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A Review and Analysis of the Human Trafficking Cases Pending Trial in Bangladesh

Justice and Care, Bangladesh
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Bangladesh



CHAPTER ONE: EXECUTIVE SUMMARY

Effective prosecution is deemed to be one of the most effective ways to curb human trafficking; whereas delayed prosecution and low conviction rates give criminals a sense of impunity, and a lucrative low-risk business model, incentivizing and increasing the trade in human lives. It is therefore imperative to identify the impediments towards expeditious prosecution of human trafficking cases, and the solutions thereof.

Justice and Care, Bangladesh is working closely with Ministry of Home Affairs of Bangladesh in finding ways to expedite the process of prosecution of the human trafficking cases pending trial. Justice and Care have reviewed 354 human trafficking cases which are at different stages of trial to identify the factors that are fettering the prosecution process and to identify any procedural gaps to be filled to improve the process, with the aim of helping.

354 cases under trial have been randomly selected from 8 selected Districts - Dhaka, Magura, Satkhira, Narail, Jhenaidah, Bagerhat, Jashore and Khulna. Court dockets and trial documents were analyzed for these cases, with 159 Key Informant Interviews conducted and analyzed to obtain an in-depth understanding of the issue.

A number of barriers to effective prosecution have been identified through this case file analysis.

The key findings include:

- 1 Procedural misapplication in regards to the pre-trial investigation of the human trafficking cases by the tribunals has been identified. The tribunal judges are ordering agencies other than the local police stations to conduct the inquiry, despite there being clear provisions in Sec 19 of PSHTA 2012 directing the investigation to be carried out by a police officer not below the rank of sub-inspector from the concerned local police station;
- 2 In less than 5% of cases the Investigating Officer has incorporated any kind of foreign evidence. With the vast majority (75%) of cases reviewed involving trafficking outside Bangladesh, this is a very significant issue;
- 3 Of the 159 key Informant interviews, more than 40% of complainants were not interested in pursuing their respective cases in prosecution, in part due to issues such as the sluggishness of the procedure and poor witness protection mechanisms etc.;
- 4 96% of cases in the Examination of Plaintiff Witness stage involve witnesses who have failed to appear before the tribunal to give their testimonies;
- 5 Poor engagement of Public Prosecutors with victims and complainants is the norm - with almost 70% of victims and complainants having made no communication with the Public Prosecutor.
- 6 Granting bail significantly impacts the availability of the accused to progress the trial; in 35% of cases where bail has been granted, the accused has absconded;
- 7 Amongst the 159 key informant interviews, almost 90% of complainants have been found to have difficulty understanding the court proceedings;
- 8 Amongst the 159 key informant interviews, more than 75% of complainants are found to be financially incapable of pursuing prosecution and attending court dates.

In view of these findings, we recommend the following actions:

1. i. Better implementation of Sec. 10 of the Prevention and Suppression of Human Trafficking Rules 2017 is needed to improve the coordination between Prosecutors and Investigating Officers. ii. In cases where the victim was rescued after the submission of the investigation report by the Investigating Officer, the Prosecutor needs to apply for further investigation to properly incorporate the new information into the prosecution.
iii. Must ensure compliance with the directives of Section 19 of the PSHTA 2012 so that the pre-trial investigations are conducted only by the police officers not below the rank of sub-inspector from the corresponding police stations.
2. Bail matters in human trafficking cases may need to be handled bearing in mind the likelihood of the accused influencing the complainants/ victims while out on bail.
3. Due to a plethora of issues such as poor legal literacy, financial incapability and weak witness protection system etc. the complainants tend to compound the cases. A mechanism needs to be implemented where the complainants are made aware of their rights and obligations after entering into the prosecution right after the filing of complaints so that they do not mistake a human trafficking case for a compoundable offense.
4. Witnesses who are not able to attend the court dates due to financial barriers should be provided with appropriate aid so that they can fulfill their obligation of appearing before the court. Also must ensure timely and effective execution of court processes to summon the witnesses during the Examination of Prosecution Witness stage.

CHAPTER TWO: BACKGROUND & SCOPE

2.1 Background to the Study

International migration has become global in this era of globalization, and, accordingly, human trafficking emerged as a drawback of globalization and one of the fastest-growing areas of organized crime (Rahman, 2011). Consequently, the delayed efforts of bringing perpetrators to justice and low conviction rate are the major reasons that now these criminal networks are flourishing across regions without restraint.

Bangladesh has an estimated 592,000 victims of modern slavery, and the estimated prevalence is 3.7 victims per 1,000 population (GSI, 2018). Bangladesh has been promoted to Tier 2 from Tier 2 Watch List based on the TVPA minimum standards (Trafficking Victims Protection Act) in 2020 (TIP Report, June 2020) which is a great achievement (USDOS TIP Report 2020). However, the country is still to comply with the minimum standards for combating trafficking in persons. The current coronavirus pandemic has worsened the situation as Bangladesh was under lockdown from 23rd March 2020 until 30th May 2020 which has made vulnerable people even more at risk of exploitation. People who used to live solely on their daily income suddenly found themselves out of work and income. This might have worked as a trigger for increasing unemployment, rising crime, and cyber bullying including increasing vulnerabilities to human trafficking (UNODC, 2020). This pandemic has also seriously affected the prosecution process of human trafficking cases which was already lagging behind due to various issues.

Effective prosecution is deemed one of the best ways to curb human trafficking while delayed prosecution and low conviction rate have given criminals a sense of impunity which often led to increase of the crime. In many cases complainants/victims have reportedly given up pursuing justice due to prolonged prosecution processes. Therefore, it was imperative to identify the impediments towards expeditious prosecution and the solutions thereof.

Justice and Care, Bangladesh is a registered international non-governmental organization (INGO), and is working closely with Ministry of Home Affairs of Bangladesh in finding ways to expedite the prosecution process of the human trafficking cases pending trial. Justice and Care opted to review around 354 human trafficking cases which are at different stages of trial to identify the factors that are fettering the prosecution process. It was also important to understand if there are any procedural gaps to be filled in to improve the process.

The case review also seeks to identify the gaps in evidence required to convict the criminals. The main aims of the case review are to help judicial stakeholders make necessary systemic changes to increase efficiency and efficacy of the prosecution system, also to look into how can foreign evidence be used against the offenders during the investigation and trial stage. Major difficulties that the complainants face to support the prosecution have also been looked into during the review. There are certain limitations of the case review that we might need to overcome in the future to understand more about the driving factors behind the delayed prosecution. According to the Ministry of Law, Justice and Parliamentary Affairs (MoLJPA) around 6,230 human trafficking cases were pending trial in Bangladesh in 2019.

2.2 Research Question

The broad research question is –

“To identify impediments towards expeditious prosecution of human trafficking cases and finding practical solutions to speed up the process.”

CHAPTER THREE: METHODOLOGY

8 Districts have been selected for this case review considering the volume of the cases pending trial and they are- Dhaka, Magura, Satkhira, Narail, Jhenaidah, Bagerhat, Jashore and Khulna. Cases under trial have been randomly selected from the selected Districts. Most of the cases in which investigation authorities have submitted a final report have been screened out to get more understanding on cases found to have merit. The number of cases reviewed are representational of the cases pending trial in the selected districts.

