

**HUMAN TRAFFICKING AND CROSS- BORDER LINKAGES:
A CASE STUDY OF NEPAL AND INDIA**

Thesis Submitted to Jawaharlal Nehru University
for award of the degree of

DOCTOR OF PHILOSOPHY

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DECLARATION

I declare that the thesis entitled "**Human Trafficking and Cross-Border Linkages: A Case Study of Nepal and India**" submitted by me for the award of the degree of **Doctor of Philosophy** of Jawaharlal Nehru University is my own work. The thesis has not been submitted for any other degree of this University or any other university.

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CERTIFICATE

We recommend that this thesis be placed before the examiners for evaluation.

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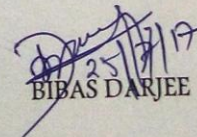
*All the Warriors Who Fight Against Modern-Day
Slavery in the World*

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List of Abbreviations

AHTU	: Anti Human Trafficking Unit
BLA	: Bonded Labour Act
CLA	: Child Labour Act
CBI	: Central Bureau Investigation, Govt. of India
CrPC	: Criminal Procedure Code
CWC	: Child Welfare Committee
CSE	: Commercial Sexual Exploitation
CSW	: Commercial Sex Worker
CSWB	: Central Social Welfare Board, Govt. of India
FIR	: First Information Report
GD	: General Diary
ICPS	: Integrated Child Protection Scheme
ILO	: International Labour Organization
IPC	: Indian Penal Code
ITPA	: Immoral Trafficking Prevention Act
JJ Act	: Juvenile Justice Act
MHA	: Ministry of Home Affairs
MPB	: Missing Person Bureau
MWCD	: Ministry of Women and Child Development, Govt. of India
NCLP	: National Child Labour Project
NCRB	: National Crime Records Bureau
NCT	: National Capital Territory of Delhi
NCW	: National Commission for Women
NCPCR	: National Commission for Protection of Child Rights
NHRC	: National Human Rights Commission
NPA	: National Plan of Action (of the Government India to Fight Trafficking for Commercial Sexual Exploitation)
NSSO	: National Sample Survey Organization
PIL	: Public Interest Litigation

Trafficking Protocol: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

SC	: Supreme Court of India
SCC	: Supreme Court Cases (a case decided by the Apex Court)
TIP	: Trafficking in Person
UN	: United Nations
UNCRC	: United Nations Convention of Rights of the Child
UNICEF	: United Nations International Children's Emergency Fund
UNODC	: United Nations Office on Drugs and Crime
UT	: Union Territories
WCD	: Women and Child Development (of the State Government)
VDC	: Village Development Committee
PPR	: Nepal Forum or Protection of People's Rights Nepal
NWC	: National Women Commission of Nepal
NJA	: National Judicial Academy
NHRC	: National Human Rights Commission of Nepal
NGO	: Non-Government Organization
MoCWCSW	: Ministry of Women, Children and Social Welfare
IOM	: International Organisation for Migration
I/NGO	: International Non-Government Organisation
HTTCA	: Human Trafficking and Transportation (Control) Act 2007
GMSP	: Gramin Mahila Srijanshil Pariwar GBV Gender Based Violence
CTIP	: Combating Trafficking in Person Project
AATWIN	: Alliance against Trafficking in Women and Children in Nepal
OHCHR	: Office of United Nation for High Commissioner of Human Rights
CSS	: Copenhagen School of Security
WTO	: World Health Organisation
UNO	: United Nation of Organisation
INSEC	: Informal Sector Service Centre
SSB	: Sastra Sima BAL
UNOTC	: United Nation Convention against Transnational Organised Crime

SAARC	: South Asian Association for Regional Cooperation
KUK	: Kanchanjunga Uddhar Kendra
MARG	: Mankind in Action for Rural Growth
CSSAT	: Community Surveillance to Prevent Trafficking
BBA	: Bachpan Bachao Andolan
TVPA	: Trafficking Victims Protection Act.
UNFPA	: United Nations Fund for Population Activities
CSB	: Central Statistical Bureau
UNDP	: United Nation Development Programme
SSP	: Senior Superintendent of Police

Chapter I

INTRODUCTION

Injustice anywhere is the threat to justice everywhere. Martin Luther

Newer terms like globalisation, non-state actor, human security and human rights are widely used in international system. The impact of globalisation has come to be felt in every corner of the world, with regions getting interconnected and territorial boundaries losing their relevance to some extent. A. G. Frank states that the wind of globalisation facilitates the connectivity of the socio-economic and political culture between peripheral and core countries (Frank 1996: 4-15) and adds that the high concentration of wealth in one corner of the world has resulted in growing inequality among nations, malnutrition, poverty, and failure of governance, health hazards and birth of numerous non-state actors like terrorist organisations, sex rackets and several other anti-social elements. Inequality of socio-economic provisions, rights and discrimination gave a considerable impetus to the formation of society with two different groups mainly 'haves' and 'have-nots' (Cowling 1998:77-119).¹

The new wave of political system is reflected in the behaviour of individual towards the role state and vice versa. In this international system international system the power-struggles have ceased to be a matter of concern for the international political community, especially when seen through the prism of frontal attacks. This has been gradually replaced by cooperation which has become the new wave or keyword in inter-state system or relations. This is deemed necessity state desire cordon themselves from the unwarranted threats and challenges that strike the human race. The classical notion of security has taken a backseat and the issue of individual safety or human security and

¹ In the history of class relation, conflict and condition of society the term "haves and have-nots" was first used by Karl Marx. In his book Communist Manifesto, he clearly described the class formation and class conflict in the capitalist state. According to him 'haves' is a capitalist class who has control over means of production and exploits the working class or proletariat (haves not) to continue the perpetual oppression in the state (Marx and Engels 1848: 5-66).

human rights has come to take precedence in academic discourses and consequently among the government across the world (Owen and Martin 2014: 28).

Human security to Securitization Theory

On a general level, the term human security can be seen as contesting notion against or being positioned as contrary to national security. This raises issue of security of the individual. Human security is a new framework of individual security which deviates from the militaristic approach that focuses solely on territorial security. Therefore, the theory defines human security as the notion of safety that goes beyond the concept of mere territorial or conventional security (Buzan, Ole Wæver and Wilde 1998: 388-413).

The theory has been the brainchild of the Copenhagen School of Security (CSS) Studies and its proponents include Ole Wæver, Barry Buzan and Jaap de Wilde. It revisits the meaning of security by arguing that while the state was the means, it was the individual who happened to be the end of all security measures undertaken by the state. Hence, the state is the 'securitizing actor' (the one providing security) whose prime object is to ensure security to the individual (Stritzel 2007: 357-383). Barry Buzan, in his work *People, State, and Fear: An Agenda for International Security Studies in the Post –Cold War Era*, advocated human security as a new concept in the world that emphasised on people-centred security including political economic, social and environmental security, and a unanimous measure of security of human being (Buzan 1991: 49-189).

The securitization theory and a contribution of the CSS are now used as almost a panacea for the modern form of security challenges towards the life of the individual. It states that if a particular object is threatened in its existence, a securitizing actor claims a right to extraordinary measures to ensure the referent object's survival. It has also been noticed that the method of securitizing the referent object can be dealt with a swift plan of action rather than just a normal theoretical imagination of policy-making. In short, at the time of security crisis and increasing threats from non-state actors, it seems necessary for state, civil society, NGOs and International organisations to

come forward to securitize and ensure the safety of the victims by implementing the plan of action. Bajpai, urges that the individual safety and freedom from direct and indirect threats of violence solely depend on governance and collective action of the state. State thus becomes a prerequisite in promoting human development and managing human security. His idea of secure life of individual is based on the provision of “basic material needs” and realization of “human dignity” in the state” (Bajpai 2000: 2-60). Human security relates to the protection of the individual’s personal safety and freedom from direct and indirect threats of violence.

Human Trafficking as a Threat to Human Security

Leaving apart the concerns of traditional notions of security, ‘trafficking of persons’ has become one of the most appalling non- traditional security issues in the recent decades. It has defied the logic of all control mechanisms. Human trafficking is an aggregation of body of persons, bought and sold in a particular place, at a specific period of time, especially by unlawful means. This happens, against the human rights related to liberty and freedom, and sexual morality or convention, thus contributing to human insecurity. It is not considered as a traditional state security issue. Rather it is a combination of extensive non conventional security issues that takes place in the form of transnational organised crime. This could not be more obvious than the recent event of the discovery of 139 bodies by the police in the dense jungles along the borders of Southern Thailand and northern Malaysia (The Hindu 2015: 16). According to the local police, the bodies bore signs of torture and molestation. Malaysia has confirmed the ugly hand of traffickers behind the catastrophic affair (The Hindu 2015:16).

Over a decade back, International Labour Organisation (ILO) of 2012, estimated number of persons in forced labour, including sexual exploitation, as a result of trafficking at any given time is 21 million (ILO 2017 : 2-7) (Table I.1).

Table I.1
Number of Forced Labour in the World

Nature / Country/Region	Number of victims	Victims
Forced labour	21 million	Almost 19 million victims are and over 2 million by the state or rebel groups. Of these, 11.4 million women and girls and 9.5 million men and boys.
Exploited by private individuals or enterprises	4.5 million	Girls , children and women of sexual exploitation
Forced labour	7.1 million (50%) forced labour	victims work in construction, manufacturing, mining, or utilities
Forced labour	3.4 million (24%) forced labour victims are domestic worker	
Forced labour	3.5 million (25%) forced labour victims work in agriculture	
Asia	The Asia-pacific region accounts for the largest number of forced laborers—11.7 million (56% of the global total).	
Africa has	3.7 million (18%)	
Countries in central, south-eastern and eastern Europe and the Commonwealth of Independent States	1.6 million (7%).	
Economies and European Union	1.5 million (7%)	
The Middle East	600,000 (3%) victims	

Source: International Labour Organisation (2012)

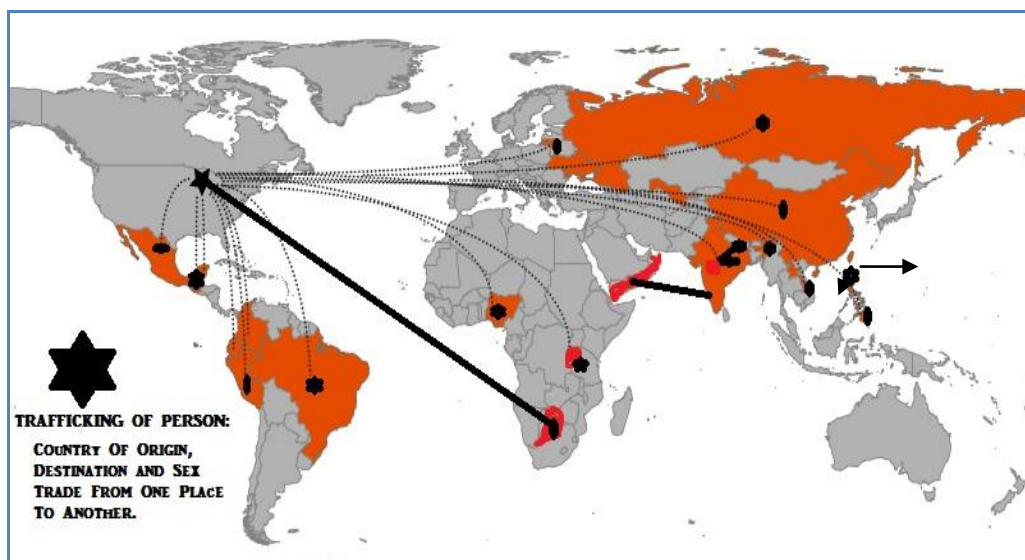
It has been noticed that the major factors and facilitator behind human trafficking ranges from an inadequate socio-economic opportunity, political instability, civil unrest, internal armed conflict, natural disasters, and porous border to corrupt government officials.

In addition, the limited capacity to enforce the law and order to check illegal migration or movement of people from one border to another is found to be another crucial driving force. These factors exert pressures on peoples and “push” them into searching for an option or migration. There are factors that tend to “pull” them towards ill luck (Tim and winters 2010: 4-12). In addition, relative concepts of poverty could also lead to both migration and trafficking. Here the victims move from pitiable conditions of life or extreme poverty to conditions of less-extremities of poverty. A rapid influence of newsprint or electronic media about better life and opportunities increase the desire to migrate and eventually victims fall prey to traffickers.

It has been noticed that today mainly third world or developing countries with low income sources, poverty and socio-economic inequality are mostly affected by problem of trafficking in persons. For instance, that Brazil, Mexico, South Africa, Thailand, Malaysia, Columbia, India, Nepal and Bangladesh are under the group of challenging country (Shreya 2013 :1-7). Map I.1 demonstrates the region or country mostly affected by human trafficking in the world (red colour).

Map I.1

Countries Affected by Human Trafficking



Source: Strupp (2011)

Map I.1 above mentioned has shown connectivity of the region affected by trafficking in person in the world. A vulnerable country is indicated in the red colour and a black dot line along with star is also showing transportation of victims of trafficking from one country to another. For example, in the Asian region victims are trafficked and transported from India to Gulf countries. Similarly, a dot arrow points the place of origin and place of destination which is shown by black stars.

Trafficking happens through the mode of transportation from Nepal to India and from India to Gulf countries and in northern part of America and South East countries. Various national and international organisations have given an annual figure of human trafficking in the world as well as between countries like India and Nepal (Table I. 2).

Table I.2

Comparative Study of Magnitude of Trafficking in Person in India, Nepal and World

Year	World	In India	Nepal (source, Nepal police)	Nepal to India (source, different NGOs and UNICEF)
2013	17752	3940	144	13,905 to 15,658
2014	63251	15448	185	365
2015	77823	19223	181	5000-7000
2016	NA	19222	NA	NA

Source: National Crime Report Bureau of India (NCRB) and Office of Auditor General (OAG) Nepal (2015-16)

As wave of crime is spreading so fast across the world, no single country can claim that it is free from trafficking in person. India and Nepal show an increasing number of victims of trafficking. In 2016, Nepal Police Headquarter in Kathmandu recorded that out of 200 trafficking victim, 180 were domestic

victims whereas 98 victims were rescued from India and 2 cases were from Gulf Countries. In India, figure shows a huge number of trafficked victims in comparison with Nepal. More than fifteen thousand and nineteen thousand is recorded as annual internal trafficking in India.

Human trafficking has become a burning issue in Nepal and India² indicating rapid increase if complex linkages of criminal minds and syndicates between Nepal and India. Modern day slavery or human trafficking as it is officially termed, it quite similar to traditional slavery. The slaveholder exercise complete or nearby complete control over the people he or she has enslaved and the enslaved victims lives and work as ordered by the slaveholder. The major factors behind human trafficking range from socio-economic conditions to political crisis and social discrimination in society (Kathryn 2009: 22-28). For instance, an agony of day by day of work stress in domestic affairs as well as in the public place, it seems girl child and woman at home always find them in social predicament. They have to work at home as well as in the agricultural fields. They generally don't participate in any public affairs. The gender discrimination brings an additional source of vulnerability to trafficking (Crawford 2010: 2-124).

Centre for the Labour and Mobility (CSLM) has reported that every year 12000 children trafficked to Indian cities (CSLM 2011: 10-180). For instance, Khalpara in Darjeeling and Sonagachi in Kolkata, G B road in New Delhi, Lucknow, Kunpur and Varanasi in Uttar Pradesh, Patna in Bihar and Kamthipura in Mumbai are the famous destinations for Nepali girls and young women from Nepal to India (Nair 2015 : 218). They are trafficked to India for physical and sexual exploitation and from India, some of them are also sent to Gulf state and South East countries via India. Natural calamities like the devastating earthquake of 25th April, 2015 in Nepal have been actually used by human traffickers as vulnerable multitude move and migrate to other places both for safety and livelihood (NHRC 2015: 7-18).

² Nepal is a landlocked country situated between India and China. India shares its 1751 KM open border with Nepal. Therefore, cross-border movement of goods and people can't be stopped. India has a big market and demand for labour and Nepal is a ready and comparatively much cheaper source.

On the other hand, social activists, academicians, and NGOs are constantly fighting against the forces of human trafficking and demanding more individual security and rights in society.

For example, Nepal and India have an extensive non-governmental anti-human trafficking infrastructure in place that encompasses local civil society organizations (CSOs), intergovernmental organizations [IGOs], international non-governmental organizations [INGOs], international donors, technical assistance providers, the academia, and individual experts. The Nepali and Indian authorities have stationed Border police and SSBs at most crucial of the transit points. This is made in adjunct to efforts to spread awareness regarding the menace of trafficking and the traffickers (The Telegraph 2015: 3).

REVIEW OF THE LITERATURE

Trafficking in persons is a global phenomenon and one of the most prevalent crimes of the modern world (Sunita 2006: 55). It takes a heavy toll of hundreds of thousands of victims annually. International organizations, government's departments, and non-governmental groups have recognized human trafficking as a contemporary form of slavery and a crime against humanity. It is noticed both developing and developed countries are affected by the menace of human trafficking. The President Barack Obama of United States in the White House New York made a very strong statement on crime of human trafficking. He considered human trafficking as a worldwide phenomenon. He indicated HT is against social fabric, national interest and it endangers public health and fuels violence and organised crime. He added

“I am talking about injustice, the outrage, of human trafficking, which must be called by its true name- modern slavery” (Wylar 2012: 1-5).

In a country like Nepal trafficking in person in takes place in both ways internally and externally for physical and sexual exploitation (Mary 2010: 23). According to NHRC 2015 report on trafficking in person Nepal, within Nepal, capital city Kathmandu has become a destination for the victims from rural districts. Districts like Sindhupalchok, Kavrepalanchok and Makwanpur where

overwhelming majority people are uneducated and poor. The report of Asian Foundation on Kavre district and condition of people who are also the victims of human trafficking describes total 93.2 percent poor victims of organ trafficking lack education and 60 to 70 percent people in average are in poverty (Asian Foundation 2015 : 5-37).

Traffickers induce them and recruit in the pretext of job and better livelihood. Later, victims are brought to Kathmandu and forced in physical work in restaurant, spa, beauty parlour and prostitution.³ The external form of trafficking in person from Nepal to different destinations of the world has become another institutionalised practice. Nepali girls are trafficked abroad mainly for an entertainment industries, illicit organ transplantation and physical or labour work in the circuses. And, other forms like domestic help or servitude in the Gulf States, South East country like Malaysia and Singapore, China, Tibet and Korea are increasing noticed (NHRC 2013-2015:19). India has emerged as a source, destination, and transit country for human trafficking. A report of the Commission for Protection of Child and Rights and Action Aid suggested that tea gardens of North Bengal have become a hotbed of child trafficking (The Hindu 2016:2-3). The poor children and girls are trafficked on the pretext of jobs in cities and taken to different parts of India as well as outside the country. The report of National Crime Report Bureau of India reveals West Bengal is followed by Maharashtra, where 13,090 cases of missing children were recorded in 2014. About 70 per cent of the children who had gone missing from Bengal in 2014 are girls (Ibid. 2016: 2-3).

According to the report of the National Crime Report Bureau of India (NCRB), there are five major vulnerable place of origin (state) for human trafficking. These are Assam, Bengal, Tamil Nadu, Jharkhand and Bihar. The other states like Orissa, Kerala, Uttar Pradesh and Manipur are also affected by trafficking in person (NCRB 2016:99). However, it has been noticed that there has been a big demand for “fair girls” from Darjeeling district of West Bengal

³ The girls from other parts of Nepal are attractive to Kathmandu for various reasons including fashion, glamour, food, modern facilities and through places like Thamel where dancing bars, restaurants and other foreigners’ joints are easily accessible.

and Sikkim in the flesh market particularly in Kolkata, Delhi and Mumbai.⁴ Similarly, the report has also shown the major destinations for victims of human trafficking.

The global tourists arriving in India make a huge market for these trafficking victims.⁵ Even peaceful areas like the army cantonment or security establishment in the hill stations of India are also noticeable destinations for victims of human trafficking (Nair 2015: 218).

India is considered as source and transit country for human trafficking, an attractive destination and market for Nepali girls and women. The linkages, collaboration, strategy and understanding between Nepali traffickers from Nepal and non-Nepali speaking or Nepali speaking trafficker of India have proved that they have innovative and ever changing modus operandi to trap the victims from rural part of Nepal. India's position as a receiving country of trafficked victims from Nepal is strengthened by i) the socio-economic proximity through the open and unguarded border with that facilitate easy movement of people and ii) India has a relatively bigger market for sex trade, sex tourism, child and adult pornography, organs, domestic help and workers for entertainment industry etc.

India is also a transit country. It has been noticed that 5,000 – 15,000 Nepali women and girls are trafficked annually to India for the purposes of commercial sexual exploitation (CSE) (Nair 2005:119). Besides, the report has also suggested that false promises of economic opportunity or marriage on the part of traffickers, as well as abduction by force or use of drugs are common tactics used to traffic girls and young women from different parts of Nepal. Later, they are again sent to foreign destinations like Middle East, Central Asia

⁴ Interview with police officials in New Delhi and West Bengal revealed that non Hindi speaking and girls with fair complexion from hilly region of West Bengal and Sikkim are mostly targeted because traffickers and brothel owners think that they fetch the higher money quickly in comparison with girls from other parts of India. The Joint Commissioner of Police Robin Hibu in Delhi and retired IPS officer PM Nair agree to this perspective.

