

**Bangladesh Society for the Enforcement of Human Rights
(BSEHR) and Ors**

Vs.

Government of Bangladesh and Ors

High Court Division

(Special Original Jurisdiction)

Judge

Md Fazlul Karim J.

Md Abdul Wahhah Miah J.

Date of Judgment: March 14th, 2000

Constitution of Bangladesh, 1972 - Article 11, 31 & 32

Suppression of Immoral Traffic Act, Section 4

As the sex workers are now confined in Vagrant Home illegally terming them vagrant, the respondents have to release them forthwith so as to enable them to go on their own which is their fundamental right guaranteed under the Constitution. (37)

Articles 31, 32 & 102

In writ jurisdiction the Court is unable to give any direction on the house owners except observing a caution that nobody should take the law in their hands violating the rights protected under the law and the fundamental rights under the Constitution.

Although the respondent nos. 1 and 4 have denied their involvement in the process of eviction and put the blame on the house owners and their hoodlums, but in a massive and wholesale eviction of the inmates of Nimtali and Tanbazar, the District administration should not be allowed to shirk the responsibility in effectively maintaining the law and order and thus preventing the house owners and their hoodlums in evicting the sex workers of Tanbazar and

Nimtali to take law into their own hands. Thus, we also express our dissatisfaction over the passive role or inaction of the Local District Administration (38)

Cases discussed – Olga Tellis vs. Bombay Municipal Corporation AIR 1986 (SC) 180; BLAST vs. Bangladesh 4 BLC 600 (11)

Namul Huda with Sigma Huda and SAM Nasimul Haque, Advocates – For the petitioners

Obaidur Rahman Mustafa, Deputy Attorney General with Mushfiqur Rahman Khan, Assistant Attorney General – For the Respondents

Judgment

Md. Fazlul Karim J: This Rule was issued calling upon the respondents to show cause as to why the lifting of the sex workers in the early hours of 23.7.1999 from their residence at Tanbazar and Nimtali, Narayanganj by the District Administration with the help of the police and dislodging them and taking some of them to the Kashimpur Vagrant Home in the name of rehabilitation should not be declared to be taken/done in violation of their fundamental rights as to residence, profession, trade, calling, etc. and why their confinement in Vagrant Centre should not be declared illegal directing that the sex workers in custody be brought before the Court so that it may satisfy itself that they are not being held in custody without lawful authority or in an unlawful manner.

2. The petitioners are the Bangladesh Society for the Enforcement of Human Rights (BSEHR) Naripokkho (a women's voluntary human rights organization); Bangladesh National Women Lawyers Association (BNWLA), a non-profit voluntary organisation, Bangladesh Manabadhikar Sangbadik Forum, a human rights journalist's organisation and Ain-o-Shalish Kendra - ASK, a human rights and legal aid centre in consultative status with UNECOSOC. All the petitioners asserted themselves to be non profit making voluntary organisations doing social welfare activities and are also representing 54 other organisations with like aims and objects, are engaged in protecting the vulnerable groups of people including those women involved in prostitution. A recent incident leading to the illegal forcible and violent ousting of prostitutes from their lawful residence has given cause to the petitioners to address the whole issue for protection and status of fundamental rights of citizens including women in prostitution and upholding the rule of law. The petitioners have alleged that the Government of Bangladesh is regularly taking measures to harass the women in prostitution and their children and to treat them as unwanted in the society hounding them from their peaceful occupation of house/rooms rented by them from the owners of the buildings. They regularly pay rent to the landlords as well as a large amount of money to different authorities including the law enforcing agencies and contribute to the development of

the area, even by constructing mosques, schools, roads, etc. The petitioners have further alleged that the respondent continuously pick up the prostitutes from their residence, physically and verbally abuse them and without any cause illegally push them into vagrant homes violating their right to life and living and livelihood as protected under the law and the Constitution. Such putting in the vagrant home is being done contrary to the provision of law ignoring the broad fact that the prostitutes are above the age of 18 years and in the camouflage calling the guardians and handing to them that they illegally abuse and provision of law under the Act of 1950. The respondents in their continuous efforts as detailed above suddenly on 23rd July, 1999 at night and in early morning on 24th July 1999 approximately at 3.00/ 4.00 AM while inmates of the area of Nimtali and Tanbazar, Narayanganj were asleep, the police raided and barged into their rooms and without giving them any opportunity to change or organise, dragged them out of their rooms and they informed the residents that the Member of Parliament of the area along with Deputy Commissioner, Superintendent of Police and Officer in Charge of Narayanganj Sadar Police Station, respondents 4, 5 and 6 respectively desired to meet them. When they went to meet the aforesaid persons, the policemen suddenly dragged them, abused and beat them and pushed them and their children into the waiting buses using filthy language. The petitioners further asserted that there was no female police personnel in the matter of carrying out the wholesale eviction of the prostitutes of Tanbazar and Nimtali. The said news was published and highlighted in the various newspapers. Whereupon the petitioners on hearing of the barbaric attack and forcible removal of the women of Tanbazar and Nimtali and their children made attempts to trace out the whereabouts of the distressed residents and learnt the same has been done with a view to rehabilitation. The press reporting published by various dailies revealed that women and children were confined most illegally by respondent no. 3 under the direction of respondent no. 2, who have given instructions through inter ministerial meeting presided over by the Hon'ble Minister in Charge of Home Affairs on 20th July, 1999. It has further been learnt that the respondent nos. 2 and 3 had circulated a questionnaire to the respondents of the said area with a view to ascertain as to how many of the residents are willing to give up their profession and opt for a rehabilitation programme and only 659 of the residents out of 1058 women served with the questionnaire among the 2800 prostitutes replied to the questionnaire. The petitioners have further alleged that the rehabilitation programme had the sole design of grabbing the rented premises occupied by the prostitutes at the behest of certain interested and vested quarters and out of 659 women willing to be rehabilitated only 267 women inmates were forcibly picked up and pushed into wrongful confinement. The petitioners have further asserted that in the process of forcible eviction of 2667 permanent residents as well as 300 casual residents of the area have been forcefully evicted driving them from their homes and living and livelihood putting them under the sky in inclement weather. The petitioners further asserted that such act of forcible eviction was not contemplated in law and that such act of eviction at this odd hour of night was violation of their fundamental right of protection from arrest under the law. The petitioners attempted to meet the Assistant Commissioner, Deputy Commissioner and District Magistrate, Narayanganj District but failed because of the avoiding tendency of the said officials, rather they