3.1 Data Analysis Procedures

During this review, content analysis was done through initial analysis of the court dockets and trial documents. The collected data was categorized for quantitative analysis. 159 Key Informant Interviews (KII) were also conducted for qualitative analysis, to get an in-depth understanding of the issue. Triangulation method was used for the overall analysis.

3.2 Data and Methods

Case Docket (analysis)

In this study, case dockets were used as the primary sources of data. Case dockets are the official summary proceedings in a court of law. Justice and Care (JCBD) collected 354 court dockets from the above mentioned eight districts in Bangladesh. Following the collection of relevant data, they were systematically incorporated in a database for easier access.

Court records (trial)

Trial documents were collected and analyzed in the second stage of data collection. These documents were also collected from the tribunals. A Trial Document is a live file which is updated based on any activity regarding a particular case. To facilitate the collection of data from both the live court records of the tribunals and the Key Informant Interviews (KII) with the complainants in the later stages, JCBD also developed a questionnaire.

Key Informant Interview (KII)

Key Informant Interviews were conducted with 159 of the complainants of these 354 cases. JCBD tried to make contact with the complainants in all 354 cases but this was not possible for several reasons, chiefly that a considerable number of them have moved to a different district and could not be tracked. JCBD appointed 8 lawyers to conduct the KII with the complainants. A specialized questionnaire was used to collect data from the interview.

CHAPTER FOUR: KEY FINDINGS & RECOMMENDATIONS

A number of barriers to effective prosecution have been identified through the case file analysis. This chapter identifies these key findings and our recommendations for addressing these challenges.

4.1 BARRIERS RELATED TO INVESTIGATION/PRE-TRIAL PROCEDURES

4.1.1 Inquiry of the cases:

Investigation into the human trafficking cases is required to be conducted by a police officer not below the rank of Sub-inspector from the local police station that received the complaint. However, there have been multiple anomalous practices.

4.1.1.1 In a number of cases, the tribunal judges are treating the matter of pre-trial investigation as an “Inquiry” instead of “Investigation” and are directing bodies other than the Police to conduct them. This anomalous and ultra vires practice can potentially create complications in the entire prosecution system.

4.1.1.2 In other instances, local police stations have forwarded the case to one of the other branches of the Bangladesh Police such as the CID, PBI or the District Detective Branch, although we did not identify any substantial negative effect of such forwarding.

Recommendations:

- Training tribunal judges to treat these matters as investigations, rather than inquiries.
- Closer adherence to Sec. 19 of the PSHTA, which states that cases can only be investigated by the police officer not below the rank of Sub Inspector (SI) of the concerned police station, which has to be complied with.

4.1.2. Use of Foreign Evidence in Investigation:

In less than 5% of the cases have Investigating Officers incorporated any kinds of Foreign Evidence (documents or witnesses) - even when the vast majority (over 70%) of the cases reviewed involve trafficking outside Bangladesh.

Recommendations:

- Improved understanding by the Investigation Officers (IO) and special public prosecutors of the need to follow International Legal Instruments/ Mutual Legal Assistance Treaties, and of the importance of foreign evidence in cross border/transnational human trafficking cases. Providing appropriate training to SPPs and the IOs may be efficacious in this regard.
- Implementation guideline for bilateral Mutual Legal Assistance Treaty (MLAT) to be developed and adopted to enable source countries investigating officers to access foreign evidence in the destination countries.
- Processes to be developed which allow Investigation Officers to include evidence of victim’s rescue in charge sheets or investigation reports.
- Special case list needs to be prepared where a victim is rescued in a foreign country and repatriated back to Bangladesh.
- Authorities / NGOs representatives involved in the rescue or repatriation of victims in foreign countries should be required to be examined as witnesses at tribunals.

4.2 BARRIERS RELATED TO TRIAL PROCEDURES

4.2.1 Complainants’ willingness to pursue the case in prosecution:

A sizable portion (more than 40%) of complainants is not interested in pursuing their respective cases in prosecution.

Recommendations:

- Functioning separate Tribunals in each district have certainly lessened some workload and expedited the prosecution of human trafficking cases. But the territorial jurisdiction of these tribunals needs to be expanded for further expediting the prosecution of these cases and the development of access to justice.
- Broader territorial jurisdiction should also be given to Specialized Tribunals to expedite the prosecution of these cases and expand access to justice.
- In districts where Anti-human trafficking tribunals have not yet been established, Prevention of Violence against Women and Children Tribunals are performing additionally as Anti-human trafficking tribunals and trying human trafficking cases. The appointment of dedicated Prosecutors to deal with the human trafficking cases in such tribunals may result in the reduction of workload.
- Digitization of the court records may be considered to expedite the prosecution process. A digital system can be introduced that will allow both the Prosecutors and the Judges to easily keep track of the trial progress of all the cases and to ensure that the attendance of witnesses never goes unrecorded.
- An effective protocol for identifying victims and crimes can be introduced to lessen the number of cases erroneously filed under wrong provisions of law.

4.2.2 Witness Examination

A large number of cases are stuck in the Examination of Plaintiff Witness stage because witnesses are not willing to appear before the tribunal to give their respective testimonies. In fact, the overwhelming majority of the cases in this stage involve witnesses who have failed to appear before the tribunal.

Recommendations:

- Witnesses who are not able to attend the court dates due to financial barriers should be provided with appropriate legal aid so that they can fulfill their obligation of appearing before the court.
- In victimless cases, where the complaint was filed by the members of the law enforcement agencies, appropriate steps need to be taken by the concerned tribunal to ensure that the witnesses are brought before the Tribunal in due time for examination so that the prosecution can be expedited.
- The provisions given in the sections 37 & 38 of the PSHTA regarding the matter of witness protection need to be properly implemented in order to protect the complainants, the victims and the witnesses from any harassment from the accused parties or their accomplices.
- Responsible authorities need to be aware of the counter litigation that the accused often use as a means of putting pressure on the victims – ref. section 37 (1) of PSHTA, 2012.
- GO NGO coordination needs to be set in place to ensure protection of victims in human trafficking cases and to motivate them for participating in judicial proceedings.
- More generally, appropriate steps need to be taken to ensure that, in cases where the complaint was filed by law enforcement agencies, witnesses are brought before the Tribunal in due time for examination so that the prosecution can be expedited.

4.2.3 Role of the Public Prosecutor:

Public Prosecutors (PP) tend to be disengaged: almost 70% of victims and complainants have had no communication with the PP.

Recommendations:

- Better implementation of Sec. 10 of the Prevention and Suppression of Human Trafficking Rules 2017 is needed in order to improve the coordination between the Prosecutors and the Investigating Officers. This may result in both bodies becoming well aware of what is necessary and available for the successful prosecution of a particular human trafficking case.
- In cases where the victim was rescued after the submission of the investigation report by the Investigating Officer, the Prosecutor needs to apply for further investigation to properly incorporate the new information into the prosecution. The Prosecutors can be given training to ensure that they are conveying the importance of the information regarding the rescue of the victim to the complainant during their initial communication.

