারীরিক ও মানসিক নির্যাতনের শিকার না হয় তার জন্য প্রয়োজনীয় ব্যবস্থা নিশ্চিত করা।	
Optional Protocol on the sale of children, child prostitution and child pornography (OPSC) Article 1: State Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present protocol. Article 3 (1) (a) (i) a.: Prohibits the “offering, delivering or accepting” of a child for the purpose of sexual exploitation.	Penal Code, 1860	Section–292: Whoever (a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or (b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or (c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or (d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or (e) offers or attempts to do any act	Pornography Ain made many of these provisions redundant.

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
		which is an offence under this section, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both. Exception.- This section does not extend to any book, pamphlet, writing, drawing or painting kept or used bona fide for religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose. Section- 293: Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.	
		Section 366A “whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.” Section 366B: “Whoever imports into Bangladesh from any country outside Bangladesh any girl under	Nari o Shishu Ain,2000 and Manab Pachar Ain,2012 made many of these sections redundant.

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
		the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.” Section 372²⁰ “Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution of illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.” Section 373²¹: Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years	

²⁰ Explanations of Section 372:

I: When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

II: For the purposes of this section "illicit intercourse" means sexual intercourse between person not united by marriage or by any union or tie which, though not amounting to a marriage, is recognized by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

²¹ Explanation of Section 373:

I: Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

II: 'Illicit intercourse' has the same meaning as in section 372.

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
		with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.	
		Section 375 “A man is said to commit "rape" who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances—with or without her consent—when she is under fourteen years of age [Exception: Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.]	
	Children Act, 1974	Section-41: Whoever allows or permits a child over the age of four years to reside in or frequently to go to a brothel shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to Taka one thousand, or with both. Section- 42: Whoever having the actual charge of, or control over, a girl under the age of sixteen years causes or encourages the seduction or prostitution of that girl or causes or encourages any person other than her husband to have sexual intercourse with her shall be punishable with imprisonment for	

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		a term which may extend to two years, or with fine which may extend to Taka one thousand, or with both Section-43: If it appears to a Court on the complaint of any person that a girl under the age of sixteen years is, with or without the knowledge of her parent or guardian, exposed to the risk of seduction or prostitution, the Court may direct the parent or guardian to enter into a recognisance to exercise due care and supervision in respect of such girl. Explanation. For the purposes of this section, a person shall be deemed to have caused or encouraged the seduction or prostitution of a girl if he has knowingly allowed the girl to consort with, or to enter or continue in the employment of, any prostitute or person of known immoral character.	
	Nari O Shishu Nirjaton Daman Ain 2000 [Women and Children Repression Prevention Act]	Section- 9 (১) যদি কোন পুরুষ কোন নারী বা শিশুকে ধর্ষণ করেন, তাহা হইলে তিনি যাবজ্জীবন সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অর্থদণ্ডেও দণ্ডনীয় হইবেন ব্যাখ্যা- যদি কোন পুরুষ বিবাহ বন্ধন ব্যতীত যৌল বতসরের অধিক বয়সের কোন নারীর সহিত তাহার সম্মতি ব্যতিরেকে বা ভীতি প্রদর্শন বা প্রতারণামূলকভাবে তাহার সম্মতি আদায় করিয়া, অথবা [যৌল বতসরের] কম বয়সের কোন নারীর সহিত তাহার সম্মতিসহ বা সম্মতি ব্যতিরেকে যৌন সঙ্গম করেন, তাহা হইলে তিনি উক্ত নারীকে ধর্ষণ করিয়াছেন বলিয়া গণ্য হইবেন (২) যদি কোন ব্যক্তি কর্তৃক ধর্ষণ বা উক্ত ধর্ষণ	