were faced with misbehaviour. Even complaints by some of the inmates of the evicted premises were not entertained until the intervention by some of the petitioners urging the authority to accept the same. Although the newspaper report was to the effect that the girls and women were picked up for the purpose of being rehabilitated elsewhere but surprisingly, the secret manner in which the so called rehabilitation programme was conducted leaves much scope for suspicion that there is more to it than a mere rehabilitation. As they were even deprived of their right to meet their family members but most of them received torture both physically and mentally. The report has further stated that the respondents are releasing the women and children from the vagrant homes along with a sum of Tk. 5,000.00 plus a sewing machine or alternatively a consolidated sum of Taka 7,000.00 but such act has resulted in a diabolical fraud of the authority played on the public. The act of playing with the respect and dignity of the children and women and letting them out on the street with much publicity and without protection have now greatly contributed to their inability to even return to their relatives. A visit to the vagrant home would reveal that the respondents have physically abused them in private parts of their bodies in the name of rehabilitation and are letting them free to go with so called family members without any verification as to their identity. The protest by the various organizations including parent organization of the petitioners went unnoticed to the residents of Nimtali and Tanbazar. The armed miscreants blocked the passage of the peaceful rally and then attacked them with arms and crackers forcing them to scatter here and there and the law-enforcing agency remained inactive. The petitioners have further stated that taking consideration of the enormity as well as the reality of the issue of prostitution the Government has chalked out a plan with the assistance of the United Nations Development Programme (UNDP) under Project No. BGD/97/029: Capacity Building Poverty Alleviation and Sustainable Livelihood of the Socially Disadvantaged Women (SDW) and their children, and the project was addressed towards the empowerment of women and children living with brothel communities in Narayanganj, Jessore, Chittagong and Mongla to ensure that they can freely exercise the same rights and privileges as other citizens of Bangladesh. But prior to any step in the light of the said project the inmates of Nimtali and Tanbazar were forcibly evicted in a very inhuman manner resorting to physical assault and abuse. The petitioners being aggrieved by the wholesale illegal eviction of the prostitutes and their children from Tanbazar and Nimtali under Narayanganj Police Station in violation of their fundamental right to life and livelihood and their subsequent detention in Kashimpur Vagrant Home contrary to the provision of Vagrancy Act, 1950 have moved this application and obtained the present Rule.

3. The Rule has been contested by respondent Nos. 2 and 3 by filing affidavits-in-opposition denying the allegations made in the Rule application and stating, inter alia, that prostitution is not permitted under Article 18(2) of the Constitution. Furthermore, sections 372, 366(a), 373 of the Penal Code and Section 41 of the Children Act, 1974 discourage child prostitution and all the activities relating to prostitution are punishable by law. Accordingly, unsocial activities and staying in the brothers is illegal and unconstitutional. The petitioners' organization is fighting against the illegal and unconstitutional activities, which are not desirable from the conscience

organizations like the petitioners' as they should not indulge in activities promoting the illegal and immoral acts of anybody. Names of the inmates of the brothels were removed illegally and none of the sex workers were taken away from their living quarters houses forcibly nor was any of them abused or tortured. It has been asserted that with the help of women police only sex workers roaming around the Tanbazar and Nimtali area found to be vagrants were taken by the Magistrate concerned who declared 155 of them as vagrants and released 112 as not vagrants and then the vagrants were taken to the vagrant home by bus and handed over 155 to the vagrant authority under respondent nos. 2 and 3 and the rest out of 267 were released. The prostitution since prohibited under the Constitution, carrying on the profession staying or roaming and moving around the locality for sex business cannot be said to be the fundamental rights of the sex workers supported by law of land. The alleged eviction was not done by the authority, which does not amount to any sort of operation. The sex workers were found roaming in the open area in day and around Tanbazar and Nimtali brothers in broad day light on 24th July, 1999 but not at any unreasonable hours or late night following 23rd July, 1999 as alleged in the writ petition and in the process nothing cloak and dagger like happened as there involved no mystery adventure or secret plots. The press reporting as annexed in the writ petition cannot be taken into consideration by this Court sitting in this jurisdiction. Moreover, the said reports were denied and no decision was taken in any inter-ministerial meeting alleged to have been taken on the date mentioned and no instructions on the basis of the said decision was given and the same are strongly denied. But due to the misreporting in newspapers the respondents could not be blamed. The sex workers were not staying under the open sky in inclement weather and the questionnaires were circulated by the respondent nos. 2 and 3 with a bonafide intention to rehabilitate the willing sex workers which cannot now be blamed as the means of alleged evicting of the sex workers of Tanbazar and Nimtali brothel. It has been categorically stated, that shifting of the sex workers who were found vagrants were carried out through the process of law by producing them before the concerned Magistrate who declared some of them vagrants under the law and being satisfied were sent to the vagrant home. It has further been stated that the prayer by the woman's mother to ascertain the whereabouts of her daughter and grand daughter were duly received by the duty officer and the prayer was registered as GDE dated 28.7.1999 and the same was endorsed to sub inspector for taking necessary action and on enquiry have found them to be vagrants staying at vagrant home at Gazipur under the management of the respondents 2 and 3. The allegation against the respondents is merely on surmise and anticipation having no basis at all. The allegation of not allowing any people to visit any inmates of the vagrant homes at Gazipur or that the situation as created was a threat to the security of the said centre cannot be said to be a refusal of fundamental right of the petitioners to meet the inmates. They have asserted that in the process of taking from Narayanganj to Kashimpur it might have caused injury to some of the vagrants but the photographs which have been unfortunately printed in some newspapers had created misunderstanding that they were beaten by the police in the process of eviction and, as such, the injury being the distortion of fact has been denied. The brothels are the root of spreading HIV, AIDS and other STDs and various kinds of