4.2.4 Accused Parties remain free during trial period:

Due to the slow pace of trials, and because a significant number of those accused are granted bail, accused parties remain free - and even flee/hide after being granted bail - throughout the trial.

Recommendations:

- Bail matters in human trafficking cases need to be considered more sensibly, bearing in mind the possibility that the accused may influence the complainants/ victims while they are out on bail.

4.3 BARRIERS ASSOCIATED WITH SOCIO-ECONOMIC CHARACTERISTICS OF THE COMPLAINANTS

4.3.2 Financial Capability of the complainant

In addition to the lack of legal awareness, the lack of financial resources on the part of the complainant has been identified to be a key issue in our study: more than a quarter of the complainants involved in the cases reviewed have been found to be financially incapable of pursuing prosecution and attending court dates.

4.3.2.1 As a result of the typically humble origins of complainants, they – and their witnesses - are subject to harassment from the accused parties in almost a third of the cases.

Recommendations:

- The provisions given in the PSHTA regarding the matter of witness protection need to be properly implemented in order to protect the complainants, the victims and the witnesses from any harassment from the accused parties or their accomplices.
- Responsible authorities need to be aware of the counter litigation that the accused often use as a means to put pressure on the victims – ref. section 37 (1) of PSHTA, 2012.

4.3.2.2 Additionally, lack of economic means also helps explain why some witnesses fail to appear before the court; and while complainants are entitled to appoint lawyers to act on their behalf and aid Public Prosecutors, they do so in only about a third of the cases reviewed.

Recommendations:

- Witnesses who are not able to attend the court dates due to financial barriers should be provided with appropriate legal aid so that they can fulfil their obligation of appearing before the court.

4.4 ADDITIONAL RECOMMENDATIONS

Based on our wider experiences and interactions with stakeholders involved we propose the following additional recommendations:

- Legal provisions regarding human trafficking need to be well understood by the concerned authorities to be able to properly conduct the initial identification of the crime and victim, so that scenarios such as illegal transportation of aspirant migrants or fraud cases related to migration are not erroneously reported as human trafficking cases.
- An effective and transparent coordination system needs to be established between the courts and the executing authorities of the court process to ensure that the court process for witnesses is executed in due manner – a court process register can be used and regularly monitored to track the execution of the court processes.
- Resources and jurisdictions available to the executing authorities of the court process may need to be revised and emboldened so that they can execute processes for both the foreign witnesses and for the witnesses who have become displaced internally.

CHAPTER FIVE: ANALYSIS

This chapter sets out the detailed findings from our analysis, including the characteristics of the cases analyzed, challenges associated with the pre-trial stage, the trial proceedings and the barriers experienced by the complainants and victims.

5.1. Case status: This section discusses our findings regarding some of the prevalent characteristics of the cases.

5.1.1 Age of the Cases:

It appears from the review, that a significant number of these cases have been in prosecution for several years now, and this is contributing to the huge backlog of unresolved cases in Bangladesh.

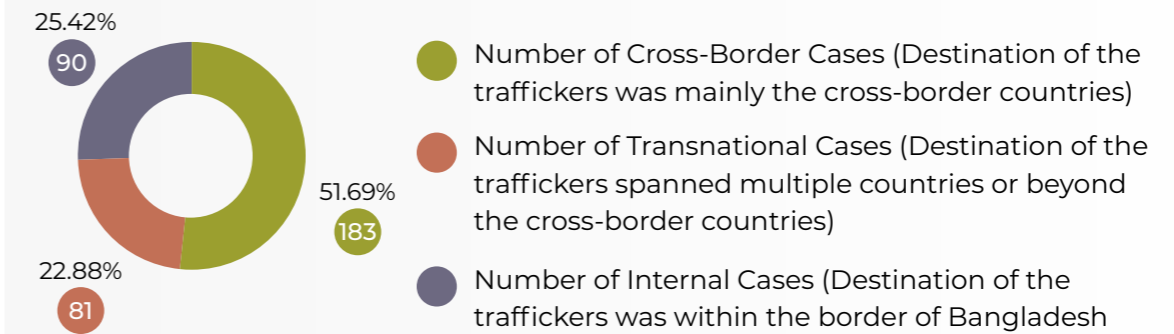
Out of the total 354 cases –

- Pending trial for 1 – 3 years: 40.68% (144)
- Pending trial for 4 – 5 years: 32.77% (116)
- Pending trial for 6 – 7 years: 15.54% (55)
- Pending trial for 8 or more years: 11.02% (39)

5.1.2 Types of human trafficking reported in the cases:

The number of cases where the trafficking destination is within the border of Bangladesh is vastly outnumbered by the cases where the destination is outside of the borders, with India being the most recurring destination country.

Out of the total 354 cases



5.1.2

5.1.3 Whether the cases have any victims or not:

A number of “victimless cases” have been discovered through this review. These kinds of cases are usually lodged by members of the law enforcement agencies after raiding prostitution establishments or apprehending individuals who are associated with any kinds of exploitation practices and are lodged under sections such as 7 / 8 / 10 / 11 / 12 / 13 of the Prevention and Suppression of Human Trafficking Act 2012.

Out of the total 354 cases –

- Number of Cases found with victims: 86.16% (305)
- Number of Cases found with no victims: 13.84% (49)

5.2. Pre-trial stage: This section reflects our findings regarding the pre-trial stage of the human trafficking cases.

5.2.1 Place of filing complaint:

As per the provision of the law currently in force in Bangladesh, a complaint of a human trafficking offense can be filed in the corresponding local police station or directly in the tribunal. It has been found in our study that the average citizens are more inclined to file the complaints in the local police station than going to the tribunals. In cases where the complainant is a member of the law enforcement agencies, the complaints have always been filed in a police station.

Out of the total 354 cases –

- Number of cases filed in a Tribunal: 37.29% (132)
- Number of cases filed in a Local Police Station: 62.71% (222)

5.2.2 The complainants of the cases:

Most of these complaints have been filed by people who are related to the victims. Cases where the victims themselves have acted as the complainant have been found to be rarer by comparison, which may be an indication of the social aspect of the aftermath of their victimization. The rest of the complaints have been filed by the members of the law enforcement agencies such as the local police, the border guards etc., and NGO actors. The data regarding the background of the complainants is as follows –

Out of the total 354 cases –

- Number of cases filed by the Relative of victims: 53.11% (188)
- Number of cases filed by the victims themselves: 24.58% (87)
- Number of cases filed by the members of the Law Enforcement Agencies: 21.75% (77)
- Number of cases filed by the NGO Representative: 0.56% (2)

5.2.3 Investigation / Inquiry of the cases:

As per the law currently in force in Bangladesh, the pre-trial investigation into the human trafficking cases is required to be conducted by a police officer not below the rank of Sub-inspector from the corresponding local police station. It appears that this provision of law is not being complied with in a certain percentage of the total cases. We have identified that in some cases the tribunal judges are treating the matter as “Inquiry” instead of “Investigation” and are directing bodies other than the Police to conduct the same.