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		পরবর্তী তাহার অন্যবিধ কার্যকলাপের ফলে ধর্মিতা নারী বা শিশুর মৃত্যু ঘটে, তাহা হইলে উক্ত ব্যক্তি মৃত্যুদণ্ডে বা যাবজ্জীবন সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অন্যান্য এক লক্ষ টাকা অর্থদণ্ডেও দণ্ডনীয় হইবেন (৩) যদি একাধিক ব্যক্তি দলবদ্ধভাবে কোন নারী বা শিশুকে ধর্ষণ করেন এবং ধর্ষণের ফলে উক্ত নারী বা শিশুর মৃত্যু ঘটে বা তিনি আহত হন, তাহা হইলে ঐ দলের প্রত্যেক ব্যক্তি মৃত্যুদণ্ডে বা যাবজ্জীবন সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অন্যান্য এক লক্ষ টাকা অর্থদণ্ডেও দণ্ডনীয় হইবেন (৪) যদি কোন ব্যক্তি কোন নারী বা শিশুকে- (ক) ধর্ষণ করিয়া মৃত্যু ঘটানোর বা আহত করার চেষ্টা করেন, তাহা হইলে উক্ত ব্যক্তি যাবজ্জীবন সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অর্থদণ্ডেও দণ্ডনীয় হইবেন; (খ) ধর্ষণের চেষ্টা করেন, তাহা হইলে উক্ত ব্যক্তি অনধিক দশ বতসর কিম্বা অন্যান্য পাঁচ বতসর সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অর্থদণ্ডেও দণ্ডনীয় হইবেন (৫) যদি পুলিশ হেফাজতে থাকাকালীন সময়ে কোন নারী ধর্মিতা হন, তাহা হইলে যাহাদের হেফাজতে থাকাকালীন উক্তরূপ ধর্ষণ সংঘটিত হইয়াছে, সেই ব্যক্তি বা ব্যক্তিগণ ধর্মিতা নারীর হেফাজতের জন্য সরাসরিভাবে দায়ী ছিলেন, তিনি বা তাহারা প্রত্যেকে, ভিন্নরূপ প্রমাণিত না হইলে, হেফাজতের ব্যর্থতার জন্য, অনধিক দশ বতসর কিম্বা অন্যান্য পাঁচ বতসর সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অন্যান্য দশ হাজার টাকা অর্থদণ্ডেও দণ্ডনীয় হইবেন Section- 10: যদি কোন ব্যক্তি অবৈধভাবে তাহার যৌন কামনা চরিতার্থ করার উদ্দেশ্যে তাহার শরীরের যে কোন অঙ্গ বা কোন বস্তু দ্বারা কোন নারী বা শিশুর যৌন অঙ্গ বা অন্য কোন অঙ্গ স্পর্শ করেন বা কোন নারীর শ-লতাহানি করেন তাহা হইলে তাহার এই কাজ হইবে যৌন পীড়ন এবং তজ্জন্য উক্ত ব্যক্তি অনধিক দশ বতসর কিম্বা অন্যান্য তিন বতসর সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত	

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		অর্থদণ্ডে ও দণ্ডনীয় হইবেন	
	<i>Pornography Niyontron Ain, 2012</i>	Section- 8: (১) কোন ব্যক্তি পর্নোগ্রাফি উৎপাদন করিলে বা উৎপাদন করিবার জন্য অংশগ্রহণকারী সংগ্রহ করিয়া চূড়ান্ত করিলে অথবা কোন নারী, পুত্র য বা শিশুকে অংশগ্রহণ করিতে বাধ্য করিলে অথবা কোন নারী, পুত্র য বা শিশুকে কোন প্রলোভন অংশগ্রহণ করাইয়া তাহার জ্ঞাতে বা অজ্ঞাতে স্থির চিত্র, ভিডিও চিত্র বা চলচ্চিত্র ধারণ করিলে তিনি অপরাধ করিয়াছেন বলিয়া গণ্য হইবেন এবং উক্তরূপ অপরাধের জন্য তিনি সর্বোচ্চ ৭ (সাত) বৎসর পর্যন্ত সশ্রম কারাদণ্ড এবং ২,০০,০০০ (দুই লক্ষ) টাকা পর্যন্ত অর্থদণ্ডে দণ্ডিত হইবেন। (৬) কোন ব্যক্তি কোন শিশুকে ব্যবহার করিয়া পর্নোগ্রাফি উৎপাদন, বিতরণ, মুদ্রণ ও প্রকাশনা অথবা শিশু পর্নোগ্রাফি বিক্রয়, সরবরাহ বা প্রদর্শন অথবা কোন শিশু পর্নোগ্রাফি বিজ্ঞাপন প্রচার করিলে তিনি অপরাধ করিয়াছেন বলিয়া গণ্য হইবেন এবং উক্তরূপ অপরাধের জন্য তিনি সর্বোচ্চ ১০ (দশ) বৎসর পর্যন্ত সশ্রম কারাদণ্ড এবং ৫,০০,০০০ (পাঁচ লক্ষ) টাকা পর্যন্ত অর্থদণ্ডে দণ্ডিত হইবেন। (৭) এই আইনের অধীন সংঘটিত কোন অপরাধের সহিত প্রত্যক্ষভাবে জড়িত বা সহায়তাকারী ব্যক্তি প্রত্যেকেই একই দণ্ডে দণ্ডিত হইবেন।	Do not extend to protection of male children of sixteen to eighteen.
Article 35:	The Constitution	No specific provision.	
States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any	<i>Jatiyo Nari Unnayan Neeti, 2011</i> [National Women Development Policy]	Article No. 49: নারীর ক্ষমতায়ন ও আন্তর্জাতিক সহযোগিতা নারীর ক্ষমতায়নের লক্ষ্যে দ্বিপাক্ষিক ও বহুপাক্ষিক আর্থিক ও কারিগরী সহযোগিতা এবং অভিজ্ঞতা ও প্রযুক্তি বিনিময়ের মাধ্যমে আন্তর্জাতিক, আঞ্চলিক ও উপ-আঞ্চলিক	