crime. The brokers are engaged in misguiding and enticing many innocent women and minor girls from the villages and ultimately selling them to the brothels and forcing them to adopt prostitution. Such prostitution is discouraged make embargo under the provision of the Constitution. The government being aware of the health hazards took up schemes for rehabilitation of the sex workers and was taking different appropriate steps to eradicate prostitution from the society by rehabilitating them phase-by-phase. It has further been stated that in June 1999 movement was started against such immoral activities in and around Narayanganj including processions, rallies and meetings participated by different social and religious organizations and individuals from all walks of life irrespective of religious and political affiliation. Meanwhile a sex worker named Jasmine was brutally killed by a customer at the brothel on the night following 30th June and following that murder tension was created in two brothels and the inmates got panicky. Law and order situation was deteriorated and the majority of the fallen women dispersed themselves and started roaming here and there. The sex workers remaining inside the brothel were denied water and power supply by the landlords of the of the houses of the brothels and many of the rooms were locked up by them and the condition rendered the entire brothels unfit for human habitation and the visitors of the brothels declined resulting in loss of business to earn their livelihood and they had no other alternative but to ask for alms for their subsistence. The deterioration of living condition, loss of business, life style and all other affairs inside the brothels had forced deterioration of the sex workers and the inmates of the brothel akin to vagrants for which they were picked up from the unsafe place for their safety and security. The said situation around the Tanbazar and Nimtali area without any shelter and food and found indiscriminately carrying on their business became threat to the law and order situation and the respondent no. 3 with the help of the respondent nos. 4 and 5 in order to normalize the said situation placed police personnel in different places of Narayanganj town and the said sex workers found roaming around were picked up by the police and placed them before the concerned Magistrate who declared them Vagrants under the Vagrancy Act and on enquiry released them being satisfied that they were not vagrants. The action and steps taken regarding the workers in question were done absolutely with a good, honest and bonafide intention for rehabilitating these socially disadvantaged women and to give them an opportunity to come out from the dark area to the normal life in the society and to prevent others likely to be forced and compelled to take up this ugly and unholy profession. It has further been asserted that the respondents did not do any unlawful action which is in contravention of the spirit of any provision of the Constitution and had not served the vested interests of any quarter in any way, and such assertions have been made in the writ petition due to political conflicts between different parties and individuals who have grabbed land and building for their own benefit following the Tanbazar and Nimtali incidents but dragging of the respondents into the said affairs is misconceived and misleading hence denied. The respondents are not in any way involved with the murder of a sex worker at Tanbazar brothel which raised tension among the sex workers and subsequent anti-brothel activities in collaboration with the owners of the building in the brothels of Tanbazar and Nimtali and disconnecting water and power line. The

admitted position is that the political conflicts between different parties and individuals who tried to grab the land and buildings for their own benefit is the root of all evils and the respondents discharged their functions in accordance with law in protecting law and order situation in the area in order to save the life and health of the ousted inmates. The local administration discharged their function in accordance with law. It has further been asserted that the building owners, the landlords of the houses did not file any allegation against the respondents that their tenants have been forcibly evicted by them, even no case is pending before any court by the tenants against their eviction following the incidents in and around Tanbazar and Nimtali brothel on the date of alleged occurrence. The respondents cannot be held responsible on the basis of vague and indefinite allegation relying upon some press reporting and photographs, which are not the conclusive evidence of the facts.

4. The respondents Nos. 4, 5 and 6 contested the Rule by filing a separate affidavit in opposition denying the allegations made in the Rule application adopting almost all the statements made by respondent No.1 and have asserted that the statement made in paragraph 9 of the Rule application is not correct, rather misleading and misconceived. It is stated that the alleged eviction was not done by the respondents which amounts to any sort of operation as alleged in the writ petition. They have asserted further that the sex workers who were found roaming in the open area in or around Tanbazar and Nimtali brothel were taken with the help of women police and handed over to the vagrant authority who after declaring some of them vagrants on 24.7.1999 released others. The allegation against the respondents that the sex workers were forcibly dragged out from their homes and beaten by the police in the name of taking them to meet with the respondents 4 and 5 at late night following 23rd July 1999 are emphatically denied. They have further asserted that the sex workers who were found roaming around outside Tanbazar and Nimtali were taken and handed over to the vagrant authority under the respondents 2 and 3 under the rehabilitation scheme with a bonafide and honest intention with a view to restoring and safeguarding their human rights which are being denied in the dark room of the brothels. They have further asserted that there was no instruction or decision received from respondent No.1 alleged to have been taken in any inter - ministerial meeting or that eviction was not done consequent thereto on the basis of the said decision.

5. The petitioners, however, by filing affidavit-in-reply reiterated the assertion made in the writ petition and denied the assertions made in the affidavits-in-opposition of the respondents and while asserting the statements made in the Rule application have stated that the respondents themselves admitted that the activities of the women in prostitution are work as they have referred to these women as sex- workers throughout their affidavits. The respondents in holding that sex – workers are vagrants and petitioners reiterated that the definition of vagrants does not include those engaged in earning their livelihood, and the women in prostitution were picked up in broad daylight when they were roaming around being displaced which is the right of all citizens as guaranteed by the Constitution and therefore denied that the same does not constitute a crime or fall within the purview of the Vagrancy Act and action on the part of the respondents

related to the attack and forced eviction of women and children from their lawful residence in Tanbazar and Nimtali took place in the early hours of 24th July, 1999 before the break of dawn which has been sufficiently proved by the respondents not contradicting the press reports at any stage.

6. Mrs. Sigma Huda, the learned Counsel appearing for the petitioners, having taken us through the Annexures submitted that although Article 11 of the Constitution postulates that respect of dignity and worth of human person shall be guaranteed but the right to live and right to livelihood of the inmates of Nimtali and Tanbazar are the fundamental rights guaranteed under the Constitution. The respondents have a duty to protect the same from onslaught by the interested quarters in as much as the District Administration as a duty to protect the inmates of Nimtali and Tanbazar to be evicted forcibly contrary to the provisions of Premises Rent Control Act and the ordinary law of the land protecting right of the tenants in as much as the right to life is a protected right under Articles 31 and 32 of the Constitution and the inmates of Tanbazar and Nimtali have as well the right to be equally treated under Article 27 and not to be discriminated as provided under Article 28 of the Constitution as they have equal right, public right but not a mere right of home. The learned Counsel has further submitted that women engaged in prostitution also enjoy the same right and obligation as of the ordinary citizen of the country and could not be evicted without due process of law from their home and hearth i.e. their rented premises, on the plea that prostitution is impliedly prohibited resorting to the constitutional provision that the State shall adopt effective measures to prevent prostitution in Article 18(2) of the Constitution providing the fundamental principles of state policy. The learned Counsel has further submitted that wholesale eviction of the sex workers from Tanbazar and Nimtali brothels at the early hours of the day is contrary to regulation 33 and 33(a) and sections 48 and 52 of the CrPC and has been done in contravention thereof i.e. the inmates were evicted without due process of law. The learned Counsel has further submitted that the wholesale eviction terming the sex - workers as vagrant contrary to the provision of law allegedly done by respondents 2 and 3 is violative of the fundamental right to freedom of movement of, the sex - workers. The learned Counsel has further submitted that the confinement of the sex - workers in and around Kashimpur vagrant house terming them to be vagrant has also offended their right to life and livelihood against their will.