23%

of cases anomalously sent for inquiry instead of investigation

5.2.3.1 Investigation:

After the complaint has been filed in the corresponding Local Police Station or Tribunal, an officer not below the rank of Sub-inspector from the Local Police Station is appointed to conduct investigation, as required by the law. In some cases, we have seen that the local police stations have forwarded the case to one of the other branches of the Bangladesh Police such as the CID, PBI etc.

Out of the total 222 cases that were filed in a Local Police Station (98.20%)–

- Number of cases investigated by the Local Police Station: 82.88% (184)
- Number of cases investigated by the Local Police Station & the CID: 13.06% (29)
- Number of cases investigated by the Local Police Station & the PBI: 1.35% (3)
- Number of cases investigated by the Local Police Station & the Jela Goyenda Shakha: 0.90% (2)

Out of the total 132 cases that were filed in Tribunals (67.42%)–

- Number of cases investigated by the Local Police Station: 57.58% (76)
- Number of cases investigated by the Local Police Station & CID: 9.09% (12)
- Number of cases investigated by the Local Police Station & PBI: 0.76% (1)

5.2.3.2 Inquiry:

Cases where the complaint has been filed in a tribunal are sometimes forwarded to bodies other than the local police station, such as to the Metropolitan Magistrates for Judicial Inquiry or to bodies such as the Police Bureau of Investigation (PBI), Social Welfare etc. for conducting “Inquiry” by the learned tribunal. This anomalous practice is ultra-vires and can have a potential detrimental effect on the case, since it has the capacity to weaken the entire stance of the prosecution. In our findings we have identified that –

Out of the total 132 cases that were filed in Tribunals (23.48%)–

- Number of cases inquired by the Metropolitan Magistrate: 6.06% (8)
- Number of cases inquired by the PBI: 12.12% (16)
- Number of cases inquired by the CID: 3.03% (4)
- Number of cases inquired by the Sub-divisional Women Affairs Officer: 0.76% (1)
- Number of cases inquired by the Social Welfare: 1.52% (2)

5.2.3.3 Miscellaneous:

We identified some cases where the pre-trial investigation was duly conducted but it was not conducted by the officers of the corresponding local police station. The undertakings of the investigating officers in these cases closely resemble what would otherwise be expected if the investigation had been conducted by a police officer from the local police station, and the investigating officers appear to have submitted charge sheets instead of submitting some other form of investigation report.

Out of the total 222 cases that were filed in Local Police Stations (1.80%)–

- Number of cases investigated by the PBI: 0.45% (1)
- Number of cases investigated by the District Detective Branch: 1.35% (3)

5.2.3.4 Limitation:

In addition to these cases, we could not ascertain which agency conducted the investigation or inquiry in 9.09% (12) cases out of the 132 cases that were filed in tribunals.

5.2.4 Status of the investigation:

After the investigation has concluded, the Investigating Officer is required by law to provide either a Charge sheet / Investigation Report or a Final report so that the trial can begin.

Out of the total 354 cases -

- Charge sheet / Investigation Report has been submitted (Prima facie of the Complaint has been found by the Investigation Officer): in 98.87% (350) cases.
- Final Report has been submitted (Prima facie of the Complaint has not been found by the Investigation Officer or it has been found but the Investigating Officer could not find the correct information regarding the name & address of the accused): in 1.13% (4) cases.

5.2.5 Medical Examination of the victims:

Medical examination of victims can oftentimes yield evidence which becomes necessary in prosecution, especially in cases where the accusations of forced sexual acts are involved. Though we have seen that in only a handful of these cases any such medical examination has been issued, it is also worthy of note that not all of the cases actually required any kind of medical examination to be issued -

Out of the total 305 cases that has victims –

- Number of Cases where the victims were medically examined: 13.77% (42)
- Number of cases where the victims were medically examined, but the doctors were not mentioned as witnesses in the Charge Sheet / Investigation Report: 0.98% (3)
- Number of cases where the victims were not medically examined: 80% (244)
- Unidentifiable: 5.25% (16)

5.2.6 Use of Foreign Evidence in Investigation

Use of Foreign Evidence in investigation has been seen to be crucial in many of the Cross-border and Transnational Cases, however the actual number of cases where the Investigating Officer has incorporated any kinds of Foreign Evidence (documents or witnesses) is next to non-existent.

Out of the total 264 Cross Border & Transnational Cases



5.2.6

5.3. Trial Proceedings: This section illustrates our findings regarding the status of the trial proceedings of the cases.

5.3.1 Stage in trial:

The trial proceedings of a criminal case in Bangladesh consists of the following stages –

- i. Charge Framing
- ii. Examination of Plaintiff witness
- iii. 342 Examination
- iv. Argument, and lastly,
- v. Judgment.

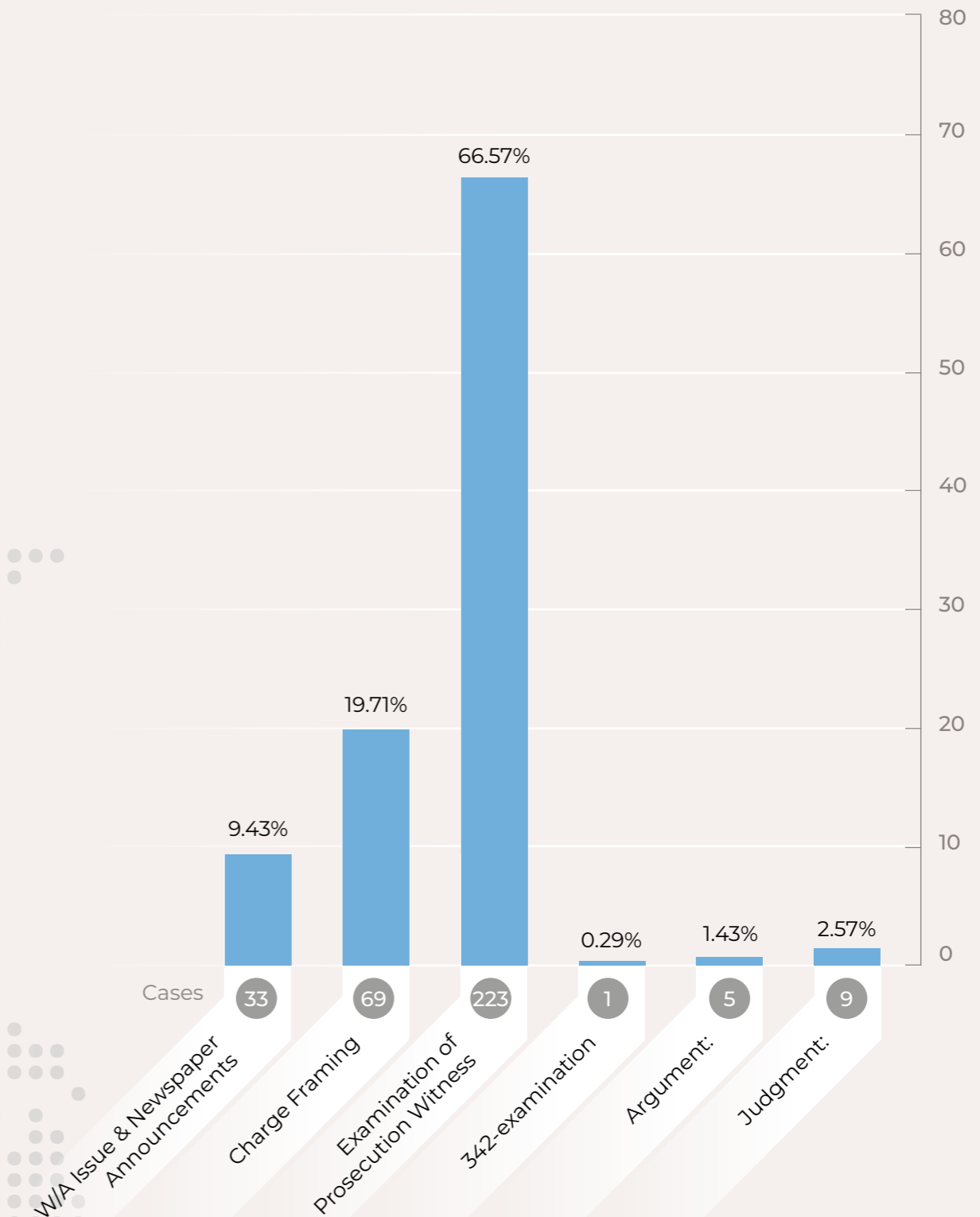
The trial proceedings of a criminal case in Bangladesh consists of the following stages –