⁵ During the interview with Anuradha Koirala founder of Maiti Nepal NGO based in Kathmandu, Nepal in 2017, mentioned that major destinations for victims of human trafficking from Nepal to India are tourist places like Goa, Shimla, Jaipur, Agra, Kolkata, Siliguri, Varanas and Delhi.

and South East Asia as sex workers, domestic servant and factory workers etc. According to Siddharth Kara, age, anatomy of body and physical strength are some of the criteria that determine the prices to be fetched against a girl who has been trafficked (Kara 2010:45).

Social and Economic Factors:

In most cases, approaches like historical, cultural, sociological, economic and geographical are used to understand the phenomenon of human trafficking. We are interested in knowing what sociological indicators of human trafficking and how it shows the cause of human trafficking lies in societal formation and practices where it becomes a community and social inclusion issue.

Any societal function is a result out of the action of its members. Human trafficking can be explained regarding the conflict structure of the society which creates vulnerable people and situation in which it fulfils the process of trafficking. The discrimination as we have seen as an integral part of the Nepali and India society, it also contributes to the cause of human trafficking in Nepal and India. Discrimination of one class of people over another class is the focus of the conflict sociological perspective of human trafficking.

In Nepal, a social issue like discrimination, untouchability and exploitation by the upper caste people over lower class people and women prevail haphazardly. Conflict of two class dominant and dominate in the structure of the society is considered as a contributor or factor in which the criminal process of trafficking in person is created (Lerum and Barents 2016: 17-26). For instance, a low caste people from the Tamang and Dalit community is discriminated and exploited by the upper caste people in Nepal and India (Kara 2010:45).

Owing to extreme poverty, discrimination and lack of opportunities in the society they look for jobs to obtain income and support themselves and their family. Under the vulnerable situation in which they can accept the extreme working condition or go anywhere to have a job. Sometimes they agree to move to other countries for work or marriage (Wendy 2003: 923-937).

Eventually, they arrive at a destination, unable to speak the language and without a proper document.

At that time, the structure is designed in the destination seems complex as trafficked victims could not exit from the situation. An approach examines both profits obtain from flesh business and the highest source areas for trafficking of women and children in Nepal and India. It draws attention towards the demand of victims as a need for earn the highest profits in the flesh market and on the other hand it shows income disparity by which victim of trafficking become a commodity in the hand of consumers. However, an economic approach to human trafficking is based on two factors namely pull (demand) factors and push (supply).

Nepal is populated by 103 castes and ethnic groups who are mostly Hindus, Buddhist and some are Muslims (Pradhan and Shrestha 2005: 2-25). It is found that there are 106 languages and dialects. Of which, the Indo—Aryan language family constituted 79.1%, and Tibet-Burma represented 18.4% (ADB 2005: 25). During the autocratic Rana regime (1846-1951) the Nepali society was ordered according to conventional Hindu notion. Even legal Code or Muluki Ain of 1854 legalise and explicitly attempt to apply the Dharma Sastras to both civil and criminal matters (Gellner 2007: 1823). All the Jats (groups) in Nepal at that time were looked like flowers in the garden. However, the fundamental distinction of all the groups was between upper and lower made by wearers of sacred thread (Tagadhari) on the one side and rest known as the Matwali or lower (alcohol consuming) caste ((Gellner 2007: 1820-23). Over the period subordinated groups were divided into “clean” caste and “untouchable” caste.

Today, we see the ethnic system of Nepal is divided into three parts. These are the hierarchal caste structure and egalitarian ethnic groups (Janajati), the high caste (pure) and low caste (impure) and Pahadi and Medhesis (Pradhan and Shrestha 2005: 2-25). The Jats or groups come to these three parts are Chhettri, Brahman-Hill, Magar, Tharu, Tamang, Newar, Muslim, Kami, Dalit, Yadav and Janajati. All these groups have their own set of culture, language and way of life. It looks all the ethnic groups are tied up by a single thread of

communal harmony but, it is tough to accept the reality of this society is vast and heterogeneous (Gellner 2007: 1819-23).

In the social context of human trafficking, the high caste and low caste people and their relations have its direct and indirect connection with human trafficking in Nepal (ADB 2005:2-25). In Nepal, the low caste Dalit community faces caste atrocities, exploitation, discrimination and caste based development. Moreover, they are trafficked for Bonded labour and Kamaiya (Anti Slavery International 2009: 25-28). In the year of 2000 and 2002, the Government of Nepal announced the Bonded Labour (Prohibition) Act and The Kamaiya (Prohibition) Act respectively. But, in the absence of government support and nil livelihood opportunities, many poor Dalit children are given to landlords by their relatives and parents to receive little or no pay. It is found that Haliya or Bonded labourers are from low caste or minority ethnic groups. The National Dalit Welfare Organisation estimated that one fifth of Haliya or Bonded labourers are Dalit (Anti Slavery International 2009: 25-28).

Human Trafficking has become the third lucrative business after arms and drugs trafficking in the world (Rahman 2011: 58-67). A demand for cheap labour and sex workers gives such an impression that traffickers are moving swiftly towards the catchment region in search of vulnerable victims to make a high profit. In the whole business employer generates profits through intra-regional and transnational trade in the flesh market. Traffickers and middle men never want to lose the business rather put efforts to maximise the profits as much as they could. In the whole function they are rationally taking decision to make a high profit (Lamier and Lutya 2012: 557).

On the one hand, they search for high profits and on the other hand, targeting the vulnerable people who get easily trapped. The report of ILO 2012 describes 21 million people are victims of forced labour where 4.5 million are victims of forced sexual exploitation (ILO 2012: 2-19). The report of ILO (2014) describes the forced labour in the private economy generate US\$ 150 billion in illegal profit per year. Of these, a US\$ 99 billion profit is estimated in commercial sexual exploitation (ILO 2014: 2-13).

The second aspect of economic approach to human trafficking is a push factor which can be viewed in a situation where victims are supplied. In fact, in economics of human trafficking, a geographical region is considered as supply side. For instance, countries or region of origin are often characterised by poverty and little prospect of sustained economic opportunity. According to Kara, a region of origin with income and ethnic bias i.e. Dalit in India; Roma in Balkans; Tamang and Dalit in Nepal, generally supply victims of trafficking (Kara 2009: 45). For example, poor women and men from rural part of Kavre district of Nepal are trafficked for organ transplantation. They become prey to traffickers due to nil economic opportunity for livelihood and extreme poverty of the district.

Moreover, traffickers make fake promises of handsome amount, property and gold to lure and get victim ready to sell organ (Asian Foundation 2015:31-45). Traffickers traffic Women and men from rural part of Nepal to India for organ transplantation. They brought victims to Delhi and Mumbai and extract their kidney to sell it with high profits (Ray 2016:7).

“What was shocking was he (Traffickers) dealt with all top hospitals across India where doctors did not even bother to ask about the donor (as stipulated by the law),” Joint Commissioner of Delhi Police (Crime Branch) Ravindra Yadav said in a brief interview (Ray 2016 : 7).

Traffickers tend to target poor and marginalised groups because traffickers think that people from such groups or castes are more prone to looking for better economic opportunities. These people realize that being a poor and low caste as well as dominated by so called elite or higher caste or class people, they stand no chance of ever having a future in that society. As a result, they are compelled to migrate for their future betterment. They think if they become economically strong, they can defend themselves against dominant class. A prominent NGO, Maiti Nepal, out of the 960 trafficked victims in 2012, at least 189 (19.7 percent) belonged to low castes (NHRC 2013-15: 7-59).

In the context of India too, discrimination in the form of caste and class has remained deeply rooted in society (Chandra 2005:30). Despite the fact that Government of India has devised and implemented policies to mitigate the inequality, oppression and discrimination in the name of caste, and gender, the

poor women and girls mainly belonging to low caste peoples still hugely suffer from rights, income and livelihood deprivations.

The rigid and patriarchal society has also become major causes in trafficking of women and young girls. According to Ruchira Gupta, a Social activist of Apne Aap based in Delhi, in a rigid patriarchy, women are always subordinate to men. Since they have been given limited economic and social opportunity, they try to search for alternative option like jobs in the foreign country. Sometimes in the crisis of alternative option they sell their valuable life and opt for new life as prostitution in the brothel (Bates News 2015: 7). A report from a joint survey conducted by the US-India policy institute New Delhi based Centre for Research and Debate in Development suggested that Dooars and Darjeeling district of West Bengal and Nuapada district of Odisha are backward districts and there are evidence of death and suicide of factory workers and people due to hunger and poverty. The report shows that people are migrating to other parts of India as well as abroad in search of better life. Therefore, the people under such a vicious circle have very limited options. Either they die or they are trafficked (Asian Foundation 2010: 5-59).

The Dalit Freedom Network (DFN), a social organisation, reported that Assam, West Bengal, Haryana and Bihar are badly hit by the problem of human trafficking in India. It reported that caste discrimination was one of the major factors in the trafficking of persons in India. It found that Puri, Rajwar, Buniya, Munda and Bauri belong to poor tribal and low caste groups facing the problem of social discrimination (Simon 2013 : 230). Thus, this incident reiterates the fact that apart from poverty, it is also caste discrimination in society that causes trafficking of girls and women in Nepal and India.

Therefore, caste system and gender discrimination also play a role in the sex trade, as many of the victims are women and girls come from disadvantaged castes. Thus an atrocity against Dalit community is a continued phenomenon in different form. Men of more noble castes see the exploitation of these girls as natural and deserved. Though steps have been taken to remove the caste system from Indian society, many elements still persist. For these reasons, implementing and amending the laws against human trafficking will not solve

the problem. The sex trade stems from poverty, rapid urbanization and a cultural stigma. To solve human trafficking, the government must work to remedy the conditions that nurture the exploitation of young girls for profit.

Open Border as a Facilitator of Human Trafficking:

Broadly there are five major pillars in Indo-Nepal relations viz., i) share religious, traditional and cultural heritage in their relationship ii) maintain the security of the region from external forces by helping each other iii) people of both countries access each others' land for economic and social purposes and maintained free movement from one country to another iv) there is an trilateral arrangement (British Government, Nepal and India) on the recruitment of the Gorkha soldiers of Nepal in Indian and British army. v) Open border and cross-border movement of people is rather institutionalised and the context of cross-border crime thus arises (Upreti 2001: 14-48).

Buddhi Nrayan Shrestha, a researcher on Border Issue and Managing Director of Bhumichitra Mapping Company Nepal, points out that non-state actor such as terrorist organisation, sex racketeers and militant group are misusing the open border between Nepal and India (Pyakural and Baral 2015 : 15-160). Human traffickers are making the best use of it for transporting innocent girls from Nepal to India. According to report of NHRC of Nepal 2013-15, 108 girls were trafficked from Nepal to India in 2015. Therefore, open border has evolved as a major facilitator in trafficking in person from Nepal to India (Sen and Nair 2005: 191). Traffickers illegally use range of transit points in this long stretch of open border making possible route via different location (Tameshine 2010: 491-513). There are major vulnerable border areas between Nepal and India which are continuously misused by traffickers. In the third chapter, we attempt to discuss extensively the routes used by traffickers.

The proximity of the border between Nepal and India makes the movement of peoples easier. These movements are based on t certain objective of work and needs. There are the pull and push factors. Traffickers have their own objectives and motives. They move areas where there are less or no surveillance. Transit points between India and Nepal have not only lax but

immobile security measures. Traffickers are always one step ahead of security personnel. Transit points like Birgunj-Bihar, Bhairahwa- Nepalgunj- Uttar Pradesh, Ilam- West Bengal and Dhangadhi- Uttarkhand are both the closets and not used. For instance, the plain area of Darjeeling like Siliguri is one of the busiest and steadily growing spots of West Bengal. It is also a transit hub for trade, commerce as well as transit point for human trafficking. Women and children are bought from Nepal and sold in different part of West Bengal (India) via various transit points in this district including Pushupatinagar and Kakarvitta.

The security system personnel are often under -resourced, bribed and due to insufficient training, they cannot recognize traffickers and illegal movement of people. Hence, the areas particularly nearby border between Nepal and India there are virtually weak or nil physical deterrence.

Legal Frameworks against Human Trafficking in Nepal and India:

Today, trafficking of women and children has become a major problem in the world. There is no single country that can claim or ensure that its border is not affected in some or the other way by trafficking of women and children. Human trafficking is an illegal trade of persons from one place to other places (Shelly 2010:23-356). Therefore, any illegal trade of women and children from Nepal to India through border areas is also considered as cross- border crime because it violates rights, liberty and freedom of Nepali women and children. In this context an international organisation United Nations (UN) came up with Protocol to Prevent, Suppress and punish Trafficking in Person, Especially Women and Children (2000) as a supplementing the United Nations Convention against Transnational Organised Crime (UNTC).

Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines human trafficking is meant by the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (United Nations 2000: 2-11). It also provides every year data on the most vulnerable country with regard to trafficking in person as well as stringent laws and policy against human trafficking.

In the regional level South Asian Association for Regional Cooperation (SAARC) has also come up with Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution in 2002. SAARC Emphasizes on the evil of trafficking in women and children for the purpose of prostitution (Kumar 2015: 14-31). It describes practice of selling the body of person is incompatible with the dignity and honour of human beings and is a violation of basic human rights (UNICEF 2008 : 4-12).

The purpose of this Convention is to promote cooperation amongst member states so that they may effectively deal with the various aspects of prevention and suppression of trafficking in women and children in the region.

The headquarter of SAARC in Kathmandu conducts every year a Ministry level meeting to discuss and resolve the problem of insecurity of the peoples in the region. Members of SAARC discuss several issues including socio-economic and political integration and security of the region in terms of external intrusion and cross-border terrorism etc. Since its inception, so far there has been 18th SAARC Summits held in different host countries. But, 19th SAARC Summit was cancelled due to abstain of India in the meeting in Islamabad, Pakistan (The Hindu 2016). However, members of SAARC meet after every eighteen months and raise the crucial issues including cross-border terrorist activities, cross-border human trafficking, socio-economic problems and environmental issues.

The SAARC Convention sets out important provisions recognizing the need to support the human rights of those vulnerable to trafficking. Article VIII (7) calls on “preventive and development efforts on areas which are known to be source areas for trafficking”. States are thus called upon to take more initiative in preventing vulnerability to trafficking. In its aim to prevent and combat

trafficking, the SAARC Convention leads to the criminalization of prostitution. Prostitution per se is deemed an offence. Article 1 (2) defines prostitution as the “*sexual exploitation or abuse of persons for commercial purposes*” (Kumar 2015: 14-31). The SAARC countries reaffirmed their determination and renewed their commitment to end violence against women and children in all forms and all settings. The member states unanimously adopted the South Asia Call for Action on Ending Violence against women and Children. It reiterates its pledge to continue to work in the next decade and beyond to address the formidable challenges faced by women and children, especially the girl child (Ibid. 2015: 14-31).

The adoption of the SAARC Convention (2002) was a landmark achievement and a significant step in combating human trafficking. It is the first regional treaty of Asia to address human trafficking. The Convention increased political awareness and co-operation among the South Asian countries to prevent and combat human trafficking (Ibid. 2015: 14-31). Though SAARC does not have a record of arresting the culprits, criminals and even rehabilitation of trafficked victims, not all but few member states have arrested traffickers, criminals and provided assistance to trafficked victims. For example, despite the problem of ratification and extradition provisions, Nepal and India are becoming helping hands for each other.

Crawford pointed out that the Government of Nepal ensures basic rights of the people including the right to equality, liberty and freedom and therefore, never allows any confinement and exploitation (Crawford 2010: 131). Nepal has three major laws to control trafficking of women and children viz., The Labour Act of 1992, The Human Trafficking Control Act of 1986 and The National Human Rights Commission Act of 1993. Human Trafficking Control Act of 1986 is enforced as special Act in Nepal which aims to combat trafficking of women and children for prostitution and slavery. Besides, it provides provisions for rehabilitation, reintegration, and protection to victims and witnesses (Nair 2005: 191).

Recently government of Nepal has passed the new Act ‘The Human Trafficking and Transportation (Control) Act of 2064 (2007)’ to implement the

provisions under the trafficking Control Act of 1986 more effectively. HTTCA has extra territorial jurisdiction, with equal penalties for offenses committed within and outside of Nepal. The HTTCA (2007) prohibits mainly the crime which constitutes people smuggling and purchasing commercial sex (HTTA 2007: 1-12). It is directly to control cross- border crime between Nepal and other nations. Nepal is a state party of major human rights instruments but, Nepal is yet to be the state party of UN Protocol on Trafficking in Person 2000, UN Convention on Rights of the Migrant Workers and International Labour Organisation (ILO) Convention 189 on domestic workers 2011. Nair and Sen pointed out that to address issues of the buying and selling of minors, importation of girls and address the problem of exploitation against women the Indian Penal Code of 1860 (IPC) continues to be the substantive law of India.

For example, section 363 A relates to the kidnapping or maiming of a minor girls for sexual exploitation and section 366B relates to the importation of girls from foreign country for commercial sexual exploitation (NHRC of India 2004). The section 498A deals with violation of rights and freedom of women in the domestic affairs. Besides, the immoral Trafficking Prevention Act 1986 has also been enacted to deal with human trafficking in India. This act is promulgated with the objective of abolishing trafficking of women and girls for sex works (prostitution). Similarly, the Immoral Trafficking Prevention Act, 1956, section 366-A deals with trafficking of a minor girls for sexual exploitation (Nair and Sen 2005: 186-311). The Ministry of Law and Justice reveals that the Juvenile Justice Act 2015 (Care and Protection of Children) deals with the procurement of a child under the age of 18 years against the sexual and physical exploitation (The Gazette of India 2016 :2-44).

The governments of Nepal and India have been making an effort to combat trafficking (Thomas 2010: 66). However, they have not been able to follow the minimum required measures and standards to control trafficking in persons. Recently Government of India has set up Anti Human Trafficking Police Unit in each police station under the Crime Branch of India to control trafficking in person for exploitation.

Rational and Scope of the Study:-

The study proposes to examine the contemporary trends in the process of human trafficking from Nepal to India and linkages of criminal hands at all the levels through different geographical locations. Human trafficking has become a major concern in the context of human security and human rights in Nepal and India. In general, the primary focus of the study is to show the process of human trafficking as an illegal transportation of person from different parts of Nepal to India and India as receiving market country. In addition, human trafficking, proclaimed as unlawful selling and buying of person, has also become responsible for the loss of the basic rights to freedom, liberty and life where trafficked victims turn out to be nothing but mere slaves at the hands of traffickers.

They are abducted, sold, feloniously assaulted and forced into prostitution. Therefore, human trafficking is a national as well as a transnational crime.

The study would also focus on the factors that trigger trafficking including social and economic inequalities, poverty, and caste discrimination both in India and Nepal. On a similar note, anti-trafficking laws, policies and measures of Government of India and Nepal are critically analyzed. There are questions as to why these measures have been to a large extent ineffective in combating trafficking. Besides, failure of government to control cross-border crimes as well as the difficulties in implementing anti-trafficking laws would also constitute a major focus of the study. To provide light on the process of anti-human trafficking steps, rescuing operation of trafficked victims and rehabilitating/ reintegrating them, the study would also look at the activities of civil society organisation and police system at the national as well as international levels.

Research Questions:

- i) Does the process of human trafficking lead to human insecurity?
- ii) Why are victims in the maximum cases belonging to poor and lower caste people in Nepal and India?

- iii) Is rate of the crime of human trafficking from Nepal to India increasing?
- iv) Are the causes of trafficking in person poverty, caste, class and gender discrimination and corruption within the state system in Nepal and India?
- v) What the linkages of criminal hands, modus operandi and routes of transportation are of the cross border trafficking in person between Nepal and India?
- vi) Can supports from government, families, communities and social organization reduce the rate of trafficking in Nepal and India?

Hypotheses:

- i) Socio-economic vulnerability is key reason behind mushroom growth of sex rackets and trafficking in person in Nepal and from Nepal to India.
- ii) The open and unmanned border between India and Nepal is an important facilitator of trade of human being and thus aggravates the problem of human insecurity in the region.
- iii) Traffickers are mostly either relatives or persons, familiar to victims.
- iv) The government has a lackadaisical approach towards the prevention of human trafficking therefore lacking the will to implement the anti-trafficking laws effectively.

Method of Research:

At the Methodological level, the study has applied the qualitative and quantitative method. The primary goal in using quantitative and qualitative methods is to determine the relationship between one thing and another within a region and population of the area of research. So, points are verified and designed descriptively. The Case study method has also been used to collect data which revision the anonymous demographic details of participants, interactions and interviews with the target population.

By doing the field study in different parts of Nepal and India, an objective of collecting the primary data has been accomplished. The study proposed to

utilize the primary and the secondary sources to tie together some of the existing knowledge and their interpretation to answer the research questions above mentioned. Similarly, it used the literature available on the topic already as secondary sources. It would be based on publications of the Government of India and the Government of Nepal. Published Indian and Nepalese newspapers, articles and journals from various quarters also helped in the research work. Importantly, the outcome of the premises of the study is based on a deductive method to reach out the particular conclusion from the general ideas and information. The criminal cases regarding human trafficking, geographical region, and condition of victims are studied to reach out the conclusion of the subject matter.

Chapters

Chapter I - Introduction:

This chapter will study the theoretical background of human insecurity due to emergence of uncontrolled criminal activities. It explains the importance of people-centered security rather than traditional state-centered security. The chapter would also discuss how human trafficking leads to human insecurity. It provides a preliminary assessment of human trafficking in Nepal and India where India is considered as a host country.