7. Mr. Obaidur Rahman Mustafa, learned Deputy Attorney - General appearing for all the respondents, having taken us through the affidavit-in-opposition has, however, submitted that neither the District Administration including the police nor the respondent No.1 had anything to do with the matter of eviction of the sex- workers and inmates of Nimtali and Tanbazar at the early hours on 24.7.1999 as alleged inasmuch as the respondents in order to fulfill their constitutional obligation to prevent the prostitution by adopting the effective measure supplied questionnaire with the help of UNDP among the inmates of Tanbazar and Nimtali. The learned Deputy Attorney - General has further submitted that over an incident of killing of one Jasmine, a sex - worker in the brothel, commotion in and around erupted to evict the inmates of the

Tanbazar and Nimtali brothels at the instance of the interested quarter and due to the fact most of the sex - workers had chosen to leave the area which rendered almost all of them vagrant roaming in and around the Nimtali and Tanbazar brothels for which police administration with the help of women police apprehended them and the attending Magistrate declared some of them vagrant and sent them to the vagrant home at Kashminpur/ Gazipur in accordance with law. The learned Deputy Attorney-General has further submitted that the respondent did not deploy any police force in evicting the sex - workers from their home. The press reporting and the statement of the petitioners led to a disputed question of fact on the fact of denial by the respondents and the same cannot be resolved in this jurisdiction.

8. The inmates of Nimtali and Tanbazar brothels carrying on sex business are in common parlance engaged in prostitution. Prostitution is not an unknown concept or trade and is not a world apart. The profession of prostitution is an age-old profession, may be, since the dawn of the human civilization. The concept is also found in some of the religions and prostitution has thus existed in one form or other in all class based patriarchal societies. Accordingly prostitution is expressly or impliedly admitted by the societies to be a profession. But prostitution in Bangladesh, as in other parts of the world, is socially condemned. This profession one of the oldest trades of the world has also found place in some of the Constitutions in the world, most providing provision against it. In spite of that the women engaged in prostitution are now being termed as sex - workers and are found in almost all societies in the world and Bangladesh is no exception. There are mainly three main classes of female prostitutes categorised on the basis of the structure within which they most operate, the degree of mobility and control over their lives, their earnings and amenities. At the lowest end of the scale are the streetwalkers and brothel - owned prostitutes. The streetwalkers operate independently or mostly through the pimps. The cage brothel prostitutes are attached to and found in place known as brothel, hiring the house on rental basis, brothel keepers run the brothels through pimps, procurers and retinue of thugs. The second category is the independently operating middle - class women mostly through pimps, most of them hold regular jobs but resort to prostitution regularly or intermittently in order to supplement their meager income, carry on this sex business in any hired house in any locality. The third category is the upper middle class clandestine call girls who may have their own houses with other amenities including telephone. But basically the prostitutes or sex - workers or women in prostitution found in brothels are undoubtedly the ill-fated being victims of circumstances, namely, some are kidnapped into it, some become victim of pretended love and then brought into brothel, some are brought there with allurements, of job, some being frustrated not being able to obtain a job, some being helpless in the society find their place in brothel, some are the off- springs of the prostitutes and some being desperately sex crazy ultimately find place in the brothels. The case of brothel prostitutes is strictly confined to the brothels in the few years of entry into the profession, lest they should escape. The prostitutes or sex- workers of Nimtali and Tanbazar are no exception.

9. Although there is no law, yet absolutely prohibiting prostitution but Suppression of Immoral Traffic Act, 1933 (Bengal Act VI of 1933) made provisions for punishment for keeping a brothel or allowing premises to be used as a brothel with imprisonment for a term which may extend to 2 years, or with fine or with both. Brothel has been defined as any houses, part of the houses, room or place in which two or more females carry on prostitution or in which any girl under the age of eighteen years kept with intent that she shall at any age be employed or used for immoral purposes. The said Act further provided that the Superintendent of Police has power to order discontinuance of house room or place as to brothels with notice to the owner, lessors, managers, lessee, tenant or occupiers. The said Act also made an offence punishable for living on the earning of the prostitution of another person, punishment for importing a female for prostitution, punishment for detention as prostitutes or in brothels, punishment for causing or encouraging or abetting seduction or prostitution of girl.

10. The, the said Act provided, inter alia, for punishment for any person who keeps or manages or acts or assists in the management of brothel or being the tenant, lessee, occupier or person in charge of the premises, knowingly permits such premises or any part thereof to be used as a brothel or being the lessor or landlord, lets the same or any part thereof, with the knowledge that the same or any part thereof is intended to be used as a brothel. But the indulging in prostitution has not been thereby prohibited by the said Act of 1933. Unless prostitution is absolutely banned resort to the said Act would also allow the vice everywhere except certain areas. Similarly, our Penal Code and some other Special Statutes provided that kidnapping/ abducting or inducing any woman with intent that she may be compelled or knowing it to be likely that she may be forced or seduced to illicit intercourse shall be punished with imprisonment or fine or both and similarly, whoever by means of criminal intimidation or abuse of authority or any other method of compulsion, induces any woman to go from one place with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with other person shall be punished as aforesaid (section 266 Penal Code, section 9 of Nari-o-Shishu Nirjaton Ain, 1995 respectively) and section 372 Penal Code provides for punishment for selling minor girls under the age of 18 years for the purpose of prostitution or illicit intercourse or for any unlawful and criminal purpose etc. and under section 373 Penal Code buying, hiring or otherwise of girls for the purpose of prostitution or illicit intercourse, etc. have been made an offence punishable with imprisonment and fine and section 376 Penal Code provided punishment for rape i.e. sexual intercourse with a woman against her will without her consent etc. (Section 375 Penal Code). But the sex-workers prostitutes operate apparently allowing sexual intercourse with consent and their profession though socially looked down upon but the same apparently is not an illegal one under the law of the land. The preamble of our Constitution pledges high ideals of trust and faith in the Almighty Allah and that the State religion is Islam but we are not subjected to Shariat Law making sexual intercourse even with consent between men and women, other than husband and wife, a heinous offence of Zina/ fornication punishable even with stoning to death but the same is not the law of the land to be enforced in the Courts of Law. However, though certain Shariat Laws have found place in our personal laws and those are part of our laws enforceable in the

Court of Law. Even if prostitution is not illegal in Bangladesh, it is never encouraged and State machineries are all out to prevent it by adopting various measures including rehabilitation schemes in consonance with our Constitutional mandate in its directive state policy that the State shall adopt effective measures to prevent prostitution.