Out of the 350 cases where Charge Sheet / Investigation Report has been submitted (Including the cases where the complainant is a member of the Law Enforcement Agencies) –

- W/A Issue & Newspaper Announcements 9.43% **(33)**
- Charge Framing: 19.71% **(69)**
 - Dismissed at Charge Framing: 8.70% **(6)**
 - Pending at Charge Framing: 91.30% **(63)**
- Examination of Prosecution witness: 66.57% **(223)**
- 342-examination: 0.29 **(1)**
- Argument: 1.43% **(5)**
- Judgment: 2.57% **(9)**
 - Acquittal: 66.67% **(6)**
 - Conviction: 11.11% **(1)**
 - Pending Judgment: 22.22% **(2)**

Stage in trial:

Out of the 350 cases where Charge Sheet / Investigation Report has been submitted (Including the cases where the complainant is a member of the Law Enforcement Agencies) –



5.3.1

5.3.2 Witness Examination:

The likelihood of a case reaching the judgment stage is vastly dependent on the due diligence of the witnesses. However, it appears that a significant number of these cases are stuck in the Examination of Plaintiff witness stage, because the witnesses are not appearing before the tribunal to give their respective testimonies. This issue of witnesses not appearing before the tribunal is a major reason as to why there is a ginormous backlog of unresolved cases in Bangladesh.

Out of the total 233 cases that are currently in the Examination of PW stage –

- In 73.39% (171) Cases none of the witnesses have appeared before the court to be examined, in those cases -
 - In 92.40% (158) Cases, the previous court date was set for Examination of PW but the witnesses were not present;
 - In 7.60% (13) Cases, Non Bailable Warrant has been issued against the witness due to nonappearance;
- In 26.61% (62) Cases at least one witness has been examined before the tribunal, in those cases –
 - In 85.48% (53) cases the previous court date was set for Examination of PW but the witnesses were not present;
 - In 6.45% (4) cases Non Bailable Warrant has been issued against the witness due to non-appearance;
 - In 8.06% (5) cases the previous court date was set for Examination of PW and the witness has testified.)

73%

of cases where not even a single witness came to testify

5.4. This section illustrates our findings regarding the experiences and barriers of the complainants and the witnesses.

5.4.1 Communication with the complainants and the witnesses:

The collection of information regarding the trial status of these cases was followed by a long and arduous process of conducting face-to-face conversation with the corresponding complainants and the witnesses, to identify the obstructions and barriers they are facing during the prosecution. In this section we will focus on those findings. Even though we were able to get the trial information about all of the cases that have been included in this study, it was not possible for us to communicate with some of the complainants and witnesses of those cases.

Out of the total 354 cases -

- Successfully communicated with the complainants and conducted KII: In 44.92% (159) Cases;
- Could not communicate with the complainants: In 55.08% (195) Cases, in those cases -
 - In 23.08% (45) Cases, the complainant decided not to share any information regarding the case and their experience during the prosecution;
 - In 36.92% (72) Cases, the complainant does not live in the same district and has not kept any connections with the trial proceedings;
 - In 36.92% (72) Cases, communication was deliberately not made due to the fact that the complainants were members of a law enforcement agency or an NGO representative;
 - In 1.54% (3) Cases, the complainants were found to be deceased;
 - In 1.54% (3) Cases, communication was deliberately not made because final report was submitted by the Investigating Officer assigned to the case because of not finding Prima facie of the Complaint;

5.4.2 The complainants willingness to pursue the case in prosecution:

It appears that a sizable portion of the total number of complainants are no longer interested in pursuing the prosecution of their respective cases. The lack of any meaningful effort from the complainant is a major factor behind the non-disposal of these cases.

Out of the 159 Cases where we communicated with the complainants –

- Number of cases where the complainants are still interested in pursuing the prosecution: 58.49% (93)
- Number of cases where the complainants are no longer interested in pursuing the prosecution: 41.51% (66);