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form.		সহযোগিতাকে উৎসাহিত করা হবে।	
Article- 11 2) States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.	<i>Manab Pachar</i> <i>Protirodh O Daman</i> <i>Ain 2012</i> [Prevention and Repression of Trafficking in Person Act]	Section 41: (১) এই আইনের অধীন সংঘটিত অপরাধসমূহের তদন্ত, বিচার এবং বিচারিক কার্যক্রমে যৌথ বা পারস্পরিক আইনি সহায়তার ক্ষেত্রে তৈরীর নিমিত্ত সরকার যে সকল দেশে এই আইনের অধীন মানব পাচারের শিকার ব্যক্তিবর্গ, সাক্ষী, অপরাধলব্ধ অর্থ, অপরাধের উপকরণ, সাক্ষ্য-প্রমাণ বা বিবাদী বা অপরাধে সহায়তাকারী ব্যক্তি উপস্থিত থাকে বা থাকিবার সম্ভাবনা থাকে সেই সকল দেশের সহিত সমঝোতা স্মারক বা চুক্তি স্বাক্ষর করিবেঃ তবে শর্ত থাকে, এই উপ-ধারার অধীন সমঝোতা স্মারক বা চুক্তি স্বাক্ষরিত না হওয়া পর্যন্ত এইরূপ যৌথ বা পারস্পরিক আইনি সহায়তা আদান-প্রদানের জন্য প্রয়োজনীয় প্রশাসনিক ব্যবস্থা গ্রহণ করিতে এই আইনের কোন কিছুই সরকারকে নিবৃত্ত করিবে না। (২) উপ-ধারা (১) এর অধীন স্বাক্ষরিত কোন সমঝোতা স্মারক বা চুক্তির মাধ্যমে সরকার, নিম্নবর্ণিত বিষয়ে যৌথ বা পারস্পরিক আইনি সহায়তার বিধান করিতে পারিবেঃ (ক) মানব পাচার অপরাধের তদন্ত, তল্লাশী বা আটক কার্যক্রম পরিচালনা এবং মানব পাচারের শিকার ব্যক্তির আইনগত সহযোগিতা সম্পর্কিত বিষয়; (খ) শপথের মাধ্যমে সাক্ষীর পরীক্ষা এবং সাক্ষীর বক্তব্য, সরকারি প্রতিবেদন এবং আদালতে দাখিলকৃত সাক্ষ্য-প্রমাণাদি বিনিময়; (গ) মানব পাচারের শিকার ব্যক্তিদের এবং মানব পাচার অপরাধ সংঘটনকারী বা সংঘটনের দায়ে সাজাপ্রাপ্ত ব্যক্তিদের পারস্পরিক বিনিময়; (ঘ) অপরাধলব্ধ অর্থ বা সম্পত্তি বাজেয়াপ্তকরণ বা জরিমানা বা ক্রোক সংক্রান্ত আদালতের আদেশ কার্যকরকরণের ক্ষেত্রে প্রয়োজনীয় আইনগত, কূটনৈতিক ও প্রশাসনিক সহযোগিতা; (ঙ) মানব পাচারের শিকার ব্যক্তিদের টেকসই পুনর্বাসন এবং উক্ত ব্যক্তিদের স্বদেশে	

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		বাংলাদেশ দূতাবাসের এবং প্রয়োজনে পররাষ্ট্র মন্ত্রণালয় বা প্রবাসী কল্যাণ মন্ত্রণালয়ের সহযোগিতায় উক্ত ব্যক্তিকে বাংলাদেশে ফেরত আনিবার প্রক্রিয়ার সূচনা করবে। (২) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, কোন বিদেশী রাষ্ট্রে বাংলাদেশ দূতাবাস মানব পাচারের শিকার কোন বাংলাদেশী নাগরিক উক্ত দেশে আটক বা বন্দী অবস্থায় আছেন বলিয়া অবগত হইলে, উক্ত দূতাবাস ক্ষতিগ্রস্ত ব্যক্তিকে উদ্ধার করিবার, মুক্ত করাইবার এবং বাংলাদেশে পাঠাইবার প্রক্রিয়ার সূচনা করিবে। (৩) মানব পাচারের শিকার কোন ব্যক্তি কোন মামলার কারণে কোন বিদেশী রাষ্ট্রে থাকিতে বাধ্য হইলে বাংলাদেশ দূতাবাস উক্ত ব্যক্তিকে আইনি পরামর্শ বা সহায়তা প্রদানের ব্যবস্থা গ্রহণ করিবে। (৪) যেই ক্ষেত্রে একজন বিদেশী নাগরিক বাংলাদেশে মানব পাচারের শিকার ব্যক্তি হিসাবে চিহ্নিত হইবেন সেইক্ষেত্রে যথাযথ আইনগত প্রক্রিয়া সম্পন্ন করিয়া উক্ত ব্যক্তির জবানবন্দি গ্রহণ করতঃ সরকার সংশ্লিষ্ট রাষ্ট্রের বাংলাদেশস্থ দূতাবাসের সহযোগিতায়, যথোপযুক্ত কূটনৈতিক যোগাযোগের মাধ্যমে, উক্ত ব্যক্তিকে তাহার স্বদেশে ফেরত পাঠাইবার প্রয়োজনীয় ব্যবস্থা গ্রহণ করিবে। Section-34: (১) মানব পাচারের শিকার ব্যক্তি সরকার বা পুলিশ বা ক্ষেত্রমত, বেসরকারি সংস্থাসমূহের নিকট হইতে পাচারকারীদের বিরুদ্ধে গৃহীত ব্যবস্থা এবং সংশ্লিষ্ট ফৌজদারী মামলার সর্বশেষ অবস্থা সম্বন্ধে মাসে অন্তত একবার অবগত হইবার অধিকারী হইবে। (২) তদন্তকারী কর্মকর্তা বা মানব পাচারের শিকার ব্যক্তিকে চিহ্নিত ও উদ্ধারকারী ব্যক্তি বা প্রতিষ্ঠান উক্ত ক্ষতিগ্রস্ত ব্যক্তিকে ক্ষতিপূরণের অধিকার, আইনি সহায়তার সুযোগ এবং এই আইনের অধীন অন্যান্য সুযোগ-সুবিধাদি সম্পর্কে তাত্ক্ষণিকভাবে অবগত করিবে। (৩) মানব পাচার অপরাধের শিকার ব্যক্তিদের গোপনীয়তার অধিকারের প্রতি যথোপযুক্ত সম্মান প্রদর্শনপূর্বক উক্ত ব্যক্তিদের চিহ্নিতকরণ, উদ্ধার, স্থানান্তর, প্রত্যাবর্তন, প্রত্যাবাসন ও পুনর্বাসন সংক্রান্ত দায়িত্বসমূহ কার্যকরভাবে সম্পাদনে সরকারের উপযুক্ত কর্তৃপক্ষ সংশ্লিষ্ট পেশাজীবী, সাংবাদিক বা জনসাধারণকে	