11. However, coming to the question of their alleged illegal eviction and their alleged confinement in Kashimpur vagrant home, our Constitution provides the right to protection of law under Article 31 and to enjoy the protection of the law and to be treated in accordance with law and only in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. Article 32 of the Constitution enshrines protection of right to life and personal liberty that no person shall be deprived of life or personal liberty save in accordance with law. The said fundamental protective rights enshrined that no action detrimental to the life, liberty, body, reputation or property or personal liberty of any citizen can be taken except in accordance with law, for a citizen enjoys the equal protection of law and is entitled to equal protection of law. Article 11 of the Constitution declares that the Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed. The evicted prostitutes of Nimtali and Tanbazar are citizens of Bangladesh, are enrolled as the voters and do exercise the right of franchise. Though prostitution is not a socially recognized profession in Bangladesh but impliedly the prostitutes initially get themselves enrolled with the local administration, sometimes swearing an affidavit expressing the desire to be a prostitute and get themselves confined to the place called brothel and get the required protection to continue in profession by the local and police administration, in spite of the provisions of Suppression of Immoral Traffic Act, 1933 whereby they are maintaining their earning/ livelihood which the State in the absence of any prohibitory legislation has a duty to protect and a citizen has the right to enforce that right enshrined in Articles 31 and 32 of the Constitution. Article 11 providing for dignity of human person though not enforceable one but the sex- workers as a citizen have enforceable right under Articles 31 and 32. The right to life as envisaged in our Constitution under Article 31 which is similar to Article 21 of the Indian Constitution came up for consideration in their case of *Olga Tellis vs. Bombay Municipal Corporation* reported in AIR 1986 (SC) 180 wherein it has been held:

“As we have stated while summing up the petitioner’s case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption the question which we have to consider is whether the right to life includes the right to livelihood. We see only one

answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important fact of that right is the right to livelihood because, no person can live without the means of living that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effect context and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be as integral component of the right to live.”

12. In view of the aforesaid proposition of law, the inmates of Tanbazar and Nimtali have a protected rights to life and livelihood i.e. important facet of the right to life is the right to livelihood and the easiest way of depriving a person of this right to life would be deprive him of means of livelihood to the point of abrogation. Thus, the said inmates upon their wholesale eviction from Tenbazar and Nimtali have as well been deprived of their livelihood, which amounts to deprivation of the right to life making the action unconstitutional and illegal.

13. Now to the problem they have been confronted with the wholesale eviction from their homes at the brothels at the early hours on 24.7.1999 the petitioners have alleged that the owners of the premises of Tanbazar and Nimtali with the assistance of hoodlums and police had evicted them on that fateful night. The petitioners have alleged that on late Friday (23.7.99) night/ early morning on Saturday (24.7.99) around about 3.00/3.30 a.m. when the residents of Nimtali and Tanbazar were sleeping in their rooms, a large numbers of policemen entered into the rooms and without giving any opportunity to change or organize themselves, dragged them out of their beds. The policemen informed them that a Member of the Parliament, Deputy Commissioner, Narayanganj, SP and OC of Narayanganj PS (respondents No. 4-6) desired to meet them. When these sex-workers went to meet them, the police suddenly dragged them, abused them, beat them and their children, forcibly pushed them into the waiting buses using filthy language and it was only when the girls and children were pushed into buses then few women police were found inside the buses to escort them to Kashimpur Vagrant Home. The allegations are supported by press reporting that the sex-workers were evicted at early hours of the day on 24.7.99 with the help of the police.

14. The petitioners have alleged that the respondents have carried out the eviction process with the assistance of police which the respondents 5 and 6 have categorically denied stating that one Jasmine was killed in the brothel arousing commotion amongst most of the sex workers who got panicky and were out of their homes and hearth and majority of them were dispersed and started

roaming here and there and the owners of some of the houses in the brothels disconnected the water and electricity connection and many of them started roaming around as many of their rooms were locked up and the condition rendered the entire brothel unfit for human habitation and consequently the number of visitors dwindled, whereupon the sex workers could not earn their livelihood and started living as vagrants. The police collected about 267 of them and placed them before the Magistrate, who on considering the facts and circumstances declared 155 of them as vagrants but directed 112 of them to be not vagrants and the vagrants were taken with the help of the lady police to get on buses and were put at Kashimpur Vagrant Home.

15. It should be remembered that nobody could violate the privacy of the inmates of any house or trespass into it except in accordance with law. Admittedly, the sex-workers were the tenants under their respective landlords and the Premises Rent Control Act, 1991 provides right inter se between the landlord and the tenants to evict a tenant or right of the tenant to continue in the premises so long he/ she is not evicted in accordance with law. It may be observed that a man's home is his castle and nobody could trespass or evict the inmates except in due process of law. The tenant so long she is not evicted, has the right to be on the premises and the State machinery should protect that right until she is evicted in due process of law. But the situation at Nimali and Tanbazar had been different as the inmates/ tenants of the houses were mercilessly dragged out of the houses allegedly by the owners with the help of hoodlums and the police. Our Constitution has also enshrined that every citizen shall have the right subject to any reasonable restriction imposed by law in the interest of security of the State, public order, public morality or public health, to be secured in his home against entry, search or seizure. Thus, the fundamental right of the citizen to be secured in his home against entry has definitely been breached/ violated in the instant case by the interested quarters in presence of the police, if not the police themselves were the violators. The photo clipping attached to the writ petition at least goes to show that the police were mere onlookers at the heinous act of eviction of the sex-workers from their houses in the brothels. Furthermore, it is not the case of the respondents that they have taken any action under the Suppression of Immoral Traffic Act, 1933 against owners, lessors, managers, lessee, tenants or occupiers in the brothels. The police is duty bound to protect the citizens in the event of their rights being violated but unfortunately, in the instant case the police did not take any step against the illegal eviction of the sex-workers from their homes at Tanbazar and Nimali. Such wholesale eviction at the beginning of the 21st century when the civilization is at its peak would certainly blacken its institutions engaged in enforcing law and order and engaging in protecting and promoting rights of the citizen in a democratic welfare state. It is provided in section 2 of the Police Act, 1961 that no police force can work successfully unless it wins the respect and goodwill of the people and secures its co-operation. All ranks, therefore, while being firm in the execution of their duty must show forbearance, civility and courtesy towards all classes. Rudeness, harshness and brutality are forbidden. In spite of the above Police Regulation 33(a) and (b), it is unfortunate that there were allegations of violation of house of the sex-workers who were dragged out, mercilessly beaten and forcibly taken by bus to the Vagrant home by the police. We do not intend to go into the disputed question of facts, but we do express our

disapproval of the police actions as to brutality/ eviction of the sex- workers from their residence. The petitioners alleged that the sex workers were forcibly evicted at the dead of night hours on 23.7.99 and in the early hours of 24.7.99 which is supported by press reports appearing in daily newspapers. It is the cardinal principle of criminal jurisprudence that there should not be even any search with warrant into any house between dusk to dawn. Section 48 CrPC provides that nobody including the police officer should get admittance into any house unless there is notification of his authority and admittance. Similarly, whenever it is necessary to cause a woman to be searched, the search must be made by another woman with strict regard to decency. But in the instant case, the allegation against the police is against decency, forbearance, civility and courtesy, which they are duty bound to display as acts, actions and behaviour.