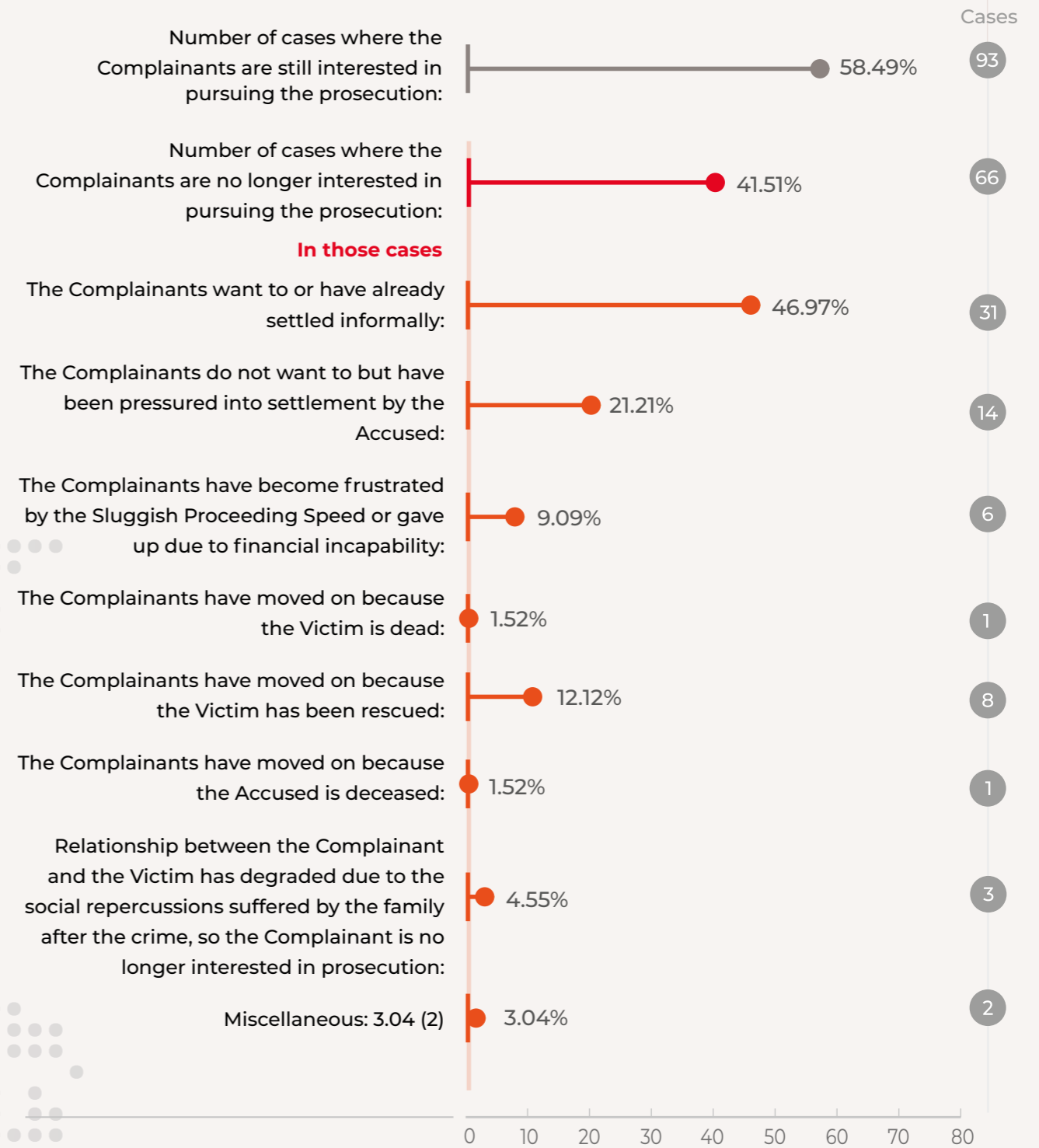
In those cases –

- The complainants want to or have already settled informally: 46.97% (31)
- The complainants do not want to but have been pressured into settlement by the accused: 21.21% (14)
- The complainants have become frustrated by the Sluggish Proceeding Speed or gave up due to financial incapability: 9.09% (6)
- The complainants have moved on because the victim is dead: 1.52% (1)
- The complainants have moved on because the victim has been rescued: 12.12% (8)
- The complainants have moved on because the accused is deceased: 1.52% (1)
- Relationship between the complainant and the victim has degraded due to the social repercussions suffered by the family after the crime, so the complainant is no longer interested in prosecution: 4.55% (3)
- Miscellaneous: 3.04 (2)

The complainants willingness to pursue the case in prosecution:

5.4.2

Out of the 159 Cases where we communicated with the complainants –

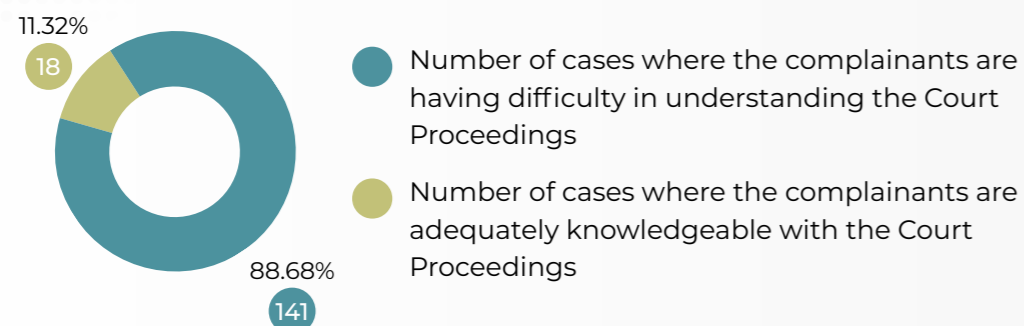


5.4.3 Legal awareness of the complainant:

It appears that most of the complainants are having difficulty in understanding the court proceedings. This is a common factor that explains why so many of the complainants are constantly making poor decisions during the prosecution process, such as refraining from appearing before the court to testify and making out of court settlements. During our interviews with the complainants, we ascertained the following:

5.4.3

Out of the 159 Cases where we communicated with the complainants -



5.4.4 Further indications regarding the legal literacy of the complainants:

5.4.4.1

Legally knowledgeable enough to make regular communications with the Public Prosecutor: 14.47% (23 cases out of the 159 cases where we communicated with the complainants)

5.4.4.2

Legally knowledgeable enough to produce their witnesses before the tribunal for examination: 27.04% (63 cases out of the 233 cases that are currently in the Examination of Prosecution witness stage)

5.4.4.3

Legally knowledgeable enough to appoint a lawyer to represent their interests during prosecution: 37.29% (132 cases out of the total 354 cases that we conducted this study on)

5.4.5 Role of the Public Prosecutor in Trial:

In Bangladesh, the state itself is regarded as the true complainant of the human trafficking cases, which inevitably places the persons filing the Complaints in a position more akin to an informant than anything else. In any event, maintaining a certain collaborative channel between the Public Prosecutor and the complaint, i.e., the person filling the complaint, is vital for the proper disposal of the cases. Firstly, this ensures that the prosecution will be promptly notified of the rescue or repatriation of the victim, should they be rescued or repatriated after the conclusion of the investigation, which would in turn result in the Public Prosecutor applying for further investigation into the crime or producing the victim before the tribunal as a witness to corroborate the commission of the crime. Secondly, since at least a portion of the total witnesses usually tend to be relatives or acquaintances of the complainants, this cooperation between the Public Prosecutor and the complainant can act as a practical mechanism for bringing those witnesses to the tribunals without any unwarranted delay.

5.4.5.1 Communication with the Public Prosecutor:

It was quite a surprising discovery that most of the complainants interviewed during this research have never made any attempts at contacting the Public Prosecutor.

Out of the 159 Cases where we communicated with the complainants -

- Complainants have made regular communications with the PP: 14.47% (23)
- Complainants have made initial communications with the PP and then stopped communicating: 18.87% (30)
- Complainants have made no communications with the PP: 66.67% (106)

5.4.6 Lawyers appointed by the complainants:

As per the laws currently in force in Bangladesh, the complainants are able to appoint lawyers to act on their behalf in aiding the Public Prosecutor during Prosecution, or for submitting Complaint-petitions in the tribunals. Efforts were made in our study to see the scale of these kinds of appointments and whether they are resulting in harassments against the complainants..