Chapter II – Socio-Economic basis of Human Trafficking in Nepal and India:

This chapter begins with explaining an integrated theoretical background of human trafficking. It will apply the single integrated theory of human trafficking which will be comprised in the study of victimisation, socio-economic and historical background of trafficking in person in Nepal and from Nepal to India. It highlights the phenomenon of human trafficking led by both push (supply) and pull (demand) factors in Nepal and from Nepal to India. It takes up the socioeconomic trajectory, poverty, discrimination, bias development of the geographical region are also contributive factors of human trafficking. To describe the reason behind trafficking in person in Nepal and

from Nepal to India, it briefly takes up the economic hardships of the socially challenged low caste people from the backward region of Nepal.

Importantly, lack of access to economic opportunity in the Nepali society and their disappointment in search for a better life are discussed to explain the process of trafficking.

Chapter III - Human Trafficking and Cross- Border Linkages:

The chapter commences with a brief account of the existence of the open border between Nepal and India. In the context of the cross-border crime of human trafficking between India and Nepal, advantage and disadvantage of the open border are discussed. The manner in which the 1751 km open border between Nepal and India has become the simple route for traffickers to traffic women and children, modus operandi of sex racketeers and process of transporting of victims through border areas has been described. It mainly dwells upon the contemporary meaning of illegal cross border activities like trafficking in persons, especially women and children. It takes up the criminal cases to explain the linkages of cross-border human trafficking. The study has also attempted to locate the vulnerable geographical routes of human trafficking between Nepal and India.

Chapter IV - Monitoring and Reporting on Anti-Human Trafficking

The chapter makes a significant account of the action of the governments of Nepal and India regarding anti human trafficking measures. In the context of Nepal, it harps on the major laws to control trafficking of women and children. It includes ‘The Labour Act of 1992’, ‘The Human Trafficking Control Act of Nepal of 1986’, ‘The National Human Rights Commission Act of 1993’, ‘Human Trafficking Control Act of 1986’ and recently passed the new Act ‘The Human Trafficking and Transportation (Control) Act of 2007’ (HTTCA). Likewise, in India, the study shows the significance of the Indian Penal Code of 1860 (IPC), the Code of Criminal Procedure Act of 1973, the Immoral Trafficking Prevention Act 1986 and the Immoral Trafficking Prevention Act, 1956 to address the issues of buying and selling of minors, importation of girls and address the problem of exploitation of women in India. The chapter also

dedicated to discussing the major judgments of the Court of Nepal and India on criminal case of human trafficking. Similarly, gaps in the process of implementing the policy and recommendation to the respective governments in combating human trafficking are also discussed.

Chapter V – The Role of Civil Society, NGOs and IGOs in Combating Human Trafficking:

The following chapter discusses the social and legal action of civil society organisation and international organisation in combating human trafficking in Nepal and India. Besides, the movement of civil society, social activists, academicians, and NGOs to fight against human trafficking and demanding more individual security and rights in society has also been explained.

For example, it shows various organisations like Maiti Nepal, Shakti Samuha, and AATWIN that are fighting against evil practices of human trafficking in Nepal and from Nepal to India. Similarly, in India, the role of Shakti Vahini, the MARG, Sanlaap India and Bachpan Bachao Andolan in combating a heinous crime of trafficking in person has been described. In the last part of the chapter, it also discussed the important role of SAARC in combating human trafficking in the region.

Chapter VI - Conclusion:

The study attempts to summarise the various findings done during the study. It answered the research questions above mentioned. The study discussed and examined all the given information and facts to test the hypothesis. It shows that human trafficking from Nepal to India is shocking and terrifying due to the socio-economic problem and strong linkages of sex racketeers. Although the report of international organisation and Non-government organisation suggested the increasing figures of human trafficking, the governments of Nepal and India have turned a blind eye to the crisis. It has been noticed that as an anti-human trafficking measure, economic development, employment facilities, training of the security personnel nearby border areas to recognise traffickers, an illegal movement of people and illicit transport of person from Nepal to India are required to be carried out strictly.

Chapter II

Socio-Economic Basis of Human Trafficking in Nepal and India

Human trafficking has received intermittent yet considerable attention in the world for quite some time. Terms like ‘human trafficking’, ‘trafficking in person’, and ‘modern- day slavery’ are often used interchangeably to refer to a multiplicity of crimes associated with the physical and sexual exploitation of person and the violation of human rights and human security. The origin of the crime of trafficking in person is said to be traced back to even before 1400 A.D when slave trade from South Africa to Europe through Portugal was of common occurrence. However, in 1904, the “International Agreement for Suppression of White Slave Trade” and declaration by the League of Nations on "Combating Trafficking in Women and Children" in 1927 drew attention. This also partly laid down the foundation for studying of “human trafficking” (Masika 2005: 2-50) .

In 1948, the Universal Declaration of Human Rights by United Nations infused new life into the study of trafficking in person just as human rights and human security became some of the major debatable issues in the world (Oberleitner 2005:185-203). In 1993, the Vienna Conference developed the idea of sustainable development, human rights and linked it with the livelihood of the people and good governance. Further, organisations like Human Rights Watch and Amnesty International enabled the policy maker and developers to incorporate the rights-based approach to concerns about human rights, human trafficking and development. There are different forms of human trafficking and related exploitation around the world.

Trafficking in person for sexual and physical exploitation, domestic servitude, fake marriage, organ transplantation, physical labour in factory and circus, trafficked children for begging and to smuggle the goods are common in nature of crime (United Nations 2004:4-61).⁶ However, irrespective of the

⁶ It is reflected in the definition adopted by the Article 3 and 4 of United Nation Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000) as mentioned, *Trafficking in persons* shall mean the recruitment, transportation, transfer

existence of national and international bodies and several agreements, treaties and policies to prevent and combat human trafficking, the number of victims of trafficking has been on the growing year after year (Mishra 2015: 151). According to Amy Klobuchar, 'human trafficking is the world's third biggest criminal enterprise and the third most lucrative business after arms and drugs smuggling in the world' (Greenberg 2016: 2-7). She added, a International Labour Organisation (2014) estimated approximately 4 million girls and women become trafficked victims every year for various purposes, subjected to working in the factory, domestic subjugation, transplantation of body organs and most importantly, prostitution (Ibid. 2016:2-7). According to Bruckett and Parent, each crime exhibit a common trend of involvement of the causes, events, objectives, a proper plan, conspiracy, process, practices and routes (Bruckert and Parent 2002: 2-29).

Likewise, the process of human trafficking involves a similar course, viz., the association of place, method, modus operandi and routes. The adverse outcome of human trafficking demands attention in the light of a crisis of human security, a blatant violation of human rights and degradation of dignified life of the victims. Nevertheless, an understanding of this societal malady calls for an explanation of its back story and addressing the causes by simply making it a priority for the government (Thomas 2010: 11-48).

Despite experts, thinkers, researchers and policy makers trying hard to study and prevent crime wave at all levels, inconsistency in approach, wrong calculation, poor condition and the ineffective conclusion regarding the phenomenon of human trafficking have so far made these goals unachievable. Hence, today, it strikes both the poor people, in most of the cases, and it does not let the rich people escape from its fatal clutch. At present, developing countries with lower development and political instability are the targets of human trafficking (Kathryn 2009: 8-28).

harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (*).

The policy makers on the other hand, have failed to recognise interdependent variables within the process of a crime and its consequences. For example, one must study the phenomenon of migration and trafficking in person as one because a solution of forced migration is also directly associated with resolving factors of the crime of trafficking in person. In short, trafficking in person and forced migration are largely interconnected and interdependent. So, forced migration and its consequences can't be separated from the process of the crime of trafficking in person (Mishra 2015).

A systematic step towards understanding trafficking needs to be based on an integrated model that explains the socio-economic vulnerability of people to trafficking and its negative outcome. The primary focus of the chapter is to examine human trafficking with the help of an integrated framework which comprises of the nature, definition, process and approaches.

An Integrated Theory of Human Trafficking:-

It recognises individuals who are most likely to be vulnerable to trafficking. The approach explains that trafficked person is a victim who is exploited and forced to forgo its basic sense of human rights, e.g. freedom, liberty and right to live a dignified life.

The lifestyle of victim and victim's family are considered to be integral to the theory to understand the process of victimisation of human trafficking. A desire for better life is another stimulating factor that contributes to the susceptibility of the victims at the hands of traffickers. Focussing on the types of victims in the criminal process is very vital. For example, one is an innocent and second, could be a provocative victim. According to Van den Hoven and Mree, innocent victims are always unaware of the fact that when and how she or he gets trafficked (Van de Hoven and Maree 2005: 55-71). Importantly, in any Nepali family, an absence of choice over protection and segregation and participation in decision making by the female members in the family deprives the girl members to be aware of the reality of the situation. The unexposed closed door situation puzzles and deprives her to think of ways and means to escape from the clutches of trafficker until she is sold off.

In brief, the event of the crime is arranged in a manner that victim can't really sense the intention of traffickers and consequences therein. In this case, the perpetrator does not allow the victim to think about her safety. The process of victimisation in the recent trends of trafficking in Nepal has its three essential components. Firstly, lack of knowledge about situation or event both immediate and future. Secondly, absent of rights of proposing the consent and thirdly, low-income family background. If a Nepali father sells a girl of 16 years old for money and she is forced into domestic servitude and, she is considered an innocent victim of trafficking. Similarly, a person, undergoing abdominal treatment in a hospital as a part of an organ-trafficking racket extracting her/his kidney or blood without the knowledge of the patient concerned is also considered an innocent trafficked victim (NHRC National Report of Trafficking in Person 2013-2015: 19-21).

Whereas a provocative victim can be seen where there are more than two actors involved in the whole modus operandi of trafficking in person. The process of victimisation and crime mainly begins when the victim agrees to listen to traffickers in disguise because the victim is evoked and aroused by traffickers to keep the pace with them.

In this case the victim and trafficker (criminal), and a victim and relatives interact the victim is completely free to take part in decision-making. However, she is cheated, lured and provoked. Hence, there is involvement of the third party who plays a significant role in manipulating the mind of a victim in the process of victimisation. For instance, a married Nepali woman always finds her life inside the agony of poverty and searches for the opportunity of a better life. Once she is lured by her sister or known person, she can agree to do any job and eventually, it leads to the victimisation of the subject in the criminal process where she becomes a provocative victim. There is a high chance of involvement of relatives and husband of a victim who is an inevitable part of the process of victimisation unless and until the victim is sold into brothels and become victims of involuntary prostitution. In summary, victimisation framework explains victim's socio-economic background, interaction with traffickers or relatives and her lifestyle in society and victim's vulnerability to human trafficking. The social and economic context of

trafficked victims is a key which plays an important role in understanding the factors and process in which he or she gets trafficked (Mishra 2013).

Profile of Victims:

The information and findings from the records of the government agencies and NGOs on human trafficking show that the flow or source of victims primarily starts from the poor geographical region to richer provinces of the world. Importantly these residential areas are never connected with the city and have poor means of communication. Moreover, an inadequacy of law and order in the vicinity of the village contributes to the high growth of criminal activities. On the other hand, it would also suggest that victim in most of the cases belongs to a group of individuals who are not satisfied with a present situation of life. They therefore seek opportunities to improve it. Therefore, the victims, in general, belong to the poor educated and uneducated sections who are deprived of social and economic opportunities. Women, girls, men and children could all be the victims of in this regard (Table II. 1).

Table II.1
Distribution of Trafficked Survivors by Age and Caste/Ethnic Group in Nepal

Age groups	Shakti Samuha Number	%	National Judicial Academy Number	%
<18 years	19	9.9	35	29.2
>= 18 years	172	90.1	5	4.9
Caste /ethnic groups				
Janajati	107	56.0	44	
Dalit	40	20.9	19	15.8
Others	44	23.0	38	31.7
Total	191	100.0	120	100.0

Source: Trafficking in Persons National Reports (NHRC) (2013-2015)

Table II.1 shows that a majority of the victims belongs to Janajati and Dalit which is followed by others. The source was based on the number of participants of a national conference organized by Shakti Samuha held June 4 and 5, 2014 in Lalitapur, Nepal. Altogether 350 participants including 191

women trafficked survivors participated in the conference. Two, the number of cases of Human Trafficking disposed by the Supreme Court of Nepal in between 2007 to 2012. A total of 120 cases were studied by the National Judicial Academy (NJA). Three, the number of trafficking victims/survivors recorded in the Nepal police in the FY 2013/14 and 2014/15. The trafficked survivors originated across the country as indicated by the conference participants of Shakti Samuha. Majority originated from central development region (59%), followed by mid-western (18%) and eastern development region (17%). Nearly one-tenth of the conference's participants were children (< 18 years of age). Data from the Supreme Court judgment revealed that only one-third of the survivors age was stated in the judgments (29% were under 20 years and 4 percent were 20 years and above). Of the total 191 conference participants, 56 percent, 21 percent and 20 percent were Janajati, Dalit and other caste/ethnic groups, respectively. From the Shakti Samuha data, it appears that two disadvantaged social groups i.e. Janajati and Dalit - are overwhelmingly represented as the trafficking survivors' vis-à-vis their share of population in Nepal. According to Population Census 2011, Hill Janajati and Dalit constitute around 37 percent and 14 percent of the total population, respectively. Data from the Supreme Court judgment do not match with Shakti Samuha's data. Yet majority of trafficked survivors comprised of Janajati (37%), followed by Brahman/Chhetri/Dasanami (32%) and Dalit (16%) (NHRC2015).

Profile of Traffickers:

In brief, trafficker is meant by a person who targets an innocent child, man, woman and girls in the pretext of the job, false marriage. After they come into their fold they sell them for money. Traffickers could be parents, friends, relatives, and husband of victim irrespective of caste, gender, age, educational background and religion (Nair 2015: 117). In Nepal and India, traffickers come from across the caste/ethnic and religious groups (Table II.2).

Table II. 2
Percentage Distributions of Imprisoned Traffickers by Key
Characteristics in Nepal

Characteristics	2006 study	2014 study
Age group (in years)		
<30	30.3	17.8
30-39	42.0	38.8
40 and above	27.7	43.4
Range	18-58	20-72
Median age	34	38
Marital status		
Married	76.5	74.5
Unmarried	23.5	25.5
Economic condition		
Poor	63.0	78.2
Non-poor	37	21.8
Number of traffickers	153	160

Source: Trafficking in Persons National Reports (NHRC) (2013-2015)

It is found that 71 percent of the 160 imprisoned traffickers interviewed in 2014 were involved in trafficking crime before they had attained their 30th birthday. Over 38 percent of the imprisoned traffickers came under the age group of 30-39. It shows a decline as compared to 2006 figures. On the other hand, 43 percent of the imprisoned trafficked belong to the age group of 40 and above years in 2014. There is a clear trend that the number of traffickers belonging to this age group increased sharply from 27 percent in 2006 to 43 percent in 2014. The median age also increased to 38 years from 34 years in 2006.

It is also found that 75 percent of them are married. Over 78 percent of the imprisoned traffickers have been found to have poor background. However, the traffickers with non-poor background have decreased from 37 percent in 2006 to 21 percent in 2014.

Besides, they commonly belong to the poor background (Table II. 3 shows that 78.2 percent traffickers are from the poor background in 2014) (National Report 2013-15: 20-42).

According to PM Nair, in the maximum case, traffickers belong to the age group between 30 and 40 years, and it is followed by the age group of 41-50 and 18-25 (Nair and Sen 2005: 116).⁷

Table II.3
Distribution of the Imprisoned Traffickers in India

Characteristics	Number	Percentage
Sex		
Male	81	50.6
Female	50.6	49.4
Age group		
18-25	21	13.1
26-30	16	10.0
31-40	60	37.5
41-50	42	26.3
51-65	21	13.1
Religion		
Hindu	119	74.4
Muslim	26	16.2
Christian	11	6.9
Others	4	2.5
Caste		
SC	50	31.3
ST	12	7.5
OBC	52	32.5
Others	40	25.0
Education		
Literate	63	39.4
Up to primary	30	18.7
Up to middle	31	19.4
Up to higher secondary	31	19.4
Graduate and above	5	3.1
Marital status		
Married	90	56.0
Unmarried	40	25
Divorcee	10	6.3

⁷ Table II.3 shows the distribution of the imprisoned traffickers by key characteristics in India.

Widow	15	9.4
Deserted	5	3.1
Country of origin		
India	144	90
Nepal	16	10

Source: Trafficking Women and Children in India (Nair 2005: 117)

A study done in 2005 as given in Table II.3 reveals that in India overwhelming majority of imprisoned traffickers (90%) belonged to India and rest were from Nepal. As the review of literature explained, there has been a lot of cross-border trafficking into India from Nepal and Bangladesh. Importantly, Indian traffickers can speak in two languages and sometimes three languages to commit the crime. For example, Hindi, Bengali and Nepali languages are the standard means of communication in the region as a whole. The report of National Crime Report Bureau of India found Assam, West Bengal and Tamil Nadu to be the most vulnerable state for victims. The states of origin of traffickers are Andhra Pradesh, Bihar, Karnataka, Tamil Nadu and West Bengal (NCRB 2016:92).

Economic Approach in Human Trafficking

The economic approach to understand the phenomenon of human trafficking as a lucrative business has been crucial. The basic assumption is that the criminal wants to maximise the profits in the trafficking in persons. The Global Slavery Index 2013 states that 250,000 to 270,000 was enslaved in which 2.5 percent were trafficked alone. International Labour Organisation estimates that approximately 21 million people all over the world are confined in the condition of forced labour of which around a fifth of belonged to the category of trafficked (ILO 2005: 7). The US State Department estimated that nearly US\$ 5 to 7 billion with a maximum US\$ 19 billion is annually fetched by criminal gangs from sex trafficking. According to Witt and Witte, the criminals play a role to maximise the benefits from this act of deception which resembles other non-criminal activities in work (Witte and Witt 2002: 302-308).

It is a profitable business with little risk because the profit comes from selling the body of the person in the flesh market. It always remains higher than the cost of recruitment and transportation of victims or even the cost of being prosecuted, punishment and rate of compensation for victims of trafficking (Eagle and Betters 1998: 165-171). The criminals believe in an illegal means of deception and have, nexus with the high profile person so even if they are booked they can get bail from the court using both their connection and money power. Sometimes, they attack and apply threats against the witness and bargain with the corrupt officers and murder victims (Nair 2015: 102-152).

McCray pointed out these criminals would like to act similar to a rational economist and increase individual role in the decision-making process. It is also termed self-maximising decision maker (Lutya and Lanier 2012:555-568). A decision is carefully taken to calculate his or her advantage in each step of crime process. Further, traffickers are wise who make a plan to trap the victims. They estimate the time framework of causing the course of the offence and caution about the each step.

Traffickers observe the social and economic background of victims before trapping them and plan for the place or business to take the victims to sell. They plan in which a way that either the victims are trafficked to sell into a brothel or for a fake marriage. Importantly, they focus much on the profit side of their business or crime. For example, the poor girls with age group between 14 and 19 are rarely trafficked for kidney trafficking racket but, in the maximum case, they are trafficked for sex trade and entertainment industry. Because in the sex trade they get more profit than other business services. Hence, criminal commits the crime with a good strategy to maximise the profit and minimise the risk. This is a way explains increasing number of the victims of trafficking from a particular geographical region. However, there is another aspect of the profits from this business which could be seen from the perspective of legal action of the government against trafficking. Lesser the degree of punishment, more the trafficking takes place and vice versa in case of an exemplary action and severe prosecution. Therefore, in the process of crime, it has been noticed that the criminals are always two steps ahead of anti-human trafficking mechanism and rules because they want to minimise the risk

and gain maximum profits. This is also means the uninterrupted trafficking reflects feeble law and order of the state. And if state implements the strict exemplary action and punishment against traffickers, then the false perceptions which are carried by traffickers towards the legal action of the state against the crime can also be changed (Shakti Vahini 2015).

Geographical Determinants of Human Trafficking:

Geography is key to trafficking of people from one place to another. The process of trafficking begins from the source **place or origin** of victims and involves **transit point** to then finally it moves to **destination** (Mishra 2015: 5-25). It involves networking, recruitment, transportation and harbouring of the person from remote and suburb locations and also identification destination where these trafficked person can exploited with maximum profit and low risks.