16. The respondents, however, claiming that they had nothing to do in the matter of eviction, have asserted that rather they have undertaken measure to rehabilitate on ascertaining some of them to be vagrants. Vagrant is defined in section 2(9) of the Vagrancy Act, 1943 that a vagrant is one such person found asking for alms in any public place, in such condition or manner as makes it likely that such person exists by asking such alms but does not include a person collecting money or asking for food or gifts for a prescribed purpose. Thus, in order to adjudicate as a vagrant there must be proof that a person is found asking for alms in public place in a manner that such person exists by asking for such alms. In order to adjudicate a person as Vagrant the following procedure under the Act has to be adopted by the Magistrate.

17. Under Section 6 of the Bengal Vagrancy Act, 1943, any police officer authorized in this behalf by the District Magistrate may require any person who is apparently a Vagrant to accompany him to appear before a Special Magistrate.

18. Under Section 7 thereof, such Special Magistrate shall make a summary enquiry in the prescribed manner with the circumstances and character of such person and if after hearing such person he is satisfied that such person is a Vagrant, he shall record a declaration to this effect and shall forthwith send the declaration to the Controller and to the Officer-in-Charge of the receiving centre.

19. Under Section 8 thereof upon declaration as a Vagrant, he shall forthwith be sent to the nearest receiving centre when the Medical Officer of the centre medically examines the Vagrant and shall furnish a medical report regarding the health of bodily condition of the Vagrant. The medical report shall state the sex and age of the vagrant, whether he is leper, from what, if any communicable diseases other than leprosy the vagrant is suffering, whether the Vagrant is insane or mentally deficient and what is the general state of health or bodily condition of the Vagrant and for which, if any, of the prescribed types of work he is fit.

20. Under Section 9 on receipt of the medical report the officer-in-charge of the receiving centre shall as soon as the necessary arrangement can be made, send the vagrant together with the declaration and medical report to such Vagrant House as the Controller may by general or

special order in this behalf direct and would be handed over to the Manager of the Vagrant Home and shall be detained until duly discharged under Section 18.

21. Section 18 provides that a Vagrant may be discharged from Vagrant's Home under the order of the Controller or the Manager's certifying that satisfactory employment has been obtained for such Vagrant, on its being shown to the satisfaction of the Controller that such Vagrant has become possessed of an income sufficient to enable him to support himself without resorting to vagrancy, or a relative of such vagrant or a person who the Controller is satisfied is interested in the welfare of such vagrant, entering into a bond with or without sureties to look after and maintain such vagrant and to prevent him from resorting to vagrancy; for such other good and sufficient reason to be recorded by the Controller in writing.

22. From the above, it is clear that any police officer may require any person who is apparently a vagrant to accompany him to appear before a Special Magistrate who shall make a summary inquiry into the circumstances and character of such person and upon hearing, has to be satisfied that such person is a vagrant i.e. a person found asking for alms in any public place or wandering about or remaining in any public place in such condition or manner as makes it likely, that such person exists by asking for alms, the Magistrate shall record a declaration to that effect and shall forthwith send the same to the Controller of Vagrancy appointed under section 4(1) and to the officer-in-charge of the receiving Centre forthwith where he would be medically examined regarding his health or bodily condition and the report shall contain the sex, age, whether he is a leper, whether he has any other communicable disease, whether insane or mentally deficient, overall general state of health or bodily condition and for what type of work he is fit. Then the Vagrant would be sent to such Vagrant home as the Controller may order and handed over to the Manager of the vagrant home and would be detained there until discharged under the order of the Controller or the Manager certifying obtaining of a satisfactory employment for the vagrant or such vagrant has possessed of an income sufficient to support him or a relative is interested in the welfare of the vagrant entering into a bond with or without sureties to look after and maintain such vagrant or for such other good or sufficient reason to be recorded by the Controller in writing.

23. The petitioners in the instant case have alleged, inter alia, that the respondents have continuously picked up the women from their residence, physically and verbally abused and pushed them into vagrant homes with impunity irrespective of the fact that they have the fundamental right to remain in privacy of their home as well as to chose their place of abode and thereafter to release them without taking responsibility to secure their property during such illegal confinement. That most of the women pushed into vagrant home and illegally confined are adult having attained the age of 18 years are thereby major keeping them confined against their will and subsequently handing over to so called guardians are absolutely illegal. On late Friday (23.7.99) night/ early Saturday (24.7.99) morning around approximately three/ four a.m. when the residents of Nimtali and Tanbazar, Narayanganj were sleeping in their rooms, a large number of policemen barged into their rooms and without giving them any opportunity to change

or organize themselves, dragged them out of their beds. They (policemen) informed the residents that a member of Parliament with Deputy Commissioner, Superintendent of Police and the Officer-in-charge of local Sadar police station (respondent Nos. 4 – 6) desired to meet them. When the respondents went to meet them, the police suddenly dragged them, abused them and beat them and their children and forcibly pushed them into the waiting buses one after another, all the while using filthy language and on boarding the buses found few women police to escort them to the vagrant home. The petitioners further alleged that it was revealed by the press that the women and their children were confined most illegally by the respondent No.3 under the direction of the respondent No. 2 who was given instructions by an inter ministerial meeting presided over by the Minister-in-charge of Home Affairs on 20th July, 1999.

24. The respondents, however, in their Affidavit-in-Opposition have denied the allegations and asserted that none of the sex- workers was taken away from their living homes forcibly nor any of them was abused or tortured with the help of the policemen the roaming sex workers of Tanbazar and Nimali who were found to be vagrant were taken to the Magistrate concerned who declared 155 of them as vagrants and released 112 of them out of total 267 and with the help of women police were handed over to the Vagrant Authority under respondent nos. 3 and 4 after they were declared vagrant by the Magistrate in broad daylight on 24th July, 1999 under a rehabilitation scheme with a bonafide, honest and the noble intention with a view to restoring and safeguarding their human rights which are denied in the dark rooms of the brothels and no instruction was received by the respondents of any alleged inter ministerial meeting and no such meeting was held for eviction of the sex workers.

25. In view of the allegations of the petitioners and denial of the respondents, one thing is very clear that whatever may be the background of the entire eviction process, the alleged declaration of 155 sex- workers as vagrants and their subsequent treatment as such was not in conformity with the provisions of sections 2(9), 6, 7, 8, 9 and 18 of the Vagrancy Act, 1943 as one of the requirements as detailed in previous paragraphs has been complied with as no inquiry as to character of such victims was ascertained or that there was nothing to show the satisfaction of the Magistrate and no paper or declaration as to Vagrancy has been produced and the averments of the respondents particularly of respondent Nos. 5 and 6 do not show that the victims were sent to the receiving centre or they were medically examined or with the Medical report and the Declarations were sent to the Vagrant home or that some of the alleged victims were released complying with the provision of section 18 of the Vagrancy Act, 1950.