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		সরবরাহের জন্য প্রয়োজনীয় তথ্যসমেত একটি ব্যাপক ভিত্তিক তথ্যভান্ডার পরিচালনা করিবে। Section- 35: (১) মানব পাচারের শিকার ব্যক্তিদের শারীরিক ও মানসিক চিকিৎসা সেবা, পুনর্বাসন এবং পরিবারের সহিত পুনর্মিলনের সুযোগ সৃষ্টির লক্ষ্যে সরকার সমগ্র দেশে পর্যাপ্ত সংখ্যক আশ্রয় কেন্দ্র এবং পুনর্বাসন কেন্দ্র প্রতিষ্ঠা করিবে। (২) এই আইন বলবৎ হইবার সঙ্গে সঙ্গে এই ধরনের কেন্দ্র প্রতিষ্ঠা করিতে ইচ্ছুক অন্য কোন ব্যক্তি বা প্রতিষ্ঠান বিধি দ্বারা নির্ধারিত পদ্ধতিতে এবং শর্তাধীনে সরকার হইতে লাইসেন্স বা সাময়িক অনুমোদন লাভ না করিয়া কোন আশ্রয় কেন্দ্র বা পুনর্বাসন কেন্দ্র বা অন্য কোনো কর্মকাণ্ড পরিচালনা করিবেনা: তবে শর্ত থাকে যে, ইতোমধ্যে প্রতিষ্ঠিত আশ্রয় বা পুনর্বাসন কেন্দ্রসমূহকে এই আইন বলবৎ হইবার ৬ (ছয়) মাসের মধ্যে এই ধরনের লাইসেন্স বা অনুমোদন লইতে হইবে। Section- 36: (১) উদ্ধার হইবার পর, মানব পাচার অপরাধের শিকার ব্যক্তিকে, স্থায়ী পরিবারে ফেরত পাঠানো না হইলে, কোন সরকারি বা বেসরকারি আশ্রয়কেন্দ্রে বা পুনর্বাসনকেন্দ্রে প্রেরণ করিতে হইবে এবং সেইক্ষেত্রে এতদবিষয়ক যাবতীয় তথ্য তাত্ক্ষণিকভাবে সরকার বা উপযুক্ত কর্তৃপক্ষের নিকট পাঠাইতে হইবে। (২) আশ্রয় বা পুনর্বাসনকেন্দ্রে অবস্থানরত মানব পাচারের শিকার যে কোন ব্যক্তি বা ভিকটিম সংশ্লিষ্ট বিষয়ে মতামত প্রদানের এবং টেকসই পুনর্বাসন ও সামাজিক একাঙ্গীভূতকরণ সুবিধাদিসহ শারীরিক চিকিৎসা এবং আইনি ও মানসিক পরামর্শ সেবা পাইবার অধিকারী হইবে। Section- 37: (১) এই আইনের বিষয়বস্তু লইয়া কর্মরত প্রত্যেক ব্যক্তি বা প্রতিষ্ঠান কোন ভিকটিম বা মানব পাচারের শিকার ব্যক্তি এই আইন বা প্রচলিত অন্য কোন আইনের অধীনে যেন অভিযুক্ত না হন বা শাস্তি না পান তাহা নিশ্চিত করিতে সচেষ্ট থাকিবে।	