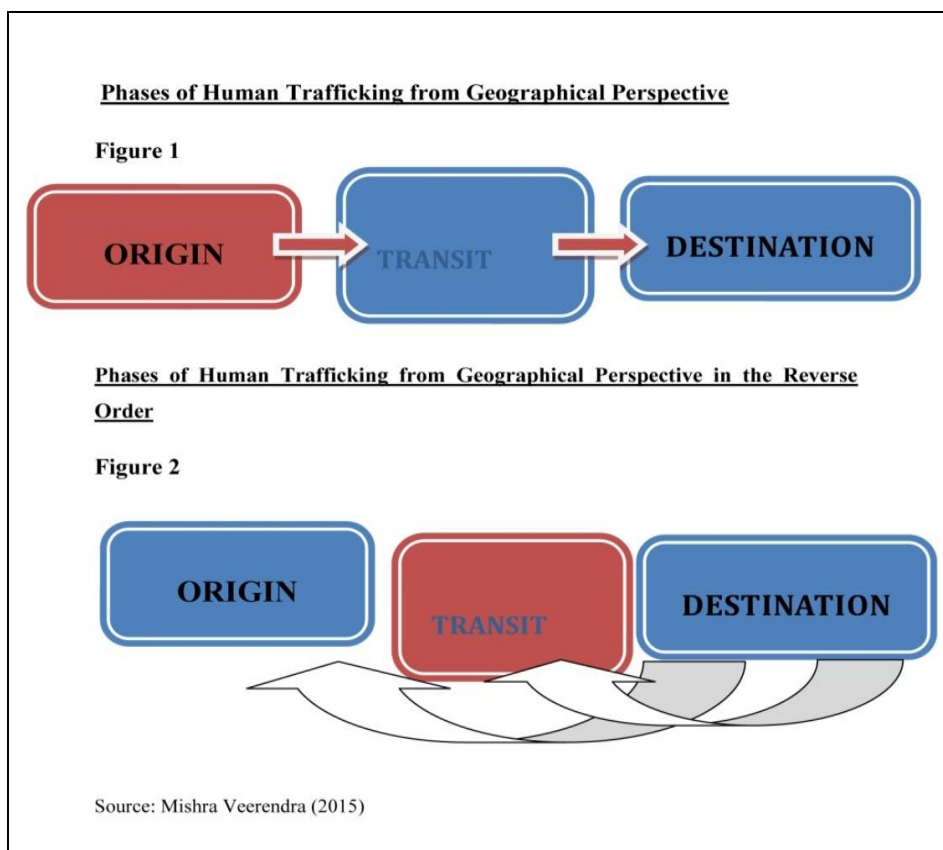
An initial stage of the crime process begins at the particular geographical location which is a territorial space from where a person is targeted and trafficked. It also indicates the socio-economic situations of the area as well as people residing over there. Traffickers are usually keen to search for locations, such as backward districts, poor villages and slum areas, places that usually remain inaccessible to administrative facilities, security and development policies for people. This is to ensure that the traffickers can easily access the area and manipulate the people there (Mishra 2013:337). Poor people are potential migrants from this geographical location to another place in search of jobs and social advancement.

Once a victim is identified and picked up, it is transit that becomes vital i.e. movement from one place to another. This also can be a specific geographical location within the country and outside the country involving both internal and international border areas (Mishra 2015: 5-20). Traffickers might set up a good nexus with officials in the transit process.

Destination is the_end of the journey. In many cases, the destination for trafficked victims is mainly urban areas, brothels and urban households, circus, beauty parlour, tourist places, places nearby army cantonment and so on

(Mishra 2013:316) . The destination is not only considered a finishing point of and a land where victims of trafficking are exploited. However for further movement of the trafficked person, this destination could also be the origin as well as a transit point. For instance, if girls are trafficked from West Bengal (India), first they are sold, destined and exploited in brothels, households, factories of anywhere. Later they will be again resold in new destination. (Ibid. 2015:316). (Figure II.1, and 2).

Figure II. 1 & 2
Geographical Perspective of Human Trafficking



Recruitment

No single source supplies a large number of victims at one time. However, some geographical region would be a supplier of victims on a regular basis. Recruitment is easiest when there are economic crisis, natural disasters and political instability (Shelley 2010: 94-112).

Recruitment of victims is based on a method of deception, a fake promise and force. These attract and entice poor people who have little or no previous work experience or have no knowledge of a foreign language and country. The attractions are housing, visa and salary.

Prostitution is sexual exploitation of trafficked victim after she is trafficked and sold in a brothel, apartment and hotel. It happens regularly when girls accept a lucrative job and marriage and they are later forced into prostitution. Traffickers seize identity documents and papers from them and they are forced to work as sex slaves in inhumane conditions without getting paid the money they were promised (Human Rights Watch/Asia 1995: 20-41). Typically, girls initially start with video chat and end up being forced to enter prostitution through manipulation and threat (Ibid. 1995: 20-41).

Earlier, trafficker used to apply the traditional method to traffic the victim from one place to another within the Indian cities. Lama, in his work 'Thakur Chandan Singh' explained that how internal trafficking happened in India and trafficker used the trick to entice and traffic a girl from Varanasi to Calcutta (now Kolkata) in fake pretext and sold her to customer of sex trade (Lama 1997: 58). However, the new trend shows the different method and strategy in the crime process. The surveillance in the border or within country strictly has given rise to the stronger and more sophisticated networking and linkages of criminals which could transgress all these surveillance and traffic the victims.

Traffickers now work in groups and members of team are assigned with a particular job to do (Nair 2005:253). The role ranges from identifying and looking for potential victims in disadvantage situation, luring them, arranging for travel, transporting to border areas, handing over to other agents and finally to sale of the victims.

Transportation of victim requires vehicles, rickshaw, rail, flight and ships and strong connection of network of criminals. The nexus between criminal and people like corrupt security personal, police officers and politician help in strengthening the linkages and transportation of victims. In addition, transportation of the victims depends on global interconnectedness and the

weak response of the law against criminal activities. The regional agreement for free trade and foreign investment has resulted in diluting the importance of the boundary of State (*).

A colossal movement of people takes place from one country to another. The movement of tourist, businessmen, migrants, common people, and criminals take place unrestrictedly and if the security measures are weak, the trafficking becomes much easier. Besides, traffickers easily deceive security personal in the security check points. In majority of cases, claiming to be married, parents, relatives and friends of victim are commonly used to avoid the attention of security personal.

An exploitation of trafficked victim is noticed in pre-destination period. (Lutya and Lanier 2012: 555-568) and also in destination which is viewed a worst form physical and mental exploitation. In both phases victims are vulnerable to physical and sexually violence. (Nair 2005: 85-97). The victim in this case is used as a commodity and the sex toy in the hand of client.⁸

The brothel owner uses several means to prevent trafficked victims from escaping that range from physical restraints in the form of sexual and physical violence locks in the feet and hands, stop giving food, cause fear of police and making them believe that they are culprits or offenders. Consequences of extreme physical and sexual exploitation are noticed in the form of depression, physical injuries such as broken bones, head injuries, bruises, and even death. Since they are not given access to hospitals and other medical support, trafficked victims are at high risk of death. Many of them suffer from untreated and undiagnosed infections such as pelvic inflammatory disease, chronic pelvic pain, sterility and pregnancy.

According to Koirala, a social activist of Maiti⁹ Nepal, an NGO based in Kathmandu Nepal, the post rescuing phase of victims suggests the exact

⁸ "Lakshmi (2016)" a Hindi movie on trafficking in girl in India has depicted the life of trafficked victim in brothel. A girl named Lakshmi trafficked in the pretext of job and later, sold into brothel. It shows the sexual exploitation and physical violence experienced by Lakshmi in brothel.

⁹ In Nepal, the term 'Maiti' shows the emotional attachment and relation between the sister and brother. Also, when the daughter gets married and starts leaving at husband's home far away from her home, the term 'Maiti and Maiti-Ghar' is used to suggest the original home of

condition and exploitation of victim. The level of exploitation and violence towards victims by traffickers, clients, owner of brothels are unspeakable and awful. She added,

“The survivor of trafficking can’t forget the painful condition of their past life. It takes time to heal their pain and grief. Importantly, the three and four weeks of post-rescuing phase seems hurting for them. They can’t speak, move and eat properly, they always cry”.¹⁰

Socio-Economic Trajectory

In the context of the socio-economic basis of trafficking in person, people of Nepal fall prey to human traffickers due to poverty, discrimination, absence of basic amenities and poor governance. The development and essential amenities play a greater role in the livelihood of the individual. At the same time in the absence of development, there would be an adverse impact on health, education and livelihood. The whole notion of victimisation and human trafficking revolves around the socio-economic background of place, societal norms and values, and the domain of individual development within the society.

Dearth of development and gender inequality directly contribute to trafficking in person. This is found to be applicable to trafficking from Nepal. Providing access to essential amenities and development could be discouraged trafficking. The developments in areas like educational system, health facilities, employment generation and participation in the decision-making process could add to this accessing potential (The Himalayan Times 2016:1-3).

In this section, the study is going to focus on the social and economic trajectory of human trafficking from the perspective of a particular geographical region and the trafficked victims therein. This also discusses socio-economic basis of internal trafficking in India.

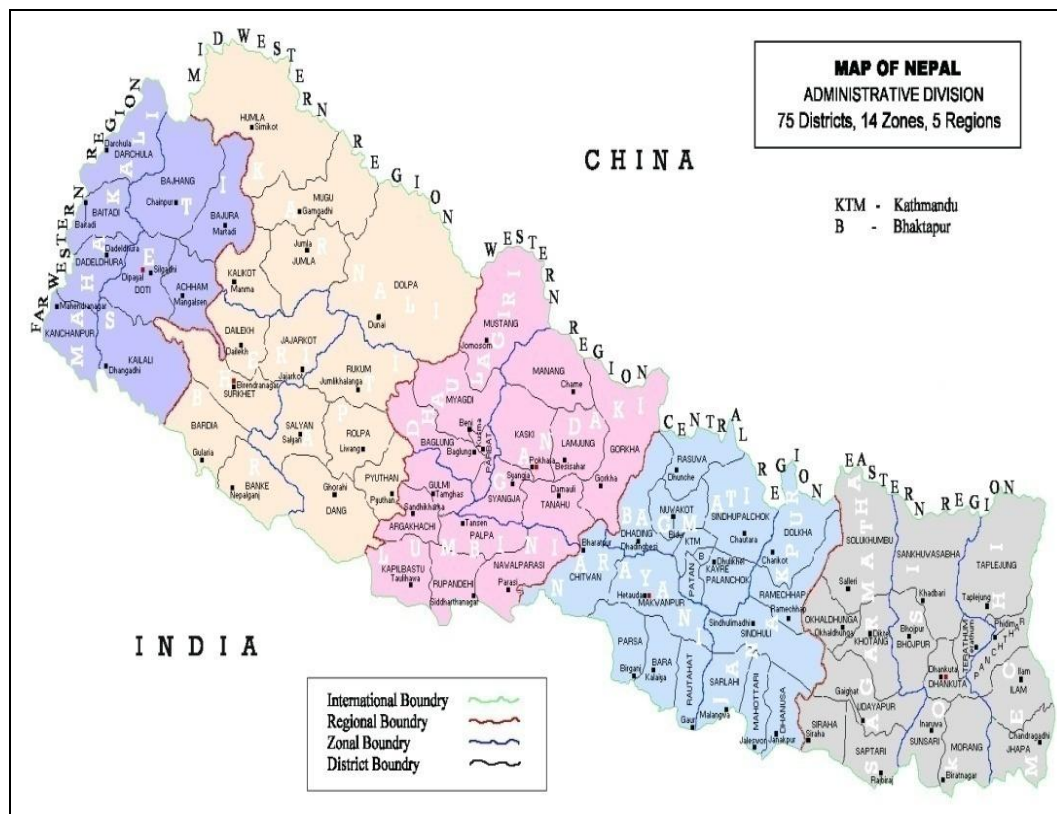
the bride. However, sometimes it also implies a ‘secure place’ for all married women or girls who feel insecure outside her home.

¹⁰ An interview with Koirala with regard to crime of human trafficking in Kathamndu during field study on 23 December 2016.

Geographically, (Map II.1) Nepal is divided into five major developments regions Eastern, Central, Western, Mid-Western and Far Western. However, there are ecological zones Mountain, Hill and Tarai that cover seventy five districts.

Map II.1

Nepal



Source: Central Statistical Bureau (2012)

Each region has their specific resources, population, adequate/ inadequate economic capacity, planning for development, and resource distribution mechanism. Moreover, demographic features, class and caste or ethnic orientation and political history of all the regions of Nepal are diverse and rich.

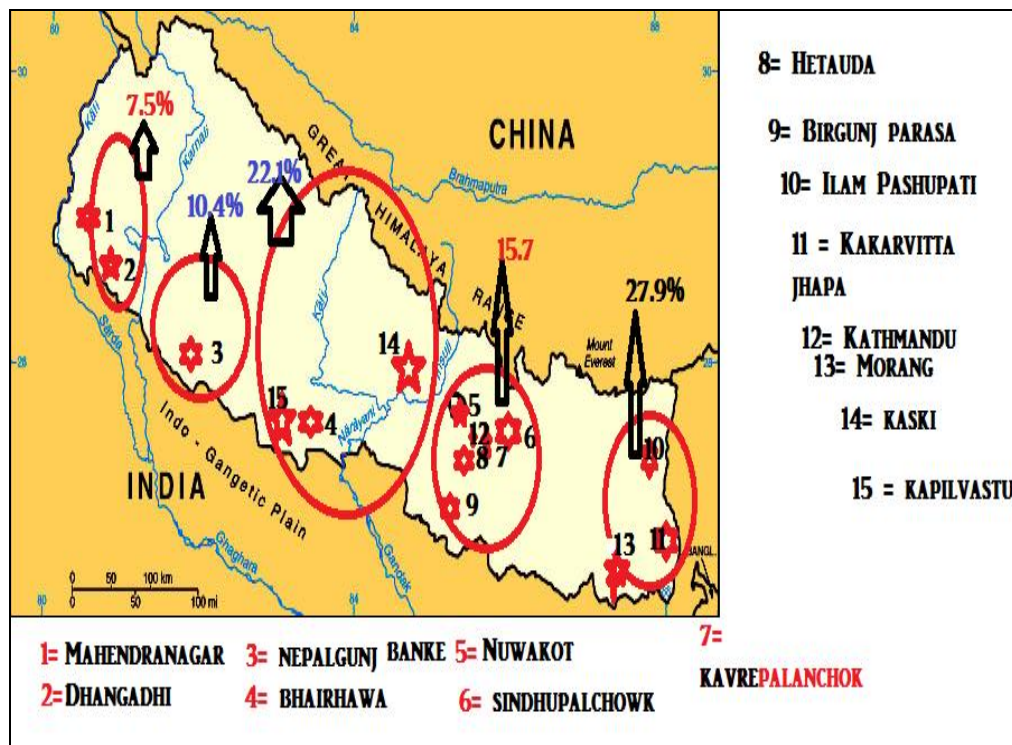
The study of development, progress and backwardness of the geographical area is critical to the understanding of eruption of the crime of human trafficking. However, in the context of the criminal offence of trafficking in

person, the study will identify the vulnerable region and its district. It then considers Kavrepalanchok and Jhapa district of Nepal to understand factors responsible for human trafficking.

According to the report of National Human Rights Commission of Nepal and Trafficking in Person Report of 2015, the most vulnerable geographical region of Nepal about human trafficking is the Eastern region, Central region and Western region (NHRC 2015:12-45). In the east part of Nepal, there is a district of Ilam, Jhapa and Morang which are producing the highest 27.9 percent victims of human trafficking in Nepal followed by Bhairhawa, Kapilvastu and Kaski of Western region with 22.1 percent. Nuwakot, Sindhupalchok and Kavrepalanchok in Central region with 15.7 percent (Map II.2).

MapII.2

Human Trafficking and Vulnerable Districts of Nepal



Source: National Human Rights Commission and Trafficking in Person National Reports, (2013-2015)

The Map II.2 above mentioned shows the magnitude of human trafficking in Nepal. The facts of the information given above are based on the reports of National Human Right Commission on trafficking in person in Nepal. First of all, we can see the five red circles inside the Map II.2 which explicitly show the vulnerable geographical region of Nepal which holds the percentage of trafficking cases of different districts in the year of 2015. For example, the Eastern eco-development region has three affected districts namely numbers 10, 11 and 13 (please see Map II.2). The central area of Nepal holds prone districts. The numbers indicate the names of the district inside the Map3 are 5, 12, 8, 7, 6, and 9. The Western region of Nepal holds districts 4, 15, and 14. We can recognise the name of districts insides the Map II.2 by tracing their numbers. The black arrow inside the Map II.3 also shows the percentage of trafficking in person in Nepal (NHRC of Nepal on TIP 2013-15). According to Map II.2, the highest proportion of TIP is 27.9 percent which comes from the Eastern eco-development region of Nepal, and its affected districts are namely Ilam, Jhapa and Morang (NHRC 2013-15).

If we see the Central region of Nepal, we find Sindhupalchok and Kavrepalanchok are mostly affected districts for girls trafficking and trafficking in men and women for kidney transplantation. According to Charimaya Tamang, a survivor of human trafficking,

“New forms of trafficking are emerging, and the problem is now becoming much more complicated than it was two-three decades ago.’ Whereas earlier trafficking rings or sex racket sold girls and children into Indian brothels, today traffickers target poor girls, women and men for organ transplantation, surrogacy and commercial sex entertainment industry. Besides, the destination has now shifted to the Gulf countries, East Asian countries and even African countries. Similarly, foreign employment, inter-country marriage and surrogacy are the new and most prevalent forms of trafficking in Nepal. Combating this new kind of trafficking in person is harder than fighting against sex trafficking”.¹¹

According to the government report of Labour Ministry of Nepal, Kavrepalancok, Makwanpur, Nuwakot, Jhapa and Dolakha and Sindhupalanchok top the list of the district with most female migrant workers and victims of trafficking (Sijapati 2015). As the report of Centra Bureau

¹¹ A life experience shared by Charimaya Tamang.. Interview with her during the field research in Nepal in February, 2016.

Statistic of Nepal (2014) reveals, India has become a primary destination for Nepali migrant workers. In general, 37.6 percent (722,255) population of the total migrant population (1,921,494) together male and female made India as their first destination. The region wise 0.6 percent (12,068) migrant population made SAARC countries as their destination. Importantly, today 37.6 percent (721,791) of total migrant population (1,921,494) made Middle East countries as their destination (CSB 2014 :).

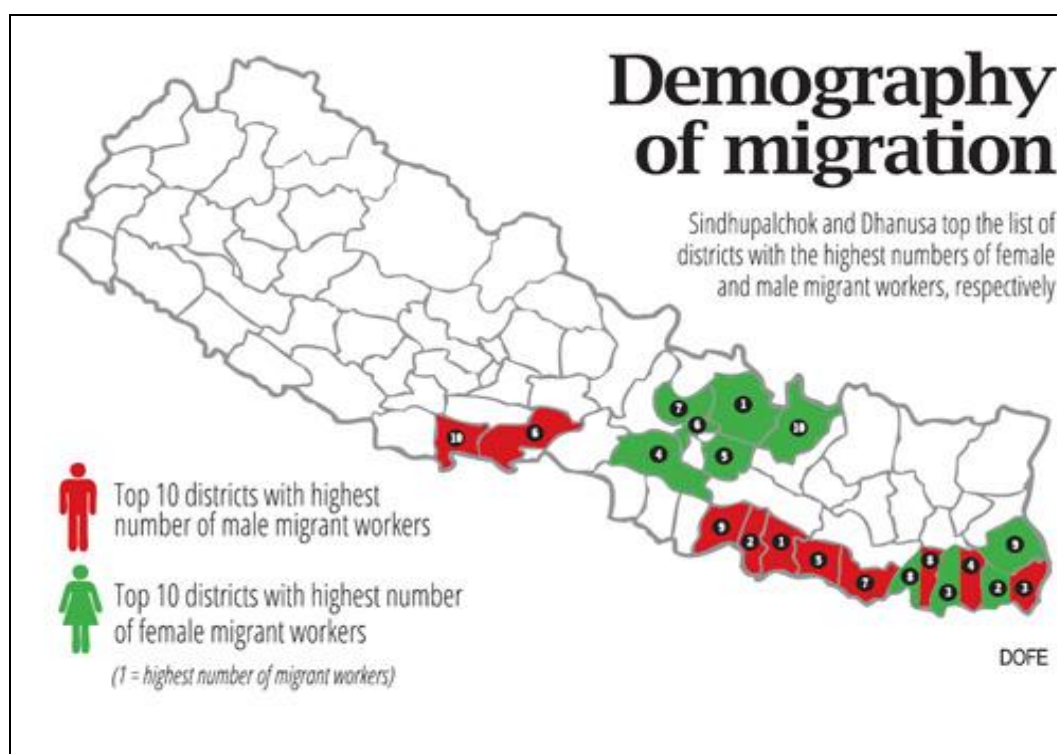
National Census 2011 of Nepal on community wise migrant population, we find two major ethnic groups migrate abroad most of the time. Mainly, Janajati¹² community 11.9 percent (655324) out of the total migrant population (1,921,494) where as the Dalit¹³ community which holds 13.9 percent (265535) of the total migrant population (1,921,494) of Nepal (Map II.3).

¹² Janajati by culture, geographical location in Nepal and traditional practices, it is a community which has its own mother tongue and traditional practices and yet do not fall under the conventional fourfold Varna of Hindu hierarchal caste structure (Dahal 1995: 91). It has its unique features such as a distinct collective identity, own language, religion, and traditional egalitarian social structure and have no decisive role in politics and government in modern Nepal. Like the case Hindus, the Janajati can also be divided into two distinct regional groups. Hill Janajati and Tarai Janajati group. Hill Janajatis are Magar, Gurung, Rai, Limbu and Tarai Janajats are Dhimal, Tharu, Santhal and Meche etc. According to the National Committee of Nationalities, they have 59 distinct cultural groups in Nepal.

¹³ One of the caste groups of social structure of Nepal and it is also found in India's social hierarchal or Varna system. In Nepal it comes under the social structure of Hindu religious practice. According to social structure of caste origin of Hill Hindu groups in Nepal, it reflects three categories. These are high caste group, middle caste Hindu group and low caste group (Dalit). All these categories of people share only one language is the Nepali language (CBS 2001: 23-56). Dalit low caste group are Kami, Damai, Badi and Gaine. There are three different categories in Dalit community or caste. These are Hill Dalit, Newar Dalit and Tarai Dalit.