26. But the affidavit-in-opposition reveal that the sex-workers were found roaming around and were taken and handed over to the Vagrant Authority. Mere roaming around in any area would not bring the sex workers within the mischief of section 2(9) of Vagrancy Act so as to adjudicate them as vagrant unless one is found to be a vagrant and other conditions for the purpose are complied with.

27. As have been asserted by the petitioners that the sex- workers being illegally evicted from their homes within Tanbazar and Nimtali brothels at the odd hours in the night following 23.7.99 and in the early morning of 24.7.99, mercilessly beaten, dragged out of their homes and were picked up by the police, and were taken to Kashimpur vagrant home by pushing them inside the standing buses and mercilessly assaulted them, the petitioners have annexed with the application the press release and the photographs of the sex workers and photograph of injuries allegedly caused by the police.

28. In view of the statement and press reporting of eviction in the early hours of 24th July 1999 and collecting them by the police on the very day belie the allegation that the sex-workers were asking for alms or wandering in such condition or manner as is likely that they were asking for alms and by no stretch of imagination in the facts and circumstances of the case, the evicted inmates of the Tanbazar and Nimtali could be termed or treated as Vagrants. In the absence of any regular proceeding attending Magistrate, we have no hesitation to hold that such actions on the part of police treating some of the evicted inmates of Tanbazar and Nimtali brothels as Vagrants has been done without any lawful authority and thus forcing them illegally into Kashimpur vagrant home.

29. The petitioners have alleged that upon hearing of the barbarian attack and forcible removal of the women (and their children) of Tanbazar and Nimitali and their children, the petitioners made attempts to trace the whereabouts of the displaced residents and it was only when the matter was reported in the press and the reporters interviewed the concerned officials then the petitioners learnt that the arbitrary and unlawful action were done in the name of rehabilitation of the prostitutes.

30. It further revealed that the women and their children were confined at Kashimpur vagrant centre most illegally by the Director General, Department of Social Welfare, Respondent No.3 under the direction of the Secretary, Ministry of Social Welfare, respondent No.2 being instructed by an inter ministerial meeting presided by the Minister in charge of Home Affairs on 20.7.99 and prior to the incident respondent Nos.2 and 3 circulated questionnaire to the sex-workers of the concerned area to ascertain as to how many of the women and girls were willing to give up prostitution and for prostitutes who are engaged in unethical and immoral profession opposed to religious injunction particularly of Islam and should be done away with to raise the socially unfortunate sex-workers from the social indignation and get them rehabilitated in the society in its effort to combat prostitution and with all attributes of a citizen. Otherwise, the prostitution shall always remain as a threat to the social, spiritual and physical well being of the people.

31. But on the face of allegations in the writ petition as detailed above and the manner the inmates of Nimtali and Tanbazar were illegally evicted from their home and hearth within the brothels and nothing has been produced before us to show that either any step under the Suppression of Immoral Traffic Act, 1933 or any appropriate procedure under the Vagrancy Act,

1950 was adopted for treating them as vagrants, the inmates of Tanbazar and Nimtali at the moment put in the Kashimpur Vagrant Home do not fairly and squarely come within the mischief of the definition of vagrants and we have no hesitation to hold that their confinement in the vagrant home in the name of rehabilitation has no sanction of law. We cannot also be oblivious of the fact that their eviction from their homes within the brothels carried out in the manner as alleged has not been done in due process of law.

32. The police action as alleged though has been denied by the respondent Nos. 4, 5 and 6 we have also observed about the authority and illegal action and behaviours of the police in a judgment of this Court in recent past in the case of *BLAST vs. Bangladesh* 4 BLC 600 in which one of us is a party, inter alia, that “Although there are many credit/ bright side of the police in our country but their discredits in present days are overshadowing the image, dignity, efficiency and credibility of the police as the involvement of the police in the incidents of torture, coercion, terrorism, harassment, extortion and even sometimes looting by putting barricade and plundering pedestrians and vehicles passing through road are rampant. This is due to the fact that police force is largely manned by untrained, ill-equipped and inadequately motivated personnel and due to their lack of proper training and motivation, in particular, a section of police finding it convenient to collude and make worldly gains.” Since the recent past the police are frequently put in the dock in their defence and the conscious citizens of the country are looking for a plausible explanation of illegal and inhuman behaviour of the Police. Police killing of students, public and women, tragic deaths in police custody have shocked the nation and their foolish actions sometimes put the democratic government into embarrassment. The horrifying incidents speak of the brutality and heartlessness of certain elements of our police force. Sometimes the vested quarters in the civil administration try to reassume the advantage out of the demoralized police in lieu of the condemnation of Police excess for their selfish motive in repression over the rivals.”

At a seminar held on 10.1.95 in observation of Police Week Mr. Justice Mustafa Kamal as the chief guest and keynote speaker addressed the Police, inter alia that;

“I thought to myself, the police stands as the main accused in the eyes of the people since the British days, what new accused shall I discover? For many years past the police force has been showered with many advice – change your attitude, change your role as a servant and friend of the people, do not allow yourselves to be used in the interest of the political parties, be they in Government or in opposition, do not take the country to the bottom of the earth by playing the ruinous game of alliance, and sharing with the well organized gang of mastans, illegal subscription collector, drug dealers, illegal arms-holders, black marketers, terrorists and anti-social elements who flex their muscles in haughty arrogance outside the purview of civilian and military administration.

“Our attempt is not to belittle the image of the police as an institution but our endeavour is to regenerate the good and beneficial spirit in police and to revive the confidence of the people in

police lest in coming years from their impressions, the people in the society do not consider that the police as an institution has outlived its utility and as such, to regain and enhance its glory and prestige which they lost by the passage of time through persistent abuse and excesses, it is high time that the Police Act, Ordinance, Code and Regulations should be strictly enforced, otherwise, it would go to demonstrate the condemnation of Police excesses”.

33. Even if a particle of the allegations against the police is found to be true or has any basis in the instant case, it is a shame for the nation, for the police has a positive duty to protect a citizen from being thrown away from their homes and the alleged hounding of them is against the conscience of the nation. It is a pity that at least the police are seen to be playing a passive role in the entire episode of illegal eviction and aiding/ abetting the owners and hoodlums in their illegal acts crimes which is highly reprehensible. It is now an admitted fact that direct involvement of police in crime is rising alarmingly with members of law enforcing agencies getting involved in crimes and a special cell has been formed by the authority to tackle the situation (Daily Muktakantha, 24th May, 1999). Even from the finding of the survey conducted by Transparency International, it is found that 96% of the victims asserted to the effect that it was almost impossible to get help from the police without money or influence. But money or influence cuts both ways, it may either make them very active, as alleged in the instant case of illegal eviction, hounding them from their houses, dragging them out of their beds and beating them and pushing into the standing buses or acting in a passive role in the nature of aiding or abetting the owners or hoodlums in the acts of illegal eviction, dragging them from their houses, standing as mere onlookers without taking any positive action in resisting the execution of illegal eviction. But it is sometimes heartening to learn, inter alia, some credit side of the police when a police sub inspector resigned protesting sharp deterioration of law and order situation in Jessore and massive violation of human rights. On the other hand, the police is in the dock in the past decades being accused of murder, rape, etc. even in police custody, which undoubtedly do not go to the credit of the police as an institution.