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
		(২) ট্রাইব্যুনালের অনুমতি ব্যতিরেকে মানব পাচারের শিকার কোন ব্যক্তি বা তাহার পরিবারের কোন সদস্যের নাম, ছবি বা তথ্য বা পরিচয় কেহ প্রচার বা সম্প্রচার করিতে পারিবে না এবং উক্ত বিধান লংঘনকারী ব্যক্তি অনধিক ০৬ (ছয়) মাসের কারাদণ্ড বা অনধিক ১ (এক) লক্ষ টাকা অর্থদণ্ড অথবা উভয় দণ্ড দণ্ডিত হইবেন। (৩) প্রত্যেক মানব পাচারের শিকার ব্যক্তি বা সাক্ষী, তাহার প্রতি হুমকি প্রদর্শিত হইলে অথবা হুমকি বা যে কোন প্রকার ঝুঁকির আশঙ্কা সৃষ্টি হইলে পুলিশী নিরাপত্তা পাইবার এবং সরকার কর্তৃক প্রদেয় অন্যান্য সুরক্ষামূলক ব্যবস্থার অধিকারী হইবে এবং আদালতে এবং অন্যান্য ফৌজদারী প্রতিষ্ঠানে যাতায়াতের সময় বা আশ্রয়কেন্দ্রে বসবাসের সময় মানব পাচারের শিকার ব্যক্তি বা সাক্ষীর নিরাপত্তা বিধান করা সেই সব সরকারি সুরক্ষামূলক ব্যবস্থার অঙ্গভুক্ত হইবে। Section- 38: (১) ডিকটিম এবং সাক্ষীর সুরক্ষা বিধান বিষয়ক এই আইনের বিধানসমূহের সামগ্রীকতাকে ক্ষুণ্ণ না করিয়া, মানব পাচার অপরাধের শিকার শিশু এবং শিশু সাক্ষী লইয়া কাজ করিবার সময় ট্রাইব্যুনালসহ যে কোন ব্যক্তি শিশুর সর্বোত্তম কল্যাণ এবং অগ্রাধিকারের নীতি প্রয়োগ করিবে এবং বিভিন্ন আনুষ্ঠানিক দলিলে সন্নিবেশিত নীতিসহ আপাততঃ বলবৎ এতদবিষয়ক যে কোন আইনের বিধানসমূহ অনুসরণ করিবে এবং মানব পাচারের শিকার শিশুদের অপরাধী হিসেবে অভিযুক্ত হওয়া অথবা তাহাদের এবং শিশু সাক্ষীদের কলঙ্কিত হওয়া বা সামাজিকভাবে একঘরে হওয়া এড়াইবার জন্য এই আইনের অধীন কর্মরত সংশ্লিষ্ট সকলে প্রয়োজনীয় ব্যবস্থা গ্রহণ করিবে। (২) পুলিশ বা সরকার বা এই আইনের বিষয়বস্তু লইয়া কর্মরত কোন ব্যক্তি শিশু-বান্ধব কর্মকর্তার হস্তক্ষেপ বা শিশু-বান্ধব প্রক্রিয়া ব্যতীত অন্য কোনভাবে এই আইনের সহিত দ্বন্দ্ব (ঈর্ষহৃৎসরপঃ) বা ইহার সংস্পর্শে (Contact) আসা কোন শিশু লইয়া কাজ করিবে না এবং মানব পাচারের শিকার কোন শিশুকে বা ডিকটিম শিশুকে উন্নয়ন কেন্দ্রে (development centre/remand home) প্রেরণ করা বা আটক রাখা যাইবেনা।	

Provisions of UNCRC & its Opt. Protocol	National Laws and Policies	Compatible articles/ sections/ rules	Strengths and Loopholes
		Section- 39: ফৌজদারী মামলা রুজু করিবার অধিকার অক্ষুণ্ণ রাখিয়া এবং দায়েরকৃত কোন ফৌজদারী মামলার পাশাপাশি, ভিকটিম বা পাচারের শিকার ব্যক্তি এই আইনের অধীন সংঘটিত অপরাধের ফলে সৃষ্ট তাহার প্রকৃত ক্লেশ (হেভবন্ডহপ) বা আইনগত ক্ষতির (ষবমধষ রহলু) জন্য বা উক্ত অপরাধের সহিত সম্পৃক্ত কোন চুক্তি লংঘনের জন্য দেওয়ানী আদালতে ক্ষতিপূরণের মামলা দায়ের করিতে পারিবে। Section- 40: মানব পাচারের শিকার কোন ব্যক্তি বা ভিকটিমকে সরকার এই আইনের অধীন প্রতিষ্ঠিত তহবিল হইতে আর্থিক সহায়তা প্রদান করিতে পারিবে, তবে এই ধরনের সহায়তা কোন বেসরকারি সংস্থা হইতে অথবা আইনগত সহায়তা প্রদান আইন, ২০০০ (২০০০ সনের ৬ নং আইন) অনুসারে আইনগত সহায়তা পাইবার ক্ষেত্রে তাহার কোন সুযোগ বা অধিকারকে খর্ব করিবে না। Section- 42: (১) এই আইন বলবৎ হইবার পর সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা মানব-পাচার প্রতিরোধ তহবিল নামে একটি তহবিল গঠন করিবে এবং উক্ত তহবিল বিধি দ্বারা নির্ধারিত পদ্ধতিতে পরিচালিত ও ব্যবহৃত হইবে। (২) মানব পাচার প্রতিরোধ তহবিলে নিম্নবর্ণিত উৎস হইতে প্রাপ্ত অর্থ জমা হইবে, যথাঃ (ক) সরকারের মঞ্জুরী বা অনুদান; (খ) কোন স্থানীয় কর্তৃপক্ষ কর্তৃক প্রদত্ত অনুদান; বা (গ) কোন ব্যক্তি বা প্রতিষ্ঠান কর্তৃক প্রদত্ত অনুদান; এবং (ঘ) মানব পাচার প্রতিরোধ ও দমনের উদ্দেশ্যে প্রাপ্ত অন্য যে কোন উৎস হইতে প্রাপ্ত অর্থ। Section- 43: এই আইনের উদ্দেশ্যপূরণকল্পে সরকার বিধি দ্বারা নির্ধারিত পদ্ধতিতে জাতীয় মানব পাচার দমন সংস্থা নামে একটি সংস্থা গঠন করিতে পারিবে	