Map II.3

Male and Female Migrants from the Major Districts of Nepal



Source: Rai (2016)

Red and green colours (Map II.3) depict the highest number of the male and female migrants to foreign countries with the purpose of doing work. The districts of Jhapa, Sunsari, Siraha and Parasa nearby the Indian border in red colour and districts of Sindhupalchok, Kavre, Makwanpur, Kathmandu and Dolakha green colour which sent the highest number of female migrant worker abroad to work. The NPHC 2011 stated that in a total household of 66,635, the number of absent population during Census was 19,712 in Sindhupalchok and out of 80,651 population, 14,531 remained missing in Kavre. It has been noticed that out of total migrant workers, 70 percent male migrant workers obtain the work permit from registered recruitment agency which can be systematically tracked by the government.

However, 60 percent of female migrants of the total migrant population obtain work permits both through legal and a fake recruitment agency. This is where the human trafficking figures so prominently. Shakti Samuha, an NGO based

in Kathmandu explained that most of the female migrant workers who obtain work permit individually reach Arab countries as housemaids and some of them are sexually exploited, not just by employers but also relatives and guest. The NGO also highlighted that some Nepalese girls reach African countries as dance bar girls (National Report Trafficking in Person 2015).

The post- 2015 earthquake the condition of people in Kavrepalanchok district of Nepal has become another major concern form of the trafficking point of view also. Asia Foundation report stated that people from Bahun, Janajati and Dalit community have become vulnerable to organ trafficking. They have problems of unemployment, poverty, health issues and absent of legal assistance. Facing inescapable poverty, people now search for jobs and migrate.. According to Mayalu Tamang, Chairperson of Nepal Tamang Women Association in Kavre, trafficking of men and women are rising in the district. She added more than 108 cases of illegal selling of kidney by traffickers were reported (Rai 2016: 2-12).

The socio-economic and political problem is crucial determinations of human trafficking. In the context of Kavre district, owing to lack of legal assistance and nil opportunity, people end up in a financial predicament. The report says that 90 percent inhabitants are under poverty in the district (Asia Foundation 2015: 5-37). It was found in 2013 that 93.2 percent of the villagers lacked education and 88.3 percent victims were under the influence of kidney rackets (please see Table II.5). The study also reveals that total 66 percent people fell prey to organ traffickers due to poor family support system and addiction to alcohol and drugs (Asia Foundation 2015: 5-37). Table II.4 shows why victims fall prey to kidney trade in Kavre district.

Table II.4**Why Victims Fall Prey to the Kidney Trade in Selected VDCs in Kavrepalanchowk, Nepal**

Opinions Why Victims Fall Prey to the Kidney Trade	Brahmin Chhetris (In %)	Janajatis (in %)	Dalits (in %)	Total (No of Cases/ %)
Lack of Knowledge and Education	95.7	91.5	90.6	192 /93.2
Poverty	93.5	89	84.4	186 /90.3
Influence of Peer Groups	90.2	84.1	93.8	182 /88.3
Due to Trusting Someone	83.7	82.9	84.4	172 /83.5
Desire for a Better Life	78.3	86.6	71.9	166/ 80.6
Absence of Government Restrictions	76.1	84.1	62.5	159/ 77.2
Addiction to Alcohol and Drugs	65.2	68.3	62.5	136/ 66.0
Lack of Family Support Systems	51.1	59.8	62.5	116/56.3
Other	6.5	3.7	6.3	11/ 5.3
Total	100	100	100	206/100

Source: Asia Foundation and USAID (2015)

Dalit Tailor of Kavrepalanchok

Shyam Nepali (pseudonym), a 52-year-old tailor from Kavre district has been working in Kathmandu. A person contacted him and offered to improve his economic circumstances by paying him a handsome amount for one of his

kidneys. Shyam was told that the kidney is an insignificant organ and that people can work and live a normal life with just one. As Shyam saw his economic condition was inefficient and could not support his family, he agreed to sell his one kidney. Shyam’s medical tests were done, and he was taken to the Indian city. After his kidney was removed, he was paid just 25 percent of what had been promised, and his economic circumstances grew worse. He can no longer work as before and has to consistently pay for his medicines (Asia Foundation 2015: 5-37).

The Inter-Agency Common Feedback Project on Community Perception Survey (2015) report on the socio-economic and political development of Kavre district reported that total 80 percent participants gave a negative answer to the question on their satisfaction with the role of government in the development sectors after 2015 earthquake (CSP 2015:1-15). The survey was conducted among one hundred male and female respondents. The distribution of ethnic group was from varied ethnic community (Table II.5).

Table II.5

Number and Ethnic Groups Participated in the Survey

Ethnic/Caste	Participants
Brahmin	43
Chhetri	8
Dalit	3
Janajati¹⁴	1
Magar¹⁵	4

¹⁴ Janajati by culture, geographical location in Nepal and traditional practices, it is a community which has its own mother tongue and traditional practices and yet do not fall under the conventional fourfold Varna of Hindu hierarchal caste structure (Dahal 1995: 91). It has its unique features such as a distinct collective identity, own language, religion, and traditional egalitarian social structure and have no decisive role in politics and government in modern Nepal. Like the case Hindus, the Janajati can also be divided into two distinct regional groups. Hill Janajati and Tarai Janajati group. Hill Janajatis are Magar, Gurung, Rai, Limbu and Tarai Janajats are Dhimal, Tharu, Santhal and Meche etc. According to the National Committee of Nationalities, they have 59 distinct cultural groups in Nepal.

¹⁵ Magar belongs to one of the Hill Janajati groups in Nepal. They are mainly living in Palpa, Beglung and Nawalparasai in the western regions of Nepal. According to Central Bureau of statistics of Nepal today Magar is gradually switching over to Buddhism. Magar find that the

Newar¹⁶	11
Tamang¹⁷	29
Others	1

Source: Community Perception Survey 2015 (*)

Out of total participants, 100 percent negative answer came from Janajati followed by 86 percent by the Tamang community and 67 percent from the Dalit community. The primary reason for their dissatisfaction was that they were promised relief, but didn't get anything from the government. 11 percent however mentioned those improvement project and relief funds were distributed on caste basis (CPS 2015: 1-15). Hence, they do not trust government.

Importantly, after the earthquake, the condition of people deteriorated even more in the Kavre district (Ibid. 2015:1-15). 68 percent participants responded that they were unaware of support and relief assistance of government. The survey report explained that the most of the people were not informed about the place where they get support materials. Even if, the government had announced the place for support materials, they could not have accessed it because the place was far away from victims and the support was provided on caste basis. Many women and men got their medical check up in Kathmandu and India. However, later they became victims of trafficking of organ transplantation. Health problems related to abdomen due to less accessibility to

Hindu social structure and values are more rigid in day-to-day life than the Buddhist values per se (CBS 2001).

¹⁶ Newar comes under both Hindu and Buddhist religious groups. It truly reflects the model of four Hindu Varna categories and unique features of Buddhist religion and culture. According to Central Bureau Statistical, Newar is only a cultural group with different occupational categories. However, they share a common language as mother tongue Newari (Daha 1995: 90-91)

¹⁷ Tamang is Tarai janajati in Nepal (Dahal 1995: 91-104). Despite, living close to the Kathamndu valley, throughout centuries social and economic condition of Tamngs in Nepal are relatively poor compared to similar other cultural groups. Their condition is one of the lowest among the numerically dominant Janajati groups of Nepal. Though they follow Buddhism and chepangs, today they are converting into Christianity as they find more attractive and socio-economically supportive (Dahal 1995: 104).

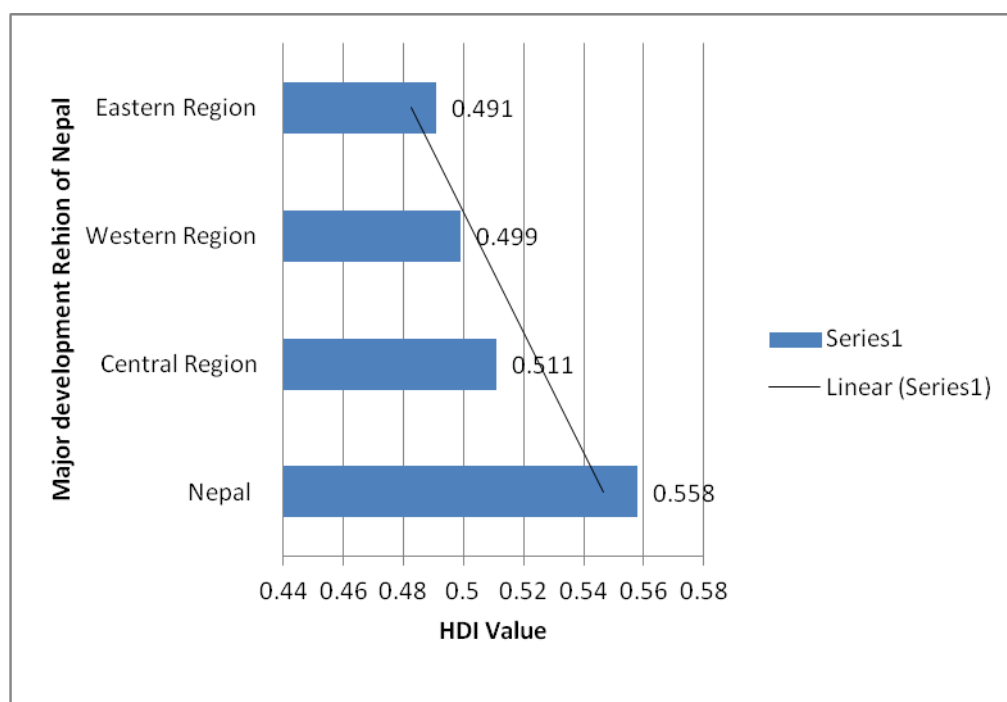
clean water and absent of medical facility in the VDC. In Kavrepalanchok, the study has shown that many victims of earthquake became gradually the victims of trafficking. According to the report of Food and Agriculture Organisation of United Nations (UNFAO) the agriculture livelihood in the six districts including Kavre, Rasuwa and Sindhupalchok suffered particularly high levels of damage (Ulak 2015:60-69). The poor people accepted the path of selling their bodily organ to sustain their livelihood.

The Eastern district Jhapa of Nepal is now catchment area for victims of human trafficking. In 2011, Maiti Nepal rescued 128 girls including 19 from India and 109 from the bordering region of Jhapa and Pashupatinagar. According to Maiti Nepal, poor girls, women and men from Ilam, Jhapa, Paanchthar and Terhathum have been found to have fallen victim to the human traffickers (The Himalayan Times 2012).

In the eastern region there are more than fifteen caste/ ethnic groups who live in different districts. The Central Bureau of Statistics (CBS) reveals in the total 5.81 million populations in the eastern region female population is higher than male. The literacy rate in the area is 60 percent a little below the national average of 61.9 percent (CBS 2015:2-40). United Nations Development Programme found that the Eastern region Human Development Index (UNDP 2014: 14-81) is much lower. Graph below depict HDI in various regions (Graph II.1).

Graph II.1

**HDI value of major three
Eco-Development regions of Nepal**



Source: UNDP 2014

According to National Planning Commission of Nepal and UNDP, the Eastern Region of Nepal is at the bottom of HDI ladder line with 0.491 HDI value against 0.551 of the Central region and 0.558 of the national average (UNDP 2014: 4-81). HDI is used as the primary indicator to explain socio-economic and geographic condition of the area and the people therein (CBS 2015:10). Though Nepali caste/ethnic group seems to be an integrated lot there are huge differences in their historical evolution and socio-economic status. The inferior castes such as Mushahar, Dom, Kami, Damai, Sarki remain far away from the development and empowerment belts (Asia Foundation 2015: 15-18).

In Nepal, estimated two-thirds of the population lacks access to formal financial services. The scarcity of access to finance is even more acute in the hills and mountains areas and in the western region and among the poorest (ADB 2013:2-14). Significantly, economic inequality, social exclusion, employment problem, absence of law and order, and discrimination became factors for people's vulnerability to migration and trafficking (IOM 2015:33-

51). Though social exclusion and discrimination in the name of gender, class and caste are considered an illegal by the Nepali criminal laws, this practice has widely and protractedly prevailed and never disappeared (Baumann and Dharel 2014: 23-143). An overwhelming majority of castes and ethnic groups and religious minorities are still excluded socially and economically. (Table II. 6).

Table II.6
Socio-Economic and Human Development
Indicators by Caste/Ethnicity

Caste/ethnicity	Life expectancy	Per capita income(PPP income in USD)	Adult literacy	Human Development Index (HDI)
Nepal	63.69	1597	52.42	0.509
Newar	68	3097	68.20	0.616
Hill Brahman	68.10	2395	69.93	0.612
Hill Chhetri	60.61	1736	58.40	0.514
Janajati	62.91	1405	51.67	0.494
Dalits	61.03	977	38.02	0.424
Muslims	60.99	890	30.30	0.401

Source: Raj and KC (2012)

Table II.6 reveals that Dalit¹⁸ and Janajati remain in deprived position. They are in the bottom from the perspective of social stratification and development deprivation. International Labour Organisation (ILO) in 2004 identified the 16 most vulnerable ethnic groups of Nepal who need particular attention for

¹⁸ The term 'Dalit' represents struggle for equity and equality.

social protection and development. These groups are self- employed workers, micro- enterprises, agriculture workers and socially excluded groups such as Dalits and Mushahar. NHRC (2015) found that out of 107 cases of trafficked persons 40 belonged to Dalits, who are found to be vulnerable at regional and national level (NHRC 2013-2015: 14-45). The maximum trafficking cases have been registered in Eastern eco-development region and its district of Jhapa. Therefore, it is essential to focus on its root causes. The district is one of sixteen districts of the Eastern eco-development region of Nepal (Map II.4).

Map II.4

Map of Jhapa District



Source: Subba (2009)

This district consists of different ethnic groups. The people of upper caste like Brahmin and Chhetri constitute 40% of the overall total population and the rest is divided among various castes and ethnic groups like Limbu, Dhimal, Gurung, Rajbanshi, Dom, Dalit, Sunuwar, Tamang and Sartar. The economy of district wholly depends upon agriculture which requires irrigation, fertiliser,

modern technology and agriculture credit. These are not so easily accessible keeping castes like Dalit, Mushar, Dom and Satar ever backward (CBS 2015:2-12).

The report reveals that Jhapa district is socially and economically backwards in the whole region (Table II.7). According to deprivation rate in the economic provision, the rate in this region show 14.84 percent and marginalised people remain deprived of economic provisions. The poor and landless people most of the time are Khetala (agriculture labour) to earn their livelihood as they are landless. Hill and Tarai Dalit don't have their land and they live on lands mostly owned by upper caste groups. This is how exploitation and dominance exist at very grassroots level. On the top of this the traditional but deleterious practice of untouchability (chuwachhut) against the lower castes make the situation unlovable (Manchanda 2009:159-166).

Bhattachan in his study on caste based discrimination in Nepal found that Dalits land holdings are small. The landlessness among Dalits community is extreme in this district (Bhattachan 2009:2-54). At the national level total 36.7% Hill and 41.4% Madhesi Dalit are landless. Landlessness has made Dalits economically vulnerable and dependent upon landlords and subject of abuses. The complex and condemnable practices like that of *Haliya*, *Balighare/Khalo*, *Charuwa*, *Haruwa* systems are associated with the issue of landlessness and small holding.

Table II.7**Socio-Economic Condition of People of Jhapa District of Nepal**

District	Total population	Ethnic group	Adult Literacy rate by percentage of different class	Deprivation in economic provision	Number of Trafficked victims
Jhapa	8,12,650	Brahmin 24%, Chhetri 16%, Dalit 3%, Santhal 4%, Rajbansi 9% and others Limbu, Tamang and Magar 27%	30% (Primary 33%, secondary 22 % and Graduate 2 % and post Graduate 1%)	14.84%	Number of victims in district is 78, out of 280 in the eastern region.

Source: 2011 census and UNDP 2015

It is found that Jhapa has 30 percent adult literacy rate as against national average of 60.9 percent. Very low educational status of Dalit community in Jhapa has always remained a major obstruction to their human development. Children from the Dalit community also face discrimination by their friends, teachers and non-teaching staff at the school. The Dalit children are not permitted to drink water from a common source and Dalit students are kept in separate lines. Ultimately, their learning achievement becomes weak which leads them to drop out. The literacy rate of Dalits (6- 15 years above) is 52.4% compared to the national average of 65.9% and it is 34.5% for Tarai/Madhese Dalit. Only, 24.7% of Hill Dalits and 11.8% of Tarai/Madhese Dalits complete 8th grade which is far behind the national average (41.7%). Dalits comprise of only 1.6% of those with a School Leaving Certificate (SLC) and only 0.8 % of those with a Bachelors' degree. The low educational status has a multifaceted impact in the socio-economic and political life of Dalits.

Similarly, the literacy rate of Dalit women is 45.5% and Musahar and Dom community are at the bottom with literacy rates of 17.4% and 17.9% respectively (IDSN 2015: 20-51).

In the whole Eastern region total only 17.3 percent of Dalit children are found to be studying in primary level in comparison with 45.4 percent children of Janjati. Similarly, Dalit student's number in the higher secondary level is found to be 5255 as against 37083 of students of Janajati community (IDSN 2015:20-45). MNDSWO states average per annum per capita consumption in Nepal is NRs. 34,187 whereas Dalits have the lowest level of consumption with per capita of NRs. 23,106.

Picture II. 1
Poor Dalit family in Nepal



Source: Poor Dalit family in Nepal, UNFCO (2015)

In the context of safety and development, the Dalit community has been the most vulnerable in the region. The National Food Corporation has maintained a national food reserve stock (buffer stock). However, Dalit people do not have access to this, particularly in rural areas. The lack of access to agricultural land and employment opportunities result in extreme poverty and put Dalits in the lowest food sufficiency status thereby adversely affecting their health condition of Dalit community (IDSN 2015: 15).

There is a no representation of Dalit in the planning and executive bodies that guide overall development process of Jhapa. Thus, they are excluded from the decision-making process even that relate to their own rights. Nepalese society is based on a patriarchal structure and culture. Dalit women are underprivileged, underrepresented and exploited in all spheres of society. The socio-cultural, political, economic and educational status of Dalit women is at the bottom in terms of all indicators (IDSN 2015:17).

Besides, corrupt political parties openly engage in the election of a local social organisation. They do politicisation, and they favour their candidate to win the election of such organisation. They have run a dirty politics at the VDC level which infuses only contentious issue in the society. The poor lower caste people can't access or be a part of the election and eventually, deprive of the decision-making process of the country.

The poor people are left with only an option of migration to evade the present situation. Moreover, in 2015 it has been notice that in Nepal 498852 houses were destroyed by devastating earth quake and resulted in uncontrolled flow of movement of people from Nepal to different destination. They are migrating to other places for job and livelihood. They use to cross the border and enter India to search for manual work (IOM 2016: 1-16). All at once, the caste based developments and politics became the reason behind people's vulnerability to migration and trafficking in Jhapa district of Nepal. Millennium Development Goals (MDGs) of Nepal revealed that the proportion of Nepal's population living below poverty line is growing up gradually (MDGs 2013:9-45) It has resulted in a country's massive outflow of labour migration from Nepal to India, Middle East countries, and Southeast countries and the influx of greater remittances (Table II.8).

Table II.8

Summary Statistics of Migration of Population, 2003/04 - 2010/11

Summary statistics of migration of population, 2003/04 - 2010/11		
Description	Nepal Living Standards Survey	
	2003/04	2010/11
Percent of migrant population		
Both Sexes 36.6		36.9
Males	50.1	36.1
Female	21.6	37.5
Percent of migrants from rural areas	81.5	81.2
Percent of migrants from urban areas	5.8	7.0
Reason for migration		
Family reason	75.2	79.4
Education/training	2.6	4.8
Looking for job	6.8	3.5
Easier life style	11.6	7.0
Other reasons	3.8	4.2
Absentees (all ages) as a percentage of total population (including absentees abroad)		
Both sexes - - 20.3		
Males	-	29.8
Females	-	10.9
Absentees as a percentage of total population (including absentees abroad)		
Under 5 years	-	11.2
5 to 14 years	-	11.1
15 years and above	-	-
Percentage of absentees (all ages) by place of current residence		
Within Nepal		60
Outside Nepal		43.1

Source: Central Bureau of Statistics (2011)

In Table II.8 as mentioned above, we can see both the migrant and absent population of Nepal. People mainly from rural areas decide to migrate abroad including India, Qatar, Saudi Arab, Singapore, and Malaysia.

Absentee population would include not only out migrants but also people who are murdered, kidnapped and trafficked. Officially they are not on record.

The report of labour and mobility reveals that internal or within Nepal, people migrate from over 37 percent people migrate from rural areas as against 62.5 per cent from urban Nepal (CBS 2014:131-138). Within this Janajati and Dalit are two communities that maintain the highest rate of migration within Nepal. Similarly, in the context of international migration of Nepali people, Nepal National Census of 2011 reveals that 30.2 percent people from the Western region, 24.2 per cent from the Central and 22.4 percent from the Eastern part of Nepal migrated to foreign country every year. Besides, out of seventy-five districts of Nepal, Kathmandu and Jhapa districts rank top in terms of migration to foreign country (Ibid. 2014:131). Department of Foreign Employment found that the highest number of migration of people ever recorded was 453,543 in the year of 2012-2013. India stands out as the top destination for Nepali migrants with 37.6 per cent as against 13 per cent of ASEAN countries and 37.6 per cent of Middle East. 27.6 percent of the Dalit family had migrated to India.