Out of the total 354 Cases -

- No lawyers appointed: 62.71% (222)
- Lawyers appointed: 37.29% (132)

Out of the 62 cases where a lawyer was appointed by the complainant and we also managed to communicate with the complainant -

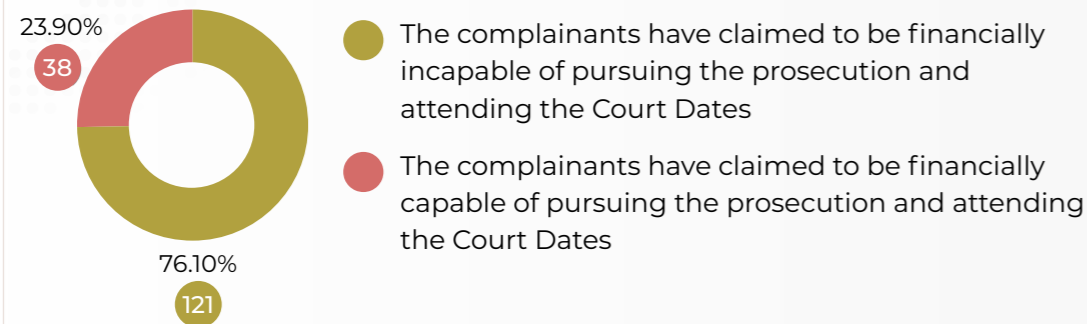
- Complainant has been harassed by the lawyers appointed: 4.84% (3)
- No harassment from the Lawyers appointed: 95.16% (59)

5.4.7 Financial capability of the complainant:

In addition to the lack of legal awareness, the poor financial capabilities of the complainants have been identified to be a key reason behind their lack of interest in the prosecution.

5.4.7

Out of the 159 Cases where we communicated with the complainants



5.4.8 Harassment of the complainant by the accused parties:

Since most of the people who are victimized by traffickers come from humble origins, it is generally expected that there is the possibility for the complainants / victims to be harassed by the accused parties in some way during the prosecution. In this study, the number of cases where the complainants or their family members have been harassed was found to be surprisingly low but nevertheless every bit as alarming.

Out of the 159 Cases where we communicated with the complainants –

- Complainants not contacted or threatened by the accused parties: 67.30% (107) Cases
- Contacted or threatened by the accused parties: 32.70% (52) Cases, in those cases -
 - Threats of Violence & Pressure for Settlement by the accused: 73.08% (38)
 - Pressure from community / local leaders for settlement: 11.54% (6)
 - Non-hostile proposal of settlement by the accused: 7.69% (4)
 - Institution of false cases against the complainants: 7.69% (4)

5.4.9 Legal awareness of the witnesses:

Limitation: It was not feasible to communicate with every single witness from all of the cases we conducted this study on. The witnesses interviewed to collect the above-mentioned data were communicated through the complainants themselves, because at least a portion of the total number of witnesses are either their relatives or acquaintances. In cases where the witnesses were living within the close vicinity of the complainants, they were interviewed directly.

Out of the 159 Cases where we communicated with the complainants –

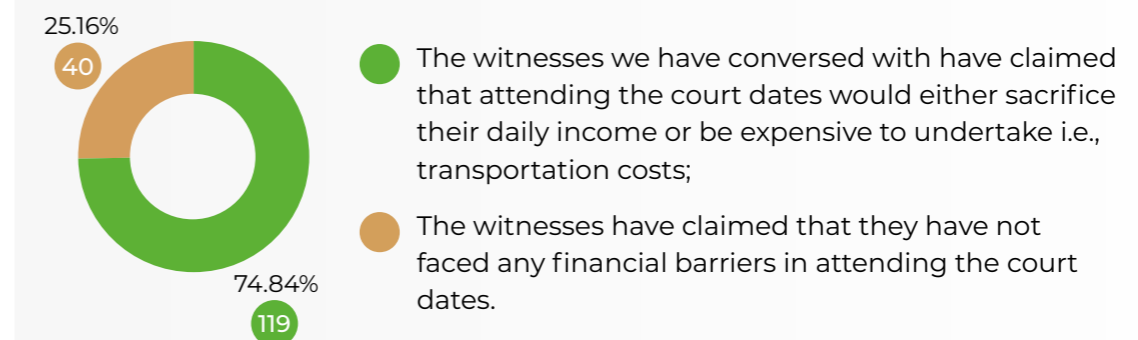
- Number of cases where the witnesses we have conversed with have claimed that they have had no difficulty in understanding their obligations in Prosecution: 14.47% (23)
- Number of cases where we have ascertained that the witnesses have had difficulty in understanding their obligations in Prosecution: 85.53% (136)

Limitation: It was not feasible to communicate with every single witness from all of the cases we conducted this study on. As such, the witnesses interviewed to collect the above-mentioned data were communicated through the complainants themselves. In cases where the witnesses were living within the close vicinity of the complainants, they were interviewed directly.

5.4.10 Financial capabilities of the witnesses:

Financial capability is just as much an issue for the witnesses as the complainants themselves.

Out of the 159 Cases where we communicated with the complainants



Limitation: Same as previous.

5.4.10

5.4.11 Harassment of the witnesses by the accused parties:

Through a similar method as the complainants of these cases, we have found the following information regarding the scale of harassment of witnesses by the accused parties

Out of the 159 Cases where we communicated with the complainants –

- In 73.58% (117) cases, the witnesses have claimed that they have not been contacted or harassed by the accused parties;
- In 26.42% (42) cases, the witnesses have claimed that they have been contacted or harassed by the accused parties;

Limitation: Same as previous.

26% of witness contacted or harassed by accused parties

5.5. Victim profile: This section discusses the information we have collected about the victims.

5.5.1 Total Number of victims (analysis on the total 305 cases with victims): of victims:

478 victims

5.5.2 Age of victims:

It appears that the individuals aged 18 or over are more prone to being victimized than the rest. The age bands of the victims are as follows

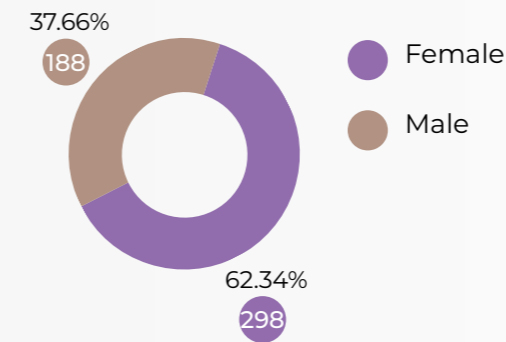
(analysis on the total 305 cases with victims) –

- Ages 0 – 10: 8.58% (41)
- Ages 11 – 17: 18.41% (88)
- Ages 18 or above: 72.59% (347)
- Unidentifiable: 0.42% (2)

5.5.3 Gender of the victims:

Females account for significantly more in regards to victimization than males. The data supporting this is as follows

(analysis on the total 305 cases with victims)



5.5.3

5.5.4 Victim rescue:

Information regarding whether the victims have been rescued or not is as follows. Please note that this only mentions the number of cases where the victims were rescued, not the number of victims.