CHAPTER- 10

IMPLEMENTATION FAILURES OF PRESENT LEGISLATIVE AND POLICY REGIME

Law at times becomes a farce or mockery with the people if it is not implemented properly or itself is not implementable at all. The implementation of law is quite a different issue for which specific attention and commitment is needed by the legislative, executive and judicial organ of the state. If the organs of the state are not committed enough to implement a law in its full sense the legislative organ will leave behind loopholes in the law which will provide perpetrators of crimes like torture and sexual exploitation of children enough scopes to remain untouched by the law enforcement agencies. Whenever the loopholes left by the legislature are not enough to provide escape to the perpetrators the executive organ will remain indifferent about enforcement of laws against the offenders. Loopholes of laws and procedures left by the legislature and latches left by the executive willfully or negligently are at times enough to save persons accused of the offences like torture and sexual abuse and exploitation of children. Inefficiency and lack of professional commitment as well as child rights sensitiveness of the judges or judicial officers at times results prosecution of the offences of torture and sexual abuse and exploitation of children frustrated. Though all the organs of the state, more or less, may be liable for failures in implementing provisions of UNCAT and UNCRC this study further examined failure in implementation of national legal and policy regime irrespective of their own compatibility with the standards of CAT and CRC.

Legislative Failures:

The first and foremost responsibility of making a law is entrusted with the legislature i.e. the national parliament of a country. Harmonizing national laws with the UNCAT and UNCRC standards is the primary responsibility of the legislature i.e. the *Jatiya Sangsad* of Bangladesh. It should be a concern for the parliament to make such enactments which can bring highest successes in its implantation within the quickest time. In reality the Parliament of Bangladesh is not so keen to have such concern while making legislations. The Constitution of Bangladesh, the supreme law of the land, itself was quite a modern

and human rights sensitive law which made all national laws which are inconsistent with it and its fundamental rights provision void. So, making laws consistent with the fundamental rights provisions of the constitution had been a responsibility of the parliament of Bangladesh from its very emergence- much before having undertakings by ratification of UNCAT and UNCRC. When the parliament fails in doing these obviously it is an implementation failure of the legislature. If a nice enactment of the legislature is not implemented it may be the failure of the executive or the judiciary. A reputed women rights activist of the country informed one member of the study team of the present study that the recently repealed the Suppression of Immoral Traffic Act, 1933, which was applicable for Bangladesh, has never been used in Bangladesh. It needs a specific legislation based separate study to find out why implementation of a law fails. However, it is now-a-days noticeable that at time the legislature is doing incomplete legislation leaving its further development to the Government, which is causing unnecessary delay and implementation failure of the law. The parliament of Bangladesh has passed a law titled *Paribarik Shahingshata (Protirodh o Shurokkha) Ain*, commonly known as Domestic Violence Act in 2010. Comparing this law with the domestic violence law of India it is found that the content of both the laws are same. However, the DV Act of Bangladesh is an incomplete one, which awaits framing of Rules and forms by the Government. Without such Rules and forms this specific law can not be implemented at all. For this reason prosecutions initiated under this Act without such rules and forms faced various challenges- an Advocate practicing in the Supreme Court of Bangladesh informed the research team. In India such forms were annexed with the main Act as schedules.

Executive Failures

Failures of the Government and its different agencies are here described as executive failure of a State party of the UNCAT and the UNCRC. An excellent law can be completely unsuccessful to achieve its purpose if the Government is not inclined to implement it. The *Manab Pachar Protirodh o Daman Ain, 2012* has been praised by many of our respondents but at the same time they expressed their anxiety about its implementation in the absence of Governments commitment to implement it by framing Rules, creating Fund and establishing a separate Court within the shortest period which

has been stipulated in this Act. The Penal Code applicable for Bangladesh enacted in 1860 either directly and indirectly includes almost all the offences included in the recent legislations of Bangladesh such as the *Nari o Shishu Nirjatan Daman Ain, 2000*, the *Manab Pachar Protirodh o Daman Ain, 2012* and the *Pornography Niyontron Ain, 2012* and the Code of Criminal Procedure, 1898 has also procedural and applicable court establishment guidelines for such offences. For implementation failures of these legal provisions the Government of Bangladesh is liable said a government prosecutor of Dhaka District seeking anonymity to the Study team. Failures of law enforcement agencies, investigation and prosecution services also fall under executive failures.