National Census of 2011 of Nepal recorded 7.22 lakh Nepali nationals are living in India for various purposes at the time of the census (Sharma and Thapa: 8-48). Process of migration from Nepal to India has three distinct features a,) recruitment into army b) permanent migration and c) seasonal or temporary migration for jobs or business purpose. Migration from Jhapa district is mainly restricted to seasonal in search for employment in India (Ibid. 2013:8-48). Many women and girls from this region including from Jhapa, Morang and Ilam districts travel to India for work as this has been only option for their livelihood. (Ibid. 2013:8-48).

However, no policy between Nepal and India monitors the regulation of migrants or the protection of their rights and safe movement of people in both these countries. "The 1950 Treaty of Peace and Friendship between the Government of India and the Government of Nepal" has provisions of equal treatment of both national of two countries and are free to participate in trade,

commerce and other privileges of similar nature (Article 6 and 7).¹⁹ Under the 1950 treaty, there is no immigration control or documentation procedure for Nepalese and Indians travelling or migrating to each other countries. In such conditions, the data on mobility in general and trafficking in particular are very difficult to collect at exit points. Therefore, trafficking in person led by migration also became the daily news of the Eastern region of Nepal (IOM 2005: 145-148).

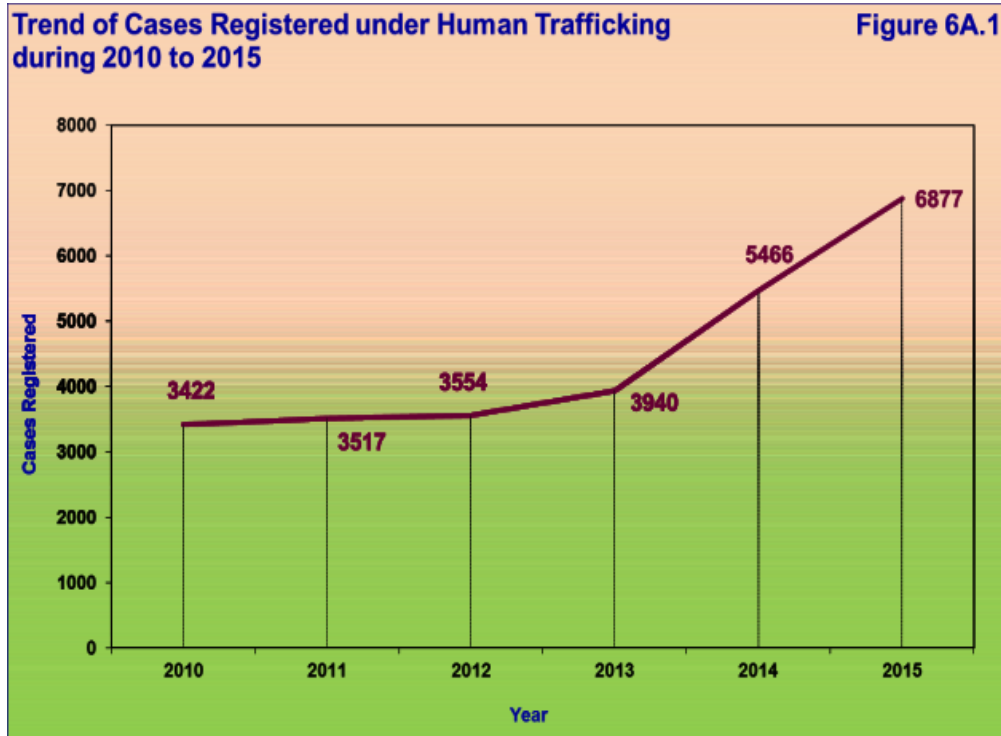
Some irregular migrants from Nepal are smuggled to Middle East countries such as Qatar, Bahrain, Oman, Libya and Kuwait for domestic labour. However, Nepali migrants with the assistance of migrant smugglers through false documents also travel to Malaysia, Thailand and Indonesia by paying at least US \$ 2700 (UNODC 2015:4-7).

Assessment of Socio-Economic Basis

India is known for its unique feature of diversity and unity. It has a huge labour market. In urban areas mainly in Delhi, Mumbai, Kolkata, Bangalore and Tamil Nadu, over the period of time, population of urban areas have increased steadily. An impact of uncontrolled migration to urban areas has also resulted in increasing crime rate in cities, kidnapping, murder, and demand for prostitutes. Government of India has made several policies to combat child trafficking or trafficking in girls and women. However, demand in sex market and physical labour has propelled the process of human trafficking in India (Nair and Sen 2005: 71-130). National Crime Report Bureau states that in India 3000 to 6900 persons are trafficked annually (Figure II.4 shows the trend of cases registered under human trafficking during 2010 to 2015) (NCRB 2016:103).

¹⁹ Nepal and India share a peculiar relationship from the ancient ages. The political ties between them has also facilitated for migration from either of the countries to the other. *The Peace and Friendship Treaty of 1950* Treaty (Article 6 and 7) states “The Governments of India and Nepal agree to grant, on a reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement that privileges of a similar nature.” This is one of the major factors for Nepalese population migrating to India.

Figure II.4.

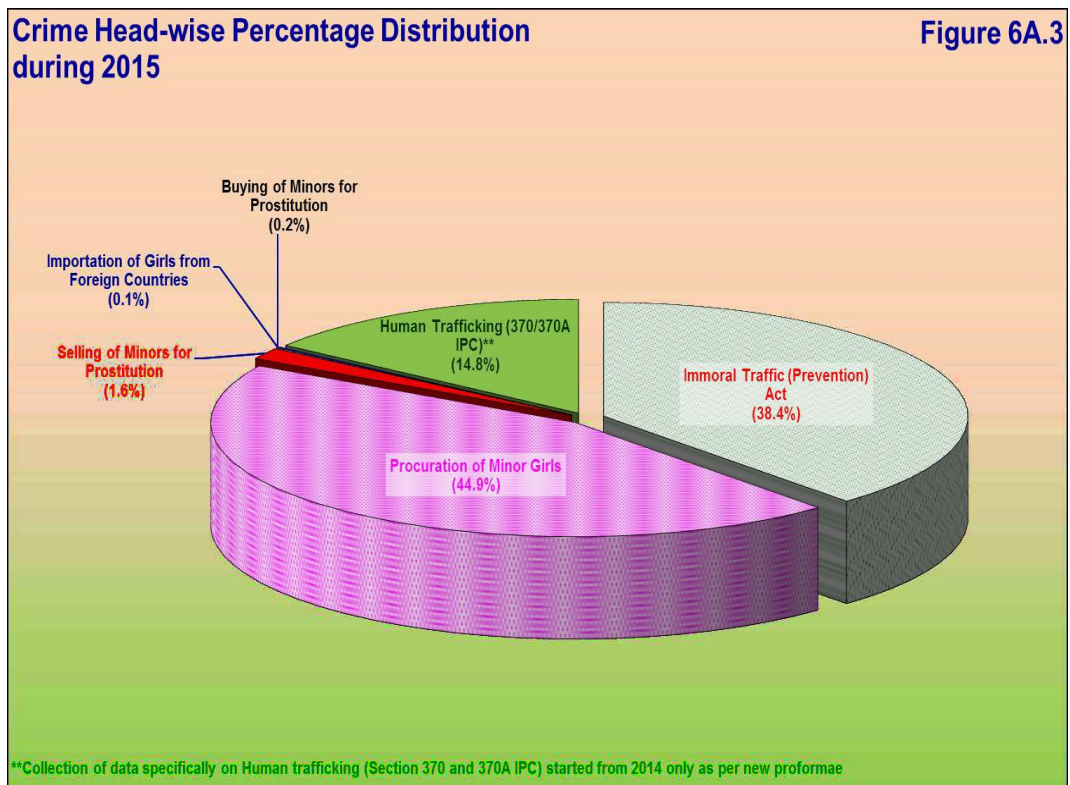


Source: National Crime Report Bureau of India (2016)

The incidents of human trafficking increased every year. A total of 3,517 cases were registered in 2011 which steadily rose to 6,877 cases in 2015 (Figure II.4). Table II.9 shows the crime head-wise details of registered crimes during 2011 to 2015 along with percentage variation in the year 2015 over 2014 are presented (NCRB 2016:103-118).

It has been noticed that the maximum cases of trafficking in person were registered under the crime head of **Procuration of Minor Girls (Sec. 366 (A) IPC) and Immoral Trafficking (Prevention) Act** in year of 2015. If all together total 6877 cases were registered in 2015 in which 3087 (44.9 percent) belonged to crime of Procuration of Minor Girls. (Ibid. 2016: 103-118).

Figure II.5



Source: National Crime Report Bureau of India (2016)

The record of criminal cases also explained the number and percentage difference of trafficking in person according to different years (Table II.9).

Table II.9
Crime Head-wise Incidence of Various
Crimes under Human Trafficking during 2011 – 2015
and Percentage Variation in 2015 over 2014.

Sl. No Crime Head	2011	2012	2013	2014	2015	Percentage Variation in 2015 Over 2014
Procuratio n of Minor Girls (Sec. 366-A IPC)	862	809	1,224	2,020	3,087	52.8
Importation of Girls from Foreign Country (Sec.366B IPC)	80	59	31	13	6	-53.8
Selling of Minors for Prostitution (Sec. 372 IPC)#	113	108	100	82	111	35.4
Buying of Minor for Prostitution (Sec. 373 IPC)#	27	15	6	14	11	-21.4
Immoral Trafficking (Prevention) Act 1956	2,435	2,563	2,579	2,617	2,641	0.9
Human Traffickin g (Sec. 370 & 370 A IPC)	-	-	-	720	1,021	41.8
Total	3,517	3,554	3,940	5,466	6,877	25.8

Source: National Crime Report Bureau of India (2016)

Table II.9 puts crime heads along with number of trafficked victims. As mentioned earlier the maximum cases of trafficking in person were registered under the crime head of Procurement of Minor Girls (Sec. 366 (A) IPC) and Immoral Trafficking (Prevention) Act in year of 2015. It is noticed that poor girls importantly from remote village of Assam, Jharkhand, Chhattisgarh and Odisha are procured for sexual exploitation. They are brought to Delhi, Rajasthan and Haryana by traffickers under the banner of placement agency in the pretext of jobs but, later they are sold for domestic servitude, factory labour and fake marriage (Nair 2005:33-47). Furthermore, the young girls are brought from remote districts of West Bengal, Bihar, and Jharkhand, Assam and sold to brothels, hotels, apartments and beauty parlours, households in Delhi, Mumbai, and Goa (Ibid. 2005: 33-47).

It has also been noticed that many minor girls and boys are brought to Delhi in the name of education in school and Madrasas. Later, they are made to work as child labour in the sweets shops of Delhi. Many of them are made to work in street as beggary (UNODC 2013:20-149). To keep them, hooked and controlled trafficker hand out drugs and alcohol. In the case of girl victims they apply oxytocin injection over them to induce early puberty to drag them into flesh market (Hindustan Time 2015).

According to Sourya a social activist from Kanchanjunga Uddhar Kendra NGO based in Darjeeling in West Bengal, today the young Nepali school girls whether from the poor or rich background are more vulnerable to trafficking. Sometimes few girls are going to Bangalore, Delhi and Kolkata for completing their higher education or some of them go in searching for good jobs. But unfortunately, they fall prey to traffickers. After a certain period it is found that they in turn become trafficker and return to village of Darjeeling in searching for the innocent girls and women and traffic them.²⁰ She also mentioned that apart from social and economic factors, the proximity or the open border between India and Nepal has been a facilitator in trafficking and transporting of women and girls from Nepal to India.

²⁰ An interview with Rongu Sourya, anti-human trafficking activist from Kanchanjunga Uddhar Kendra NGO based in Darjeeling in 22 March, 2016.

Chapter III

Human Trafficking and Cross-Border Linkages

As the world has become increasingly globalised, the rapidity in the communication network from one place to another location has highly developed. Although globalisation has had many positive impacts, it has and will continue to produce unwanted adverse effects. For instances, today we have seen globalisation influences on human trafficking as trafficker makes the best use of new border regimes and transit points to prey on those vulnerable and hapless (Rahman 2011:1-18). The Central Intelligence Agency (CIA) reported that 45,000 to 50,000 women are imported illegally into the U.S. every year. A large number of these women are trafficked from the poorer nations mostly from south Asia and south East Asia to satisfy the lust of the wealthier people. Other estimates suggest that about 700,000 people are victims of cross-border trafficking every year (New York Times 2011). Similarly, women and girls' trafficking from Nepal to India has been growing successively due to ignorance at various levels. Every year about 7000 girls and women are trafficked from Nepal to India through the open border and air route (The Kathmandu Post 2016:2-3).

The chapter discusses cross-border linkages of human trafficking and the role of open border between India and Nepal. The huge demand for Nepali girls and women in Indian brothels along with influences of the human traffickers in the trafficking business will be assessed.

At present, thousands of Nepalese and Indian access each other's border every day and enter into each other's country through various check posts. It is estimated that 200 Nepalis cross the border every hour and enter into India with varied purposes (Bhattraï 2007:4-35). The eight major trade exchange points between two countries are – Kakarbhitta-Siliguri, Biratnagar-Jogbani, Bhairahawa-Sunauli, Nepalgunj-Rupendiya, Dhangadhi-Gauriphanta, Birgunj-Raxaul, Pashupatinagar- Sukhia Pokhari and Mahendra Nagar- Banbasa.

If people are free to access an unguarded and unrestricted border, then criminal can also access to the open border to conduct the crime.

It is noticed that every day 54 and every year some of 12000, children are taken to India against their will via different routes of the border (Gurung and Kachchhap 2016:21-28).

SSB Director General Archana Ramasundaram said, “We want to involve every stakeholder who is instrumental in restricting the menace of human trafficking. It is not enough to just intercept such instances and let the police be handed over the investigation. It is essential to find out the source and supply destination of trafficking and hit at the illegal act comprehensively,” Because, ‘even after the deployment of the SSB along borders areas between India and Nepal, there is a little sign of decreasing the number of incidents of human trafficking due to the open border. It becomes difficult for the Jawans (soldiers) to keep vigil in all the areas. Therefore, trafficker takes advantage of the naked border to supply the victims incessantly’ (PTI 2017: 2-5).

In general, all the criminal activities between India and Nepal take place through the border routes. The air route is expensive and difficult for any regular criminal activity due to strict surveillance and a high cost of operation.

Open –Border as a Facilitator of Human Trafficking:

Prithivi Narayan Shah, a king of Gorkha laid the foundation of Nepal in the 18th century. Nepal was divided into several kingdoms. In 1744 Shah began to conquer and united many small kingdoms under the one umbrella (Baral and Pyakurel 2015: 5-30).

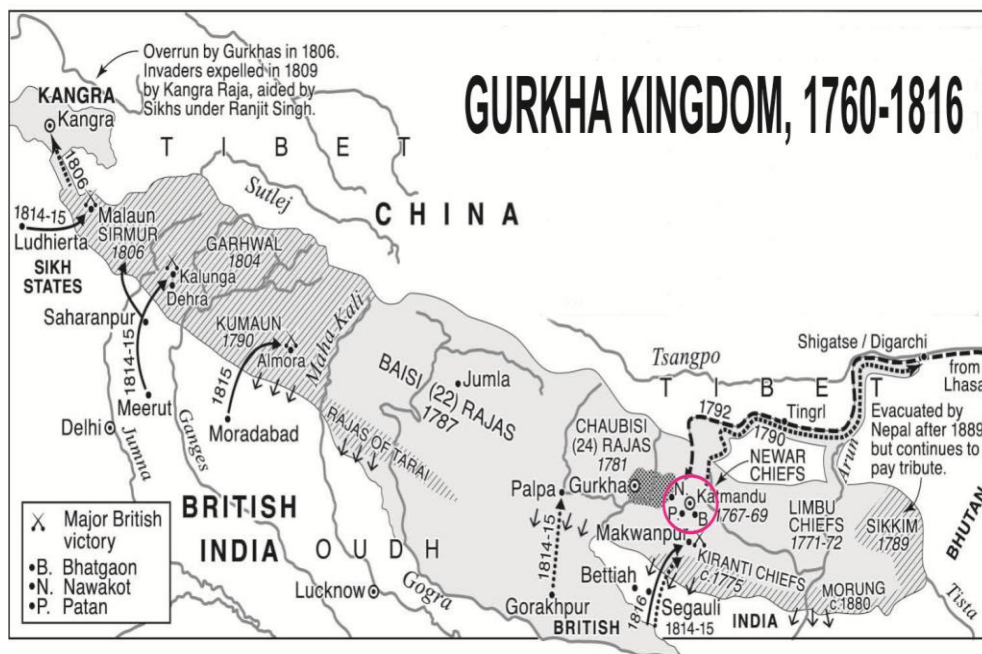
He consolidated the Kathmandu and other parts of Nepal and named them as the kingdom of Nepal. It is said that since the Shah period, there had been free movement of the people from India to Nepal and vice versa (Ibid. 2001:3-63). There were social and economic connection between people and the rulers of the two countries. After the death of Shah in 1772, his son Simha Pratap Shah continued the expansion of Nepal, followed by his widow Rajendra Laxmi in 1775. Later, the responsibility of expanding the Kingdom had rested on the shoulder of Rana Bahadur Shah who extended Nepal’s territory up to the river Teesta in the east, including parts of today’s state of Sikkim and the

river Sutlej in the west till 1805. This history of conquering under the Shah-dynasty is known as the unification of Nepal” (Hans 2001: 7-10).

The British kingdom with their narcissistic ambition had started the colonisation, expansion and consolidation of Indian states through invasion and was planning to attack Nepal after the death of King Prithvinarayan Shah. As the British East India Company attacked Butwal (Please see the Map III.1), Hariharpur, Mekwanpur, and Nalapani the part of Nepal and tried to annexe them, it led to the Anglo-Nepalese War in 1814-1816 (Ibid. 2001: 3-63).

Map III.1

History of Border between India and Nepal



Source: Central Department of Geography Tribhuvan University and Kansakar (2001)

The Gorkha forces fought against the British army with the brave heart and without fear under the leadership of Balbhadra Kunwar a Nepali commander. However, the battle was ended with signing the treaty of Sugauli in 1816 and Nepal had to cede around the third of its territories to the British East India Company (Kansakar 2001: 3-32). Accordingly, the Mahakali River formed the western boundary, while the Mechi constituted the border in the east along

with ridges in the Darjeeling hills and Sikkim. However, settlement, demarcation and delineation of the boundary between Nepal and the British East India Company remained uncertain and unsolved for some geographical region of Nepal and India (Pandey 1995:27). For instance, border demarcation, especially over the river Mahakali (Sharada 2003:168) and Mondia Ghat to Bunbasa appeared more problematic than the rest of the part of the territory. With the idea of resolving the problem, the Boundary Commission of the two governments was set up in North Oudh at Bagara Tal in February 1860 (Ibid. 2003:168). Some years after the British government of India started the Topographical Survey of the whole of Nepal in 1926-27.

The scale of the topographical Map was drawn to be an indicator of the boundary and estimated 1 inch to 4 miles. Later, the Topographical Survey of Nepal-India boundary was conducted again by the survey of independent India in 1955-58. It provided the most detailed study of the open border between Nepal and India through aerial as well as ground survey and resulted in the publication of maps to the scale of 1 inch to a mile (Kansakar 2001:3-63).

According to 2001 Topographical Survey, the length of the porous border of Nepal-India is estimated 1751 kilometres which run along three sides of Nepal, and it is approximately 165 kilometres longer than Nepal-China boundary. Importantly, the high portion of the border lies on the east side up to Sikkim state and Darjeeling district of West Bengal in India. The rest of the boundary runs along the plains in the south and that of the northern part of the state of Bihar and Uttar Pradesh in India. On the west side, the boundary touches Bamanpuri a place of Uttarakhand in India which also touches some part of the Sarda River (Trevedi 2008: 200-210) (Map III.2 and Table III.1, Table III.2).

Map III.2

Transit Points along Nepal-India Border



Source : Baral and Pyakurel (2015)

The transit points between Nepal and India (Map III.2) are indicated by the red- cross mark with the blue spot. There are trade transit points and eight immigration points between Nepal and India (Table III.1 and Table III.2).