34. In the said decision (4 BLC 600) this Court has urged upon the authorities to take appropriate step in framing a Code of Conduct for the law enforcing agency immediately with the sole object of assuming the position of a shelter/ support for the citizens in times of need and thus to wash away the bad name it has acquired through passage of time, in the light of Code of Conduct of Law Enforcing Agency adopted by the General Assembly of the United Nations by resolution 34/169 of 17th December 1979 and hoped that the authority should take immediate steps to establish a trustworthy, dignified strong and disciplined police force enjoying people’s confidence. But who cares and who cures. The police involvement is almost common phenomenon in aiding, abetting or participating in some of the heinous crimes throughout the country and under the circumstances as detailed in the foregoing paragraphs and alleged in the petition, police involvement in evicting, assaulting, injuring, etc. of the inmates of Nimtali and Tanbazar cannot be ignored and/ or brushed aside. The photographs and reports also go to show at least their presence in the area at the time of atrocious acts of eviction by the interested

quarters. This illegal police action or deliberate police inaction in preventing misdeeds have prompted this court previously as well to sound a note of caution that people may think of alternative to the existing police administration for setting up a more humane, dependable, law enforcing, trustworthy and beneficial police institution. The police who are supposed to be the saviour of the victim, if themselves indulge in or become party to the atrocious/ heinous action at the behest of the interested quarters, the police institution is sure to incur the wrath of the helpless public. The police being saviour and protector, if acts otherwise the citizen will have no place to lodge their grievance and consequently would feel absolutely frustrated and would unfortunately dare to take law into their hands.

35. We painfully observe that though the police are the protector of the oppressed, in the instant case they have failed in fulfil their obligation inprotecting the rights of the dwellers of Tanbazar and Nimali. The petitioners have alleged that the police men informed the residents that a Member of the Parliament from Narayanganj area, the Deputy Commissioner, the Superintendent of police and the officer-in-charge of Narayanganj, Sadar PoliceStation, the respondents 4-6 respectively desired to meet them and when the said inmates went to meet them the policemen suddenly dragged them, abused them, beat them and forcibly pushed them into the standing buses. The allegation though denied but the District Executives of both Civil and Police Administration, who execute and supervise the policies of the Government and the enforcement of the laws and engaged in maintenance of law and order, had a duty to see that the citizens are not harassed in this manner. The sex- workers were dealt with by the house owners and their hoodlums allegedly in connivance with the local police but the onerous task of enforcement of the law that no man should be evicted except in due process of law, rest upon the local civil and police administration. We do not find any reason on record as to why the said members in the services of the Republic remained so inactive or passive, may be at the behest of the local Member of Parliament or the house owners of the Tanbazar and Nimali. The local administration should have realized that they could not ignore the provisions of the law in maintaining law and order in the area by preventing the violators from taking law into their hands and should have taken appropriate action against the wrong doer. By remaining passive they themselves connived with the wrongdoings of the interested quarters. We hope the authorities in the high ups would look into the matter in order to set its own chain of administration at right, which is the constitutional obligation of the Executive Government in a democratic country in promoting the causes of civil society.

36. In view of the above, we are constrained to hold that the forcible taking away of the sex workers and putting them into the Kashimpur Vagrant Home at Gazipur have been done without any lawful authority in derogation of their right to life or livelihood and contrary to dignity and worthy of the human person, as they do not come squarely within the mischief of the definition of Vagrant under the Vagrancy Act, and no proceeding in accordance with law or any finding was arrived at as to the vagrant nature on material in order to put them in Kashimpur Vagrant Home. We also like to put on record that the petitioner by way of Supplementary Affidavit has

further asserted that the sex- workers are still operating at Daulaldra and Rajbari. Although their consent had been taken for improvement of their conditions upon rehabilitation but the rehabilitation scheme must not be incompatible with their dignity and worthy of human person but designed to uplift personal morals, and family life and provision for jobs giving them option to be rehabilitated or to be with their relations and providing facilities for better education, family connection and economic opportunities in order to do much to minimize the conditions that gave rise to prostitution. But not in the way as has been done in respect of the sex workers of Nimtali and Tanbazar. All the respondents should co-ordinate themselves with UNDP or other connected organizations formulating and adopting a durable rehabilitation scheme to start with a pilot scheme for the purpose of the sex workers of the country with a sense of security and then the government should come out with legislation prohibiting prostitution and or soliciting prostitution and strictly enforce the laws in solemn observation of the constitutional obligation adopting effective measures to prevent prostitution. This court being the upholder/ protector of the rights of the citizens has duty to see that the rights including the fundamental rights of any citizen are not being violated by any means.

37. As the sex- workers are now confined in Vagrant Home illegally terming them to be Vagrant, we direct the respondents to release them forthwith so as to enable them to go on their own according to their choice, which is their fundamental right guaranteed under the Constitution.

38. The police has a duty as instrument of demonstrative welfare of the country but as we have observed earlier, the police at least have failed to resist the owners of the houses at Tanbazar and Nimtali and their hoodlums in preventing the eviction of the sex-workers from their dwelling houses and the action of house owners do not have any sanction of law, not being in due process of law. But in this jurisdiction we are helpless to give any direction on the owners except mere observing a caution that nobody should take the law in their hands, so as to violate the rights protected under the law and the fundamental rights guaranteed under the Constitution. Although the respondent Nos. 1 and 4 have denied their involvement in the process of eviction and put the blame on the house owners and their hoodlums but in a massive and wholesale eviction of the inmates of Nimtali and Tanbazar, the District Administration should not be allowed to shirk the responsibility in effectively maintaining the law and order and thus preventing the house owners and their hoodlums in evicting the sex workers of Tanbazar and Nimtali to take law into their own hands. Thus, we also express our dissatisfaction over the passive role or inaction of the Local District Administration.

39. In the result, the Rule is made absolute in part without any order as to costs and accordingly, we direct the respondents 2 and 3 that they shall forthwith release the sex workers now detained in Kashimpur Vagrant Home allegedly treating them as Vagrants.

Let a copy of this judgment be sent to the Hon'ble Minister, Ministry for Home Affairs and Director General, Department of Social Services.

Source –

Landmark Judgments on Violence Against Women and Children from South Asia

South Asia Regional Initiative/Equity Support Program (SARI Q)

Pages 22 - 45