Judicial Failures

The failures of the judiciary in implementing a law by dispensation of justice has been discussed here as judicial failures. However, in recent years from 1995 to 2012 the parliament of Bangladesh has brought many legislative changes making the many previous legal provisions relating to sexual abuse and exploitation of children replaced with the new ones. For example the *Nari o Shishu Nirjatan Daman Ain, 1995* was passed making many provision of the Penal Code, 1860 redundant, this Act of 1995 itself was repealed in 2000 and replaced with the *Nari o Shishu Nirjatan Daman Ain, 2000*. Many provisions of the Act of 2000 were further amended in 2003. The recent legislation of the parliament, the *Manab Pachar Protirodh o Daman Ain, 2012* has repealed sections 5 and 6 of the *Nari o Shishu Nirjatan Daman Ain, 2000*. No case laws under the recent laws like *Manab Pachar Protirodh o Daman Ain, 2012* and the *Pornography Niyontron Ain, 2012* has been developed yet from which successes and failures of the judiciary can be examined. However, these two laws made many previous legal provisions redundant making the case laws developed on these legal provisions almost unnecessary. However, the research team of the study searched for relevant judgements of last 10 years for this study to explore the highest court's directions, observations and interpretation regarding existing laws and policies regarding torture, sexual abuse and exploitation of children. One of such recent case laws, which provides Bangladesh scope for harmonization and implementation of its obligations under UNCAT and UNCRC is the judgement of the Appellate Division of the Supreme Court of Bangladesh in the case of *Anika Ali vs Rezwanul Ahsan* (reported in 17

BLC (AD)(2012) page 77) where Mr. Justice Md Imman Ali, the author judge of the judgement passed by the full Bench of the Appellate Division of the Supreme Court observed-

“... Unless provisions of international instruments are contrary to our domestic laws, the beneficial provisions may profitably be referred to and implemented in appropriate cases. ”

Despite this huge advancement of the higher courts there are lots of judicial failures in implementation of national laws regarding torture, sexual abuse and exploitation of children. Delay in delivering judgements is one of the major failures of both higher and lower part of judiciary. It made almost all the recent legislations providing time-bound trial procedure useless. The judiciary has also failed to follow up the implementation of its judgements and order already passed.

Chapter 11

CHALLENGES IN HARMONIZATION

Political Challenges:

The emergence of Bangladesh was followed by framing of a very modern Constitution for the country. The Constitution of Bangladesh has incorporated in itself almost all the civil and political rights included in the UDHR and ICCPR which are also applicable for children and extends legal protection from torture and sexual abuse and protection. However, failure of Bangladesh in continuing constitutionalism because of unconstitutional intervention in the state power of Bangladesh and lack of minimum consensus among the political forces as well as lack mutual respect and trust interrupted human rights advancement of the country as well as continuity of legislative reforms. It has been still persistent in the politics of Bangladesh, which constitutes a big challenge in harmonizing national laws and policies with the standards set out in UNCAT and UNCRC.

Economic Challenges:

Article 10 of the OPSC considers root causes contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism includes poverty and underdevelopment. Bangladesh is a least developed country. It can provide adequate standard of living to its citizens. A large number of children are compelled to be workers are under 18 years of age. They are the easy prey to sexual abuse and exploitation.

Social and Cultural Challenges:

Awareness raising and capacity building activities on child sexual abuse and sexual exploitation faces some social and cultural challenges in Bangladesh as general people treats sexual issues as taboo. The social and cultural environment of Bangladesh provides some kind of shelter to the perpetrators of sexual abuse and exploitation of children in

Bangladesh. Sex is considered as a taboo and victims of sexual offences are accepted properly in the society. People at times consider the victims of such offences are also responsible for being victim because of their character. It compels victims and their family members suppress the whole issue which result in less complains and less prosecution. Once they become the victim of sex trafficking they dare not to seek remedy before the court of law in fear of losing social position. Though our domestic law provides provisions of camera trial in such cases, a three in one overburdened court could not maintain it. Some respondents cited an existing proverb regarding our legal system that a raped victim becomes raped twice in the court. The offences of domestic violence are quite accepted in our society. These socio-cultural challenges are very difficult to be addressed through legislative actions of the State.

Legal Challenges:

Since Bangladesh adheres to the principle of dualism in regard to the international laws like the provisions of UNCAT and UNCRC are not automatically incorporated in our legal system. It needs further national legislation. Many provisions of our Constitution relating to protection of children from exploitation are in its fundamental principle of state policy part. These provisions are not enforceable by the judiciary.

The legal system of Bangladesh also accommodates the respective personal laws of its population on personal affairs. Religion provides a separate code of lives of the people of Bangladesh. It controls marriage, sexual rights of man and women, maintenance, guardianship of children etc of the citizens of Bangladesh. It is a great challenge for Bangladesh to initiate harmonizing the personal law provisions with the UNCRC or UNCAT standards.

The adjudicative process in Bangladesh is adversarial in nature. Salient features of this system are that the parties, through their lawyers play a dominant role in the judicial process and the judge merely plays the role of an umpire to keep the parties within the bounds of the rules. The lawyers representing the parties in court present the facts of the

case, produce evidence, call witnesses, examine and cross-examine them, argue with the counterparts, point to the laws applicable to the disputes and pursue decisions by the courts. A judge merely evaluates the facts in order to pass judgment on the basis of the appropriate law. In short, lawyers have, in this system, more active role than the judges. Even though there is lack of capacity building initiatives for lawyers.