Table III.1

Main Trade and Transit Points along the Nepal India Border

India	Nepal
Pashputi Nagar	Sukhia Pokhari
Kakerbhitta	Naxalbari
Bhadrapur	Galgalia
Jogbani /	Birat Nagar
Setobandhe /	Bhimnagar
Rajbiraj /	Kunauli
Siraha	Janakpur, Jayanagar
Jaleswar	Birtamod (Sursand)
Malangwa	Sonabarsa
Gaur	Bairgania

Raxaul	Birgunj
Bhairahawa	Nautanwa(Sunauli)
Taulihawe	Khunwa
Krishnangar	Barhni
Koilabas	Jarwa
Nepalgunj	Nepalgunj Road
Rajapur	Katerniyaghat
Prithvipur	Sati (Kailali) / Tikonia
Dhangadhi	Gauriphanta
Mahendra Nagar	Banbasa
Mahakali	Jhulaghat (Pithoragarh)
Dharchula	Darchula

Source: Baral and Uddap (2015) and Baral and Pyakurel (2015)

Table III.2

Immigration Points along the Indo Nepal border of entry and exit

Serial No.	Immigration Points of Nepal
1	International Airport, Kathmandu
2	Kakarbhitta, Jhapa (Eastern)
3	Birgunj, Parsa (Central)
4	Kodari (Northern Border, Central)
5	Belhia, Bhairahawa (Rupandehi, Western)
6	Jamunaha, Nepalgunj (Banke, Mid-Western)
7	Mohana, Dhangadhi (Kailali, Far Western)
8	Gadda Chauki, Mahendranagar (Kanchanpur, Far Western)

Source: Government of India (2007)

The Peace and Friendship Treaty was signed on July 31, 1950 by India and Nepal. Both the Government of Nepal and India agreed to grant, on a reciprocal basis, to the nationals of one country in the territory of the other the same privileges on matters of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature. Under the provisions of the treaty, the movement of Indians into Nepal and

vice versa increased steadily and also facilitates to engage in trade, commerce and other different occupations (Nayak 2010:579-593). People's movement and trade and commerce between two countries mostly happen through the border areas. And, open border has been a facilitator. India-Nepal border is unique in the region in the sense that people of both the countries can cross it from any point, despite the existence of border check posts at several locations (Kansakar 2001:7).

This border connects people of two countries. There are different views of People regarding the open border and its existence. Some of them want the open border to be regulated from the perspective of their daily experiences. Table III.3 puts together both Indian and Nepali views on the advantage as well as disadvantage of the open border.

Table III.3

Different meanings and importance of the Open Border

Indian views	Nepali views
<p>1) The open border, as well as the free and unrestricted movement of people of both the countries, has existed for a long time because of the common approach of the two countries.</p> <p>2) A large section of people from both the countries believe that the open border is the historically unique arrangement. Moreover, the socio-economic linkages across the border help in cementing ties between people of the two countries.</p> <p>3) Many of the farmers living in the border region buy and sell agricultural and livestock product at the border Hat Bazar and another market centre in each other's territory.</p> <p>4) Despite the Nepalese people argue that the India is benefiting more from it than Nepal, the fact remains that Nepalese farmers benefit from the cheaper agricultural inputs and household product from India while Indian benefit from better medical facilities and cheaper education in</p>	<p>1) For many, the open border between Nepal and India is the lifeline. The number of local people crossing the border is much higher than the travellers and outsiders doing so.</p> <p>2) As the people living on both sides of the border many have socio-economic relations across the border, some visits are more frequent than others. It seemed almost impossible to control and regulate the movement of people along 1751 km of border.</p> <p>3) Trade agreement of the 1950 Treaty of Peace and Friendship has specified the agreed routes for mutual trade but there is no agreement regarding the agreed routes for the movement of people in both the countries.</p> <p>4) There are total twenty-two transit points along the border. However, it is unique in the sense that people of both the countries can cross it from any point or any place of the border, despite the existence of border check post at several locations. See the Map III.1 which</p>

<p>medical college across the Nepalese border. A survey report of the Food Programme (WFP) and European Union (EU) says that 39% of Nepal's total households with one or more migrants have India as their destination. In comparison, less number of Indian workers will go to Nepal in search of jobs.</p> <p>5) Open border has become a sensitive issue to the security of both Nepal and India and through different transit points it is easy to enter into the plains and hills of India and contribute to the increasing security problem in India.</p> <p>6) A Joint Border Management Committee has been assigned to control the crime rate. However, infrastructure for patrolling and management of the border is very poor.</p>	<p>shows transit points between Nepal and India and Table III.1.</p> <p>5) There are only six points or immigration points out of them, and the movements are permitted to subject of the third country. The nationals of the third country require entry and exit visa to cross the border.</p> <p>6) According to Nepali police post in Kakarbitta, the movement of people is enormous. Their estimate is over 2000 people cross the transit point between 7 am and 7 pm.</p> <p>7) Since the concept of the open border between Nepal and India has remained an enigma, there is alleged that an illegal movement of people and goods, as well as criminal activities, has been taking place in collaboration with personnel deputed in those posts.</p>
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Source: Baral and Uddap (2015)

However, today in the most of the cases it has been noticed that 1751 km long Nepal-India porous border can't be provided with a tight surveillance appropriately. It has been tough to control massive movement of people and illegal transportation of goods in each transit points, isolated and unmanned areas along the border.

The illegal activities have grown up day by day and adversely affected the relations of two countries due to weak monitoring and unmanned areas nearby border. Baral and Uddhab Pyakurel state that the differences and mistrust among the leadership of the two countries actually encourage illegal activities like trafficking in person and smuggling of goods and arms along the border (Baral and Uddhab 2015: 20-45).

“Very simple thing, that I would like to tell you about that, some goods we bring from India, and we have to pay certain charges to the police. If we do not pay, they snatch our goods, if we pay; they allow us to take it to Nepal (Hans 2015:2-9).

Apart from an illegal transaction of small arms and ammunition through Nepal-India border, traffickers also use the border areas transport girls and children from Nepal to India.

Trafficking in person from Nepal to India has its historical and cultural link with the movement of people of both countries even earlier than the 19th century. Studies suggested that girls were brought from surrounding hills in Nepal and recruited in the Kathmandu Palaces (NHRC 2007: 2-32). The practices of illegally keeping the minor Tamang girls in the Kathmandu palace for physical labour or sexual exploitation and gifting them to other kings or landlords were carried out as a social and historical trend of the palace. These practices resembled the crime of trafficking in person. The minor girls and young women were kept as housemaids, concubines, singers, dancers, Nani and Ketishaya.²¹ Importantly, the Rana king used to bring Nani by paying 120 to 500 Ashrphis or gold coins (ONRT 2006-2007:32).

The price of the Nani depended upon her beauty. Once a girl entered the kingdom as a Nani, she became the private property or slave like a prostitute in the hand of the buyer. She was then denied from maintaining her private lives. According to Gauri and Sangroula, the end of the Rana regime in 1951 and the advent of democracy led to their settlement in India in Kolkata, Delhi and Shimla. It is said that their families also took their housemaids for their luxury and sexual pleasure. After a course of time, some of the Nanis were left in India, and ended up in Indian brothels (Ibid. 2006-2007:32).

²¹ It is found that the practice of keeping Nani and Ketishaya were similar to practice of Jogni or Devdasi in India. In India fairly, the young girls of the poor family were brought from rural areas by the rich family to worship and take care of their temple but, in the name of service to God but they were sexually harassed and forced to engage in prostitution. Similarly, in Nepal the king brought the young women to look after the domestic affairs but, they were secretly raped and abused by rulers.

Later, some Nanis opened own brothels in India to run their livelihood and started recruiting other girls from the areas of their origin. Importantly, they began recruiting the rural girls and women from hill region of Nepal decided to go to India in search for better life. This is how the crime of cross-border trafficking from Nepal to India had started. Moreover, every political instability deteriorated the economy of Nepal and witnessed an outmigration. The volatile situation in the country and socio-economic crisis resulted in growing high criminal links between Indian brothel owners, sex traders, agents, Nepalese and Indian traffickers (Pradhan 1996: 19-60). Eventually, full-fledged transportation and recruitment of girls started extensively.

Young women, girls, men and children are trafficked to India for physical and sexual exploitation and organ transplantation (CNN Freedom 2015:2-7). A baseline survey of LWF (Lutheran World Federation) identified ten highly trafficking affected districts from where innocent girls and children are trafficked to India. These are Rupandeshi, Kapilbastu, Palpa, Sindhula, Ilam, Morang, Nawalparasi, Sindhupalchok and Banke (Nepalganj) (NHRC 2015: 15-32).

UNICEF reveals that, every year 7,000 girls and women are trafficked to India and around 200,000 are working in Indian brothels (NHRC 2015: 10-35). Similarly, 180 girls and women were trafficked from Nepal to different parts of India in 2015 alone (Ibid. 2015: 10-35). Results from a collective survey of the Walk Free Foundation and the Alliance Against Trafficking in Women and Children in Nepal, it is found that 229,000 Nepalese are subject to some form of human trafficking in 2014 (Baumann and Dharel 2014: 20-23).

A news daily reported 160 Nepalese girls were rescued by Law enforcement agency from Siliguri of West Bengal in 2016 (Himalayan Times 2016) and Delhi police rescued 21 women and girls from Mahipalpur hotel of South Delhi in 2016 (PTI 2016). According to Sunita Nepal, Joint Secretary in the Ministry of Women, Children and Social Welfare,

“The main source district for trafficking is Sindhupalchok, while Kathmandu is a transit district for the trade. They people are

trafficked to India through the border districts of Chitwan, Rupandehi, Parsa, Jhapa and Kailali” (Hamza Khan 2016).²² .

Modus Operandi and Route of Trafficking

The study done by various NGOs from India and Nepal reveal that in the majority of case, coercion, force or threat as a means of entrapping and trafficking, may not be used in the initial stage of transporting or recruiting of the trafficked victims. Rather, Nepali traffickers adopt the real promise of love, marriage, jobs, tour, and eventually lure girls, children and women at the beginning stage. Similarly, in the case of trafficking in person for extraction of an organ (kidney), traffickers lure the victims by making fake promises like providing a house, investment in the productive sector and buying ornaments. It is noticed that victims are contacted via middle-men who prepare travel documents of the victims. The modus operandi of the commercial sexual exploitation, physical exploitation and organ trade involves consent under coercion or deception, the abuse of positions of power, and the denial of freedom (ADB 2015:55).

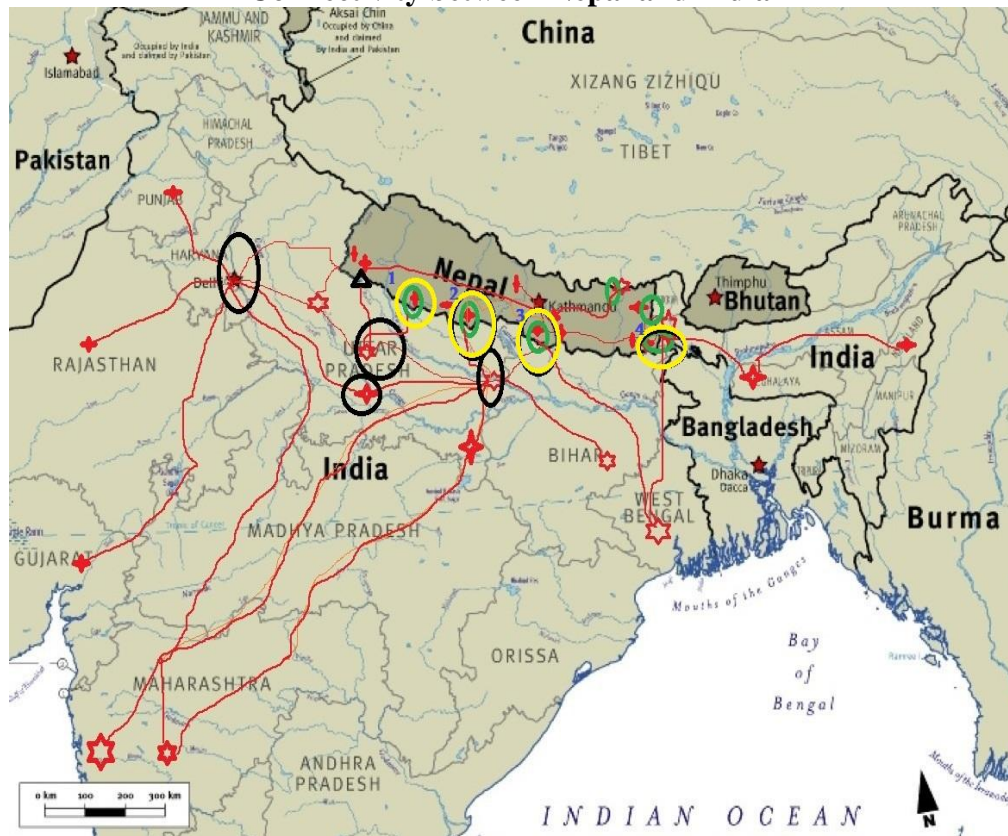
Human trafficking is an organised crime in the world (United Nations 2004: 5-53). Today, it is operated by more than one traffickers or group of the organisation and sex racketeers in Nepal and India. In Nepal, trafficking takes place mostly through the networks of traffickers. Moreover, there is always a strong network of communication between both Nepali and Indian traffickers during the process of the crime of trafficking. Most of the studies in cross-border trafficking in overwhelming majority of cases the traffickers operate in a group. There are very few traffickers who work alone. Networks of trafficking begin and extend from the place of origin to the destination. In majority cases, traffickers have strong nexus with local leaders, criminals, businesspeople, officials, various institutions such as border police, travel agents and transport agencies and so on. Opinions of parents of trafficked victims suggest that mainly friends, relatives and villagers/ local brokers are

²² An interview with Sunita Nepal, Joint Secretary in the Ministry of Women, Children and Social Welfare of Nepal in Kathmandu conducted on 12 March 2016.

the traffickers. Information from the victim's side says that particularly parents, husband, relatives and families together, relatives and villagers/local brokers are traffickers. Traffickers follow the safest routes to cross the border and transport the victims (Sanghera and Kapur 2000: 20-45) Routes and networks (linkages) of trafficking are depicted in Map III.3 and Map III.4. These highlight both short and long routes from the place of origin (Nepal) to the destination (India). These are arrived at by using the facts provided by the victims and persons involved and also on secondary sources like books, newspapers and the reports of various NGOs.

Map III.3²³

**Vulnerable Check Posts and Long Routes
Connectivity between Nepal and India**



Source: Erin Collins (2010)

²³ The Map III.3 has been taken from a work of Bhutanese Refugees Students and drawn after studying the cases of trafficking in Person and Annual Report of Maiti Nepal, 2013-16.

There are three types of the circle in different colours namely green, yellow and black in the map III.3. Six green circles indicate most vulnerable places between India and Nepal which are used by traffickers while crossing the border to transport the victims.

Yellow circles indicate the four transit points used by traffickers in India time and again. And black circles are the places of Indian states which are the most popular destinations and also used by traffickers as transit place to reach other destinations to supply the victims. Besides, red small and big stars show the connectivity of the routes from a place of origin to destination as well as linkages of criminals.

Traffickers who start the journey from the central Nepal and make Kamathipura brothel of Mumbai (India) as their destination generally follow Narayangadh-Butwal- Bhairahawa and Sunauli-Gorakhpur routes. From there, they take the train to reach Mumbai. Some criminal cases reveal traffickers traffic girls and women from Kathmandu and move towards the Eastern part of India mainly Sonagachi or Khalpara brothels in West Bengal (India). For this, they follow Kathmandu-Pashupatinagar-Sokhia Pokhari-Darjeeling-Siliguri-NJP Junction-Howrah-Calcutta or Kathmandu-Kakarbhitta-Siliguri- and after, NJP to Calcutta route. Similarly, traffickers who move from Eastern region mainly from Ilam, Jhapa, and Morang districts, make Calcutta, Siliguri and north-eastern states of India their destinations. They first proceed to Pashupatinagar-Darjeeling- Siliguri- NJP and Kolkata or they also cross the border through Kakarvitta- Siliguri-NJP and reach north-east part of India. Importantly, today, north—east region of India like Darjeeling (WB), Sikkim and Shillong (Meghalaya) are the tourist places, and there is high demand for girls for sex tourism (Bhardwaj and Kumar 2014:10-17). There are cantonment areas that are a suitable zone for sex business. For instance, in North Bengal, Siliguri, Bagdogra, and Darjeeling are considered as markets for sex business because of business, tourism and brothels in Khalpara and Jalpaiguri.

Traffickers who move from the Western region of Nepal use the Sunauli-Gorakhpur, Bhagawanpur, Bagaha, Kalidaha, and Rayapur routes to cross the Nepal border. Then they reach G.B road brothel in Delhi, Agra, and Kanpur, Meeraganj brothel in Allahabad and Shidaspur brothel in Varanasi as the destination in India (NHRC 2013:). Likewise, if traffickers move from the

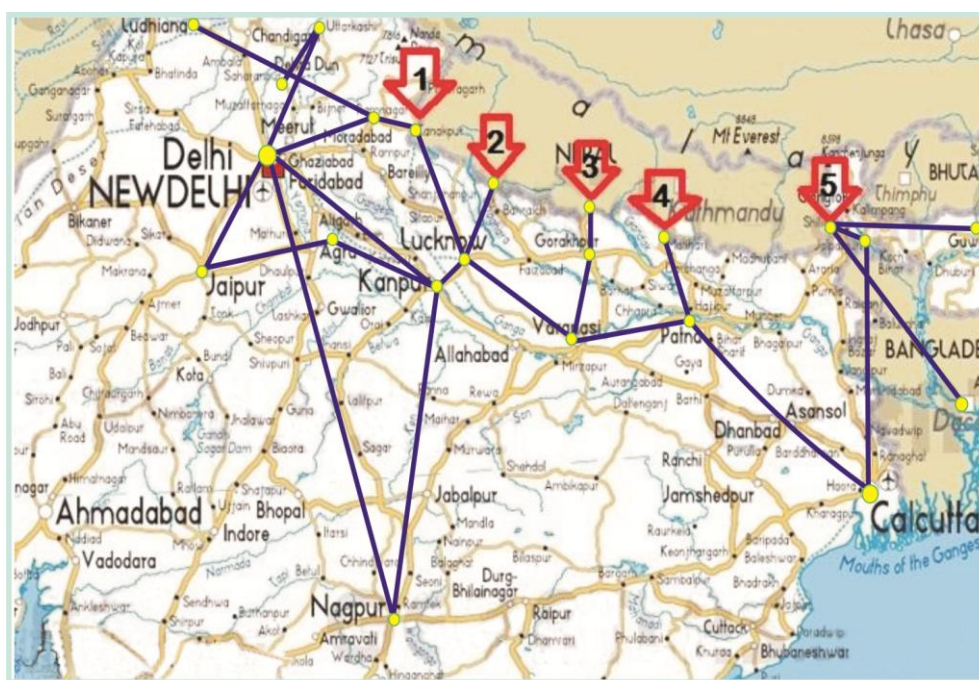
South-west region of Nepal, then they follow Krishnanagar, Chakalchauda, Khunuwa, Hardauna, Hathihawa, Thakurapur, Rangpur, Kushawa/Badhani/Milmi routes to cross the border. The major means of transportation are smaller vehicles, bus, rickshaw, tanga, tempo, train and taxi. If girls are trafficked from West-Central Nepal to Meeraganj, Shivdaspur and Varanasi in Uttar Pradesh considered as a huge sex market in the central region of India, then traffickers follow Birganj-Raxaul border routes (Map III.4).

Further, trafficker moving from the Far-Western region of Nepal like Kanchanpur, Darchula, and Doti, they first cross the border near Banbasa (Upadhyay 2015:) and enter into Utrakhand and proceed towards Delhi, Haryana, Agra, and Lucknow (see arrow 1 inside the MapIII.4).

At the same time, they can use Dhangadi-Mohana- Lucknow route to reach Mumbai (arrow 2 in Map III.4). These locations and tracks are used again as intermittent or shifting spots to move further towards West-Delhi; South-Nagpur-Mumbai, Goa, Chennai, East-Guwahati, and Bangladesh via north-east states of India (arrow 2 and yellow spots in Map III.4).

Map III.4²⁴

Linkages of Route of Human Trafficking



Source: Nepal and India roadways Team BHP and Bhardwaj (2012)

Some of the routes and border points between Nepal and India are regularly used by traffickers because they find the weak surveillance in the areas nearby the border – sometimes they use money power to get help from corrupt border police and local politician to cross the border. Asia Foundation has indicated four vulnerable check posts and routes namely Kathmandu air, Kakarbhitta-Panitanki, Birganj-Raxual and Bhairahawa-Sunauli. Of these, Bhairahawa-Sunauli route has been used many times to traffic person from Nepal to India (Asia Foundation 2015: 39-42).

When traffickers find difficulties in transporting or crossing the border due to the strict surveillance, they follow the different routes or move towards a new location via open border.

The 13 Nepali girls who were rescued in by Delhi Police in 2016 were brought by changing the routes. Some girls were from Dang district (Mid or central-western region) of Nepal (The Hindu 2016: 2-3). According to police record,

²⁴ Map III.4 has been taken from Nepal and India roadways Team BHP (2012) and drawn according to information of case study of trafficking in persons.

the victims were brought to Delhi via the eastern border of Nepal instead of using old routes. Therefore, it seems traffickers are always a step ahead of the police, and they commit the crime as a rational being.

The following case study of trafficking from Nepal to India has been written with the help of both primary and secondary data. The primary source has is based on field study in Nepal and India. During the field study information was gathered through filling the questionnaire and number of interviews with different persons including from NGOs and government officials of Nepal and India. Secondary resources are mainly books, journals and annual progress reports of different government departments like NHRC of Nepal, MoWCSW of Nepal, Newspapers, UNIFEM, NCRB of India and NGOs of Nepal and India. Further, relevant websites related to case study like NCRB, Shakti Vahini, Shakti Sumuha, UNODC, UNIFEM and Maiti Nepal were made use of extensively.

However, throughout the case analyses the name of the trafficked survivors has been changed and names of the victims and government officials who were interviewed are also not been written for the purpose of confidentiality.