Out of the total 305 cases with victims -

- Victim has been rescued: In 85.57% (261) Cases
- Victim has not yet been rescued: In 13.77% (42) Cases
- Victim was deceased after being trafficked: In 0.66 (2) Cases
- Unidentifiable:

5.5.5 Role of the Police in the destination countries:

The rate of victims being helped by the police in the destination countries after being trafficked is extremely low. We have also found a pattern that in some cases the victims have been taken into custody by the police for entering the destination country illegally.

Out of the 264 Cross Border & Transnational cases -

- Number of Cases where the victims were never transported to the destination countries: 22.73% (60)
- Number of Cases where the victims were not rescued or helped by the Police in the destination countries (self-rescue and others): 60.23% (159)
- Number of Cases where the victims were rescued or helped by the Police in the destination countries: 10.98% (29)
- Number of Cases where the victims were captured by the Police in the destination countries for entering the country illegally and served time in prison: 6.06% (16)
- Unidentifiable: 0

5.5.6 Victim transportation:

It appears that there is a portion of the cross-border / transnational cases where the victim was never transported to the destination countries.

Out of the 264 Cross Border & Transnational cases –

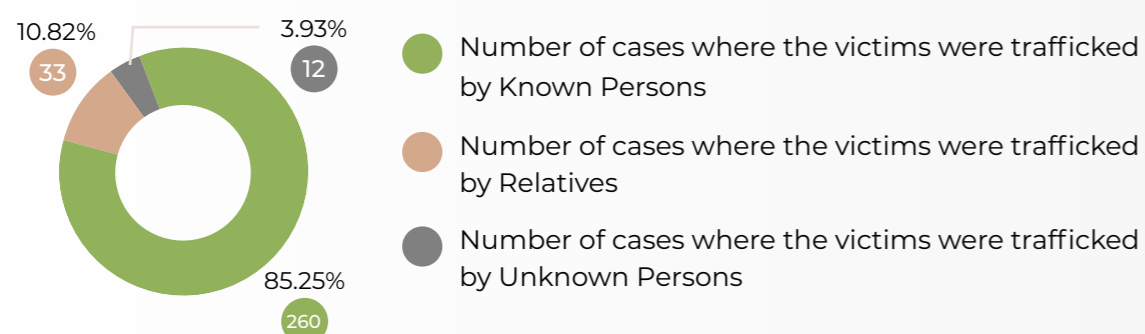
- Victims were rescued within Bangladesh while being transported to the destination country: 22.73% (60)
- Victims were transported to the destination country: 77.27% (204)
- Unidentifiable: 0

5.6. Accused profile: This section shows the data we collected about the backgrounds of the accused parties.

5.6.1 Relationship between the victim and the accused:

It appears that most of the victims of trafficking are being victimized by their previously known acquaintances and relatives more than they are being by completely unknown individuals.

5.6.1 Out of the 305 cases with victims



5.6.2 Number of accused:

In this section the number of the accused individuals mentioned in the initial complaints and the ensuing investigation reports have been displayed.

Out of the 335 cases where the Number of accused was properly ascertainable in both the Complaint & the Investigation Report -

- Number of accused mentioned in the Complaints (Ejahaar / Complaint Petition): 1301
- Number of accused mentioned in the Investigation Report: 1063
- Number of cases where the victims were trafficked by Unknown Persons: 3.93% (12)

5.6.3 Impact of bail in human trafficking cases:

It appears that a significant number of accused in these cases are being granted bail, which is creating some unexpected complications in the broader sense. There is a discernible number of accused who are directly absconding after being granted bail by the tribunal. Other than that, since most of these cases have remained trapped in the examination of the prosecution witness stage in trial, the accused parties have remained free and unaccountable.

Out of the 350 cases where a Charge Sheet / Investigation Report has been submitted

- Number of accused granted bail: 807
- Total number of accused who have absconded after being granted bail: 23.92% (193) accused
- Cases where accused have absconded after being granted bail: 35.71% (125) Cases
- Cases where no accused have absconded after being granted bail: 64.29% (225) Cases

5.6.4 Previous criminal records of the accused parties: :

Since character of the accused can become an important ingredient in the prosecution of a criminal case, we tried to identify whether the accused parties acknowledged in these cases had any previous criminal cases lodged against them.

5.6.4.1 Has any of the accused been found as accused in any other human trafficking case? (analysis on the 350 cases where Charge Sheet / Investigation Report has been submitted)

- Cases where at least one accused is involved in some other trafficking case: 5.14% (18)
- Cases where none of the accused are involved in some other trafficking case: 74.29% (260)
- Unidentifiable: 20.57% (72)

5.6.4.2 Has any of the accused been found as accused in any other criminal case? (analysis on the 350 cases where Charge Sheet / Investigation Report has been submitted)(analysis on the 350 cases where Charge Sheet / Investigation Report has been submitted)

- Cases where at least one accused is involved in some other criminal case: 10.86% (38)
- Cases where none of the accused are involved in some other criminal case: 68.57% (240)
- Unidentifiable: 20.57% (72)



CHAPTER SIX: CONCLUSION

In supporting and facilitating this analysis of the backlog of human trafficking cases in the court system, the Government of Bangladesh has taken a huge stride forward in its efforts to increase the prosecution of perpetrators of human trafficking. Only by accurately diagnosing the current barriers to effective prosecution, can progress be made towards scaling up the number of offenders brought to justice.

Our analysis has revealed that the majority of cases (59%) have been pending for more than 3 years - with 11% pending for more than 8 years. This time lag leads to discouragement and disengagement from the victim or complainant, who wish to move on with their lives; and opportunities for the accused to abscond if on bail, or for associates of the accused to intimidate or pressurize the victims into withdrawing their case or settling out of court.

Most cases (67%) have become 'stuck' at the stage where the examination of the prosecution witness should take place - this is due to lack of communication between the complainant and the Public Prosecutor (67% had no communication at all); lack of understanding of the court processes on the part of the complainant (85%); and lack of resources on the part of the witness to attend the court proceedings (75%). All of these issues can be mitigated through relatively straightforward and inexpensive measures such as the provision of information to complainants at the start of the process and the provision of legal aid for transport costs to attend court.

Not only are prosecutions progressing too slowly, but too often they are unable to be disposed in conviction due to issues with the investigation prior to the trial - including the investigation not being carried out by the local police as prescribed by law; the investigation failing to obtain or incorporate any evidence from foreign lands, despite this being critical to proving the exploitation and rescue (97% foreign cases lacked any foreign evidence); and medical examinations not being conducted which could have provided key evidence. Training to tribunal judges on the correct procedures for assigning an investigation, the provision of guidelines on the mutual legal assistance treaty to investigating officers, and the provision of guidelines on medical examinations could quickly and effectively address many of these investigative deficiencies and improve the strength of investigation reports relied upon in court.

The findings and recommendations in this report are designed to illuminate the problems causing the backlog and low conviction rates in human trafficking cases, and our hope is that by bringing these to light, the judges, prosecutors and law enforcement personnel involved will be better able to expedite the human trafficking cases they are seeking to bring to justice. Despite the challenges identified, relatively low-cost and straightforward measures as per our recommendations could radically increase the conviction rate and in so doing disincentivizes the criminals involved and reduce trafficking and exploitation of vulnerable Bangladeshi citizens.

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