Chapter 12

RECOMMENDATIONS

The Study Team makes the following recommendations in to harmonize the legal system of Bangladesh with the UNCAT and UNCRC standards:

- 1) **Comprehensive Review of Existing Laws to Identify Scopes for Harmonization:** The Committee on the Rights of the Child in 2009 in the Concluding Observation adopted on the combined third and fourth periodic report of Bangladesh recommended the Government several times to carry out a compressive review of existing laws of Bangladesh to harmonize the same with the CRC standards. In addition to the recommendations made by the Child Rights Committee the Study Team of the present study recommends the government of Bangladesh to identify, during the comprehensive review, the scopes for legal reform including making new laws in absence of any law to harmonize our legal system with the UNCAT and UNCRC standards.
- 2) **Revision of Existing Laws:** The study team recommends revision of the existing laws on sexual abuse and exploitation of Bangladesh by repealing some provisions of old laws which became redundant by the recent laws passed by the legislature. The government my consider codification of all laws relating to sexual offences.
- 3) **Translation of Laws:** Bangladesh is at present making all laws in Bangla. It is a laudable initiative to make legal service available to the common people. Almost all the laws have provision to make a government approved English translation of the law but the government is yet to make the translation. The government is recommended to translate all the recent laws and make it available to the legal community.
- 4) **Determination the Age of ‘Child’:** There are still some laws in Bangladesh e.g., the Nari O Shishu Nirjaton Daman Ain, 2000, the Children Act, 1974, Sromo

Ain, 2006 which have enough scope to define any human being of below 18 years as an adult. The laws having such ambiguities ought to be amended for harmonizing those with the provisions of UNCRC and UNCAT.

- 5) **Enacting a new Law on Torture:** The government of Bangladesh is recommended to enact a new law for providing all adequate protection from all kinds of torture and other cruel, inhuman and degrading treatment or punishment as per the Article 2 (1) and Article 4 of the Convention against Torture. The government may consider the private member bill presented in the Parliament on 10 September, 2009 by Mr. Saber Hossain Chowdhury, the Member of Parliament for the Constituency 182, Dhaka-9 as an example of legislation but specific attention should be given for child protection so that children get utmost protection from torture and treatment, which may be sexual nature.
- 6) **Amendment of Criminal Procedure Code:** Some provisions of Criminal Procedure Code like sections 54 and 167 provide some scope, when abused, for torturing a child in conflict with laws. These provisions would be amended as per the directions passed in *BLAST v. Bangladesh*²² and *Saifuzzaman v. State*²³ for harmonizing criminal provisions with those of UNCAT.
- 7) **Amendment of Service Laws:** The government is recommended to make laws of different government services including that of law enforcement agencies for harsh punishment when persons of these services get involved with offences of torture and sexual abuse and exploitation.
- 8) **Separate Child Rights Commission:** The government is recommended to establish a separate child rights commission or assigning one commissioner of the National Human Right Commission exclusively child rights functions.

²² 55 DLR 363

²³ 56 DLR 324

- 9) **Development of Institutional framework of rehabilitation Programme:** The Except the Manab Pachar Protirodh O Daman Ain no other child rights laws provide vivid provisions for the rehabilitation of the victims of sexual offences. Moreover, Bangladesh has not sufficient institutional facilities to rehabilitate these victims. The government should develop its legal and institutional framework for effective physical and psychological recovery and social reintegration for the victims of sexual abuse and exploitation.
- 10) **Development of relationship with NGOs:** There are a good number of national and international NGOs working with child rights in Bangladesh. Of these, some have special schemes for the rehabilitation of sexually victimized children. The government is recommended to provide them scopes to work together with government by establishing relationship through adopting necessary legislative changes in concern laws.
- 11) **Framing of Rules of recent laws:** The Government is recommended to frame rules under newly enacted Domestic Violence Act and Human Trafficking Prevention and Suppression Act as these laws are not being implemented properly in absence of the rules making of which is vested to the Government.
- 12) **Scope for filing a case directly before *Manab Pachar Protirodh O Daman Tribunal*:** In the *Nari o Shishu Nirjatan Daman Ain* there was provision for filing case directly to the Tribunal established under this Act when Police do not record such case but in the *Manab Pachar Protirodh o Daman Ain* (Human Trafficking Prevention and Suppression Act) no such provision has been made. It may result in less filing of cases as Police of Bangladesh at times found unwilling to record cases to hide the real crime rate in their working area. Sometimes they refused to record cases being influenced by the offence side. So, provisions for direct case filing should be incorporated in *Manab Pachar Protirodh O Daman Ain*.

- 13) **Laws on National Identity Card and Birth Certificate:** The government is recommended to make the law on National Identity Card effective and to give full effect to the laws on birth registration.
- 14) **Amendment of Evidence Laws accommodating Use of Modern Technology:** The Evidence law of Bangladesh should be amended to give or increase evidential value of video and audio files which are essential to try cases of cyber and digital pornography.