Case study 1: Kathmandu to Mumbai

The story of Gita Thapa (name changed) given below explains three essential parts of human trafficking from Nepal to India.

Firstly, it shows the new method of modus operandi of trafficking. Secondly, it shows the linkages of criminals in the process of crime of trafficking along with geographical connectivity of border areas and thirdly, the role of the Indian police, NGO and judgement of the Court of Nepal.

Gita Thapa, a girl from a low-income family of Kathmandu (Nepal) always wanted to be economically independent. She started working at one of the schools in Kathmandu. After three months working in a school, she came in contact with a man named Bibek nearby her workplace. She used to visit Bibek after office time. After a course of time, one day Gita came in contact with Rupa Rai when Bibek introduced Rupa to Gita as his sister. One day,

Rupa explained Gita about her sister's comfortable and happy life in Mumbai in India and lured her to go to India to see the life of her sister in Mumbai. Firstly, Gita didn't agree with Rupa's plan but, when Bibek also enticed her, she finally accepted to go for a short trip in Mumbai.

Next morning, Rupa informed Gita about a person named Suresh who will come to take her to Bus Park in Kathmandu. After sometimes, Gita met Suresh who harboured Gita to his friend Tilak's house to prevent her from escaping as well as to avoid the attention of others. In the evening, all Rupa, Bibek, Suresh and victim (Gita) took a bus from Kathmandu to Dhanagadi. As a part of the modus operandi, Rupa and Bibek planned to reach first Uttar Pradesh via Dhangadi border between Nepal and India and later, go to Mumbai by train from Lucknow in Uttar Pradesh. They made a plan to separate the group into two parts to deceive the border police in the Dhangadhi checkpoint or entry point of the border.

Gita was not allowed to approach for answering the question asked by border police in Mohana, Dhangadhi (Kailali, Far Western) the border between India and Nepal. After successfully crossing the border checkpoint they all were heading towards Mumbai and stayed there in a lodge. During the transportation of victim, Rupa (primary or field trafficker) was speaking to a girl named Kamala (kingpin of trafficking). Kamala arranged everything including train ticket, travel expenses and temporary housing in Mumbai.

In Mumbai, Kamala was introduced to Gita as a sister of Rupa. In the next day, Rupa asked Gita to go with Kamala to stroll around and told her that she would join them later after watching a movie. But Rupa never appeared back, and when Gita asked for Rupa's whereabouts, Kamla described Gita that she was sold for Rs 50000. Gita was then forced into prostitution in Kamathipura brothels in Mumbai.

In 2008, she was rescued by police and sent to shelter home for 22 days. Next, police sent her to Nepal with the help of Maiti Mumbai (Maiti Mumbai is one of the branches of Maiti Nepal NGO in India. The headquarter of Maiti Mumbai is in Kathmandu Nepal). In 2008 Gita lodged the FIR against Rupa, Bibek and Suresh Tamang in Kathmandu police station with the support of

NGO Maiti Nepal. With all the pieces of evidence and statements provided to the Court, the defendants, Rupa, Suresh and Bibek were found guilty.

The court ordered 15 years of imprisonment and imposed fine of Rs. 50000 to pay the Court as under the section 8(1) and Section 8(5) of Human Trafficking and Transportation Act (Control) 2043(2007). Like Gita Thapa, other girls who belong to a simple family never understand the trick of traffickers. So, they just fall prey to traffickers. In this case, it is found that a strong networking and linkages helped traffickers in the transportation of the victim from Kathmandu to Mumbai. Kamala (kingpin of trafficking) played a major role in the whole process. Very cleverly, she took Gita to a brothel in Mumbai. It was the good fortune for Gita that she was rescued by Mumbai police and sent to Nepal with the help of Maiti Nepal.

The judiciary system of Nepal brought culprits to justice by giving priority of the statement of the victim. Besides, NGO Maiti Nepal helped Gita at the maximum level to get her rights and justice for losing her dignified life in Mumbai.

Case Study 2: From Dhulakha to Delhi,

Dhulakha is one of the seventy-five districts of Nepal. Naturally it is a famous tourist spot in Nepal because of its natural beauty of mountain Machapuchare and Fewa Lake. Kanchi (name changed) a girl belonged to poor family wanted to be economically independent by doing the job after completing her 10 grade or SLC (School Leaving Certificate). After board examination, she was waiting for her result in March in 2014. Kanchi often thought of happy and prosperous life. She was attracted by the metropolitan life. She wanted to leave her place to search for a better life. She used to visit Dhulaka market with Pranita (name changed) bhauju (sister in law) to see the urban life. After passage of time, bhauju had become the closest friend of Kanchi. In fact, Kanchi liked to listen to bhauju more than her parents.

One day, bhauju told Kanchi that she has a brother named Ram (name changed) and he likes Kanchi very much. And, if Kanchi wants, then Ram would like to meet her and get married. After listening to Bhauju, Kanchi

became shy, happy and speechless. On the other hand, Bhouju and her fake brother Ram had planned before-hand to traffic Kanchi from Dhulakha Market itself. An inauspicious moment came, and the whole life of Kanchi got messed up. She met Ram in Dhulakha market. Pranita bhauju enticed Kanchi by saying that she will be happy if she gets married to Ram.

In the pretext of marriage, Ram brought Kanchi to Kathmandu. Though she was happy, a sign of tension was still there on her face. She thought that she could not return to home and her parents would never accept their relations because she got married and ran away from home without the consent of parents.

Next day, Ram told Kanchi his parents are at home in Hetuda and would never accept Kanchi, and they won't be having their consent. So, to earn their livelihood they are going to meet his sister in New Delhi in India. Next morning both Kanchi and Ram were heading towards New Delhi by following Narayangadh-Butwal- Bhairahawa and Sunauli-Gorakhpur routes to reach Delhi.

In Delhi, Kanchi was introduced to a brothel owner in Garstin Bastion Road (G B Road) as a sister of Ram. The fake drama was played in front of the victim as brothel owner is a real sister of Ram. Brothel owner asked Ram to go to search for a job, and she will look after Kanchi until he gets the job. After spending two weeks without Ram, things became difficult for Kanchi in an unknown place. One day, she asked brothel owner Ram's whereabouts. In reply, brothel owner disclosed the real story of Ram as a trafficker, and he sold her for a handsome amount. The whole world of Kanchi got shrunk into the fake promises of Ram. When the reality came before her, the anguish she felt was unbearable. She was forced into prostitution in G B road brothel of Delhi. After almost spending three years in the hell of the brothel, one day Kanchi met a Nepali client.

He heard the story of Kanchi and agreed to help her to return to the country. According to police record of Kanch's statement, it was midnight around 2 am when she climbed the tree nearby her window of the corridor (buranda) and fled from the brothel with the help of that Nepali client. Next day she was

taken to Kathmandu (Nepal) with the support of Gorkha organisation of Delhi. She lodged FIR in the Dhulakha police station with the help of Maiti Nepal against Pranita bhauju and Ram. The district court of Dhulakha punished Pranita with 20 years imprisonment and one lakh fine under the human trafficking and transportation control Act 2007. However, according to police record, culprit Ram is still at large.

Case Study 3: Hetuada to Mujaffarnagar (Uttar Pradesh, India)

According to Shakti Samuha NGO based in Kathmandu (Nepal), every year 10 to 19 children below 18-year-old are rescued from different states of India.

In most of the cases, the child victim of human trafficking belongs to vulnerable districts of Nepal mainly Lalitpur, Bhaktapur, Saralahi, Rupandehi, Hetauda and Biratnagar (NHRC of Nepal 2-13-15). The facts of the case study are based on an interview with executive director of Child Protection of ABC Nepal NGO based in Kathmandu in December 2016 (NCR Tribune 2003).

According to NCR Tribune, 16 children and two girls were rescued from the Apollo circus company by SSP of Muzaffarnagar, Bhajni Ram Meena and his team with the help of NGO ABC Nepal and Pravasi Nepali Mitra Manch (NCR Tribune 2003). According to police record, two girls and other children had been kept hostage by the owners of the circus with the help of some musclemen. It was alleged that the children were being harassed on the premises. For the most part, the rescued children were between 8 and 18 years of old age, and they are mostly from poor family from districts of Hetauda and Biratnagar of Nepal.²⁵

14 year old Victim SH (name changed) from Hetauda Nepal “I was told that I would become a great artist and perform before large audiences. The public would appreciate my art and display. They will be enabling me to earn a great fortune for myself and my family” (Nair 2005: 392).

More than the money it was the child’s eagerness and temptation for performing were capitalised by traffickers (Nair 2005: 392). According to the narration of the victims, girls were sexually and physically exploited during

²⁵ According to ABC Nepal, mostly children were poor, illiterate and had completed only their primary education.

their training session. Trainer asked them to get up early in the morning for training without breakfast. They were allowed only two-time meal, and with that, they had to survive throughout the day. The Senior Superintendent of Police (SSP) of Muzaffarnagar mentioned that, a child worker was given Rs.150 as her monthly salary. With that, they had to buy their necessary stuffs. Further, Circus Company had not provided the medical facility, monthly health checks up and children were not allowed to go outside the premises of circus.

Speaking to the NCR Tribune on the phone, SSP Meena said that efforts were on to arrest the owners of the circus as the girl workers had alleged that they were made to work forcibly and that they had not been paid for months. They were also harassed in other ways. Later, the parents met the SSP at Police Lines and requested the SSP to order the release of the children. They expressed fears that the owners of the circus would force the girls into prostitution if they again lay their hands on them.

Case 4: Kapilvastu to Mumbai (Trafficking in girl for involuntary prostitution)

Sufiana (name changed) belonged to poor Muslim family from mid-western part of Kapilvastu district of Nepal. In 2014 she was married to Mohammad Rafiq Khan of Abhirao VDC of Kapilvastu. After 5 days of marriage, she was told that Rafiq works in Mumbai in India and she can also do the same job in his company in Mumbai. However, he did not let her inform her parents about the plan. As she did not have other option, she agreed to go to Mumbai. After arriving in Mumbai, Rafiq proposed her to go to his brother-in-law's residence.

When she started asking Rafiq about his brother-in-law, Rafiq showed his anger on her question and asked her to leave the place and go to wherever she wanted. Being an unknown to the new place, she could not raise her voice against husband and went to his brother-in-law, Samad Khan's house.

After some time Rafiq left the apartment without informing her. As soon as Rafiq left the room, a stranger of Indian origin entered the room and raped her.

She cried, shouted and tried her best to get away from a person, but she could not succeed, and even she could not even call anyone for help because her phone was taken away by husband Rafiq. After, she was again raped by another two strangers, and then she realised that her husband was a trafficker and she had been sold in India.

Her statement shows that everyday 5 to 7 men came to her and forced her to sex. In fact, the apartment was being run like a brothel in the city. She had gone through such pain that nobody could understand and explain it. She was there for almost one and half year. One day she got an opportunity to call her father and inform him everything about the situation. Later, she was rescued by her father with the help of Indian police. She filed a case to the court of Rupandehi against Mohammad Rafiq Khan who was found guilty on the charge of Human Trafficking and Transportation (Control) Act 2007 and was convicted with 12 years of imprisonment and Rs one lakh fine and also Rs 50000 compensation to be paid to the victim.²⁶

Case 5: Kathmandu to Calcutta

Sumitra Aryal, a working girl in Chabahil in Kathmandu, came in contact with Bikash when he introduced himself as senior of her in the school where she studied. They started meeting nearby her work place in Kathmandu.

Bikash told her that he is going to introduce a person named Rudra as his *vena* (sister's husband). After an introduction, they often met in Kathmandu for tea, lunch and dinner. Without doubting their intention, she also accompanied them to other places.

One day, during their conversation Bikash offered Sumitra a job in Darjeeling. Bikash asked her to go to Darjeeling with them and work in a hotel of a foreigner where Rudra's brother was a manager. So, she would earn better and more. Sumitra completely got trapped into their fake drama and agreed to

²⁶ Criminal Case NO- 069-CR-0461, Decision No: 185, Registration Date: 2070-02-12, Decision Date: 071/1/3; Plaintiff: Gayatri (name changed) Defendant (Mohammad Rafiq Khan From Kapilvastu district)

travel to Darjeeling with them. They started their journey from Kathmandu and reached Ilam by local bus. After Ilam Bikash, Rudra and Sumitra were accompanied by Rajesh who also helped them to cross the Pashupatinagar border and reached Siliguri a city of crime. Unfortunately, Sumitra did not have knowledge about the location and routes of Darjeeling. Hence, traffickers easily transported her from Nepal to India via border routes. After arriving in Siliguri, they boarded the train to Kolkata and later a bus to their destination Sonagachi brothel in Calcutta (West Bengal).

In Kolkata, Bikash was talking to a girl named Sita over the telephone and informed about their arrival. He asked her to pick Sumitra (victim) up. Since Sita was a field trafficker and a part of the crime, she did the same as they had planned before. Sita took them to a brothel. Later, Bikash introduced Sushma, (the kingpin of trafficking) to Sumitra as a sister of Bikas. After an introduction, Bikas, Rudre and Rajesh left the room by pretending that they would return soon but, they never showed up again. Right after their departure, Sushma came to Sumitra and told her that she was sold for the cost of Indian Rs 60000. She was hence, forced to take the job of a prostitute. When she did not agree, then the fellow worker from Nepal Maili, forced and tortured her to accept the life of prostitutes. She had to suffer and endure the inhuman life in the brothel for ten months.

Later, Maiti India NGO with the help of Kolkata police rescued Sumitra and other trafficked victims from Nepal. After, they were brought back to Nepal. During the investigation, Sumitra gave the statement against Maili (Maili Tamang) who involved in forcing her inhumanely to get involved in prostitution. Another victim Sangita Subba also gave her statement against Maili for forcing her into the hell life of the prostitution. However, neither Nepal police nor Indian police caught traffickers Rudra, Bikash and Rajesh and they are still at large.

Case study 6: Kidney Trafficking from Kathmandu to Delhi,

Trafficked victim Sita (name changed) was from a village of Kathmandu had a small restaurant in Kathmandu market. She initiated the business when her husband lost his leg in foreign employment and her family was in misery.

Unfortunately, the business could not support her to run the family as well as she faced problem in returning the loan amount Rs 200000 which she got from Nepal bank. When she was going through all these misery, perpetrators Binod and Krishna lured her to sell her kidney for she could get Rs. 200000. Traffickers made her believe that after taking out a kidney she won't be having any physical complication.

According to testimony of victim, in October 2013 the perpetrators took her to clinic for blood test and medical examination. On 8 December 2012 she was brought to Delhi through Nepalgunj route. Later, she was taken to Singhaniya hospital where her kidney was removed on 25 January 2013 in Delhi. In Nepal even after 15 days of returning she did not get money but, experienced some physical complication like vomiting and pain in stomach. She came in contact with a Forum for Protection of People's Rights Nepal (PPR) and filed FIR in metropolitan police Range, Kathmandu. The police arrested both perpetrators and prosecuted in Kathmandu District Court.

Case study 7: Trafficking and Prosecution in Bihar

Rami (name changed), a 14-year-old girl belonged to Birjunj district (Tarai region) of Nepal. Her village was just 5-8 km away from Bettiah city of Bihar in India.

After divorced, her mother left husband house with Rami and settled down in Birgunj. They did not have an adequate source for living. So, both of them were facing both social and economic challenges in the village. To resolve the economic problem, both of them used to visit Bettiah in search of a manual job. Rami liked to visit India not because of they were earning a living but, she had a fondness of watching the India circus.

Sunita kaki (aunty) was known to Rami and her mother in the village. Like everyone in the village, Sunita kaki also had an idea about Rami's acquisitive desire to watch the circus in India, and she made the best advantage of that. One day, she lured her on the pretext of watching the Indian circus in Bettiah in Bihar. On Tuesday 9 September 2000, Sunita lured Rami by telling her she is going to watch the circus in Bettiah and she bought a ticket for her too.

Listening to Sunita kaki Rami tried hard to get the permission from her mother to watch the circus in India. Without knowing on an evil purpose of Sunita, Rami's mother allowed her to go to watch the circus along with Sunita kaki. Next morning, Sunita simply transported Rami via Raxual border and brought her to one of the hotels in Bettiah. Sunita locked the door from outside and told Rami that she would be returning soon. Rami did not understand anything in the hotel. She did not realise that she had been locked up in the hotel. Nor did she have any inkling of the danger to come. After, a person with a giant figure told Rami that he bought her by paying Rs 20000 and Sunita kaki won't return again. Later, he raped Rami several times. Rami screamed, cried and tried to get free from the clutch of that man but, she couldn't. She was raped by him and other three men in hotel. She was devastated physically and mentally.

According to her statement, she was bleeding from her private parts. The blood had stained the bed sheet too. When she wore the panties later, it was also stained with blood. Later, police came to the hotel and arrested four people including Rami. She was prosecuted and charged under the section of U/S 3,4,5,6 and 7 of ITPA of 1956 and 120 B of IPC. However, the entire accused people were granted bail but, victim Rami was not granted bail by the magistrate of Bettiah.

Although she was just 14 years old, the police did not invoke the established provisions of S375 IPC, which states that sexual relations with women of less than 16 years, irrespective of her consent, amounts to rape. In fact, she was a victim of trafficking and rape. She had to spend two years in the police custody in Patna (Bihar) from 9 September 2000 to 24 April 2002. Though she was produced more than 12 times before Patna Court, her case was not discussed due to absent of advocate, and she did not get bail. In 2001 her father met her once and told he would bring a good advocate after selling some property in Nepal. Later, she came to know that her father had already sold the property and shifted to another part of Nepal.

In 2002 the Prayas Bharati Trust (PBT) of Patna raised the voice against the wrong investigation of a police officer. PBT intervened in the matter to ensure

Rami's freedom and had filed a complaint before the NHRC Patna on 22 March 2002. The protest in favour of Rami's freedom not only touched the NHRC. Later, when the news came before the Inspector of General (CID) of Bihar, a special police team was formed to investigate the Rami's case. Eventually, the case was reopened under the section of 173(8) CRPC.²⁷ Rami got all the supports from the police department of Bettiah and Prayas Bharathi Trust to get bail. After few days, she was granted bail on 24 April 2002.

Above mentioned criminal cases in a way provide us the glimpse of the factors behind trafficking in person, modus operandi and process. Besides, some cases have shown the powerful networking of criminals, weak surveillance and insufficient anti-human trafficking measures in areas of the open border. However, the Governments of both the countries are vigorously campaigning against women and girls' trafficking. Government has funded NGOs, vigilance and awareness programmes in the rural areas as well as urban.

The Nepal Embassy in Delhi is active to respond to such cases related to trafficking and provide assistance to Nepali trafficked victims to return to the country. The average number of girls' rescue in India and sent back to Nepal per month varies between four and nine but sometimes the number of victims exceeds 50 annually. To control the situation, India has enhanced the level of surveillance in the border areas in terms of installation of closed-circuit television in the transit points (Business Standard 2015).

²⁷ It has been noticed that the provision of Section 173(8) in The Code Of Criminal Procedure, 1973 explains - nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).

Chapter IV

Monitoring and Reporting on Anti-Human Trafficking Laws and Policies of Nepal and India

An effective prevention, no doubt, is an essential response to any form of crime. In the context of human trafficking in Nepal and India, a preventive measure has become an inevitable step of the state and civil society to minimise the crime of trafficking and re-trafficking in person (Mishra 2013:296). It only implies nipping the sin in the bud or complete obliteration even before the bud emerges. There is no denial that Trafficking in person is a crime which can be controlled and prevented with stringent responses from the government of the country, NGOs, INGOs and civil society, etc. Therefore, combating trafficking is considered as multi-dimensional effort and measures of the government including making laws, concerning on socio-economic problems, the strategy for rehabilitation and reintegration, awareness or guideline through different organisations (Nair 2010: 211). This chapter would throw light on anti-trafficking legislation and policies that have been formulated and implemented by the governments of India and Nepal. The role of the judiciary in fighting against human trafficking will also be the core of the chapter. Primarily, the role of Nepalese and Indian police in rescuing, rehabilitating and reintegration of trafficked victims is also highlighted as anti-human trafficking measures of the state.

In the context of anti-human trafficking measures, we can see the administrative structure, the role of stakeholders, NGOs and its function for combating trafficking in person. These preventive measures can be classified into three levels. These are 1) at international level by the different organisations, 2) on the regional basis, the role of its organisation against human trafficking can be seen and 3) at the national or local level, the role of the government agency and NGOs of the country against trafficking in person can be studied. In brief, in the international arena, we can observe the work of US Department of the State, International Labour Organisation, and United Nations Transnational Organised Crime etc.

In the region, we can see South Asian Association for Regional Cooperation (SAARC) is playing an important role in combating cross-border human trafficking. At the national level, we can examine the role agency of the government of Nepal and India and NGOs like Maiti Nepal, Shakti Vahini, Bachpan Bachao Andolan (BBA), Marg, Sunlaap Kolkata, and ABC Nepal in combating human trafficking. Furthermore, we can also see the Police Department, Intelligence Bureau, National Crime Report Bureau, the Human Rights Commission, Child Rights Commission or National Commission for the Protection of Child Rights, Legal Aid Services Authority, and Community Surveillance System against Trafficking (CSSAT) at national level of Nepal (ILO 200: 69).

Constitutional Provisions against Human Trafficking in Nepal:

Today we can see a movement against modern day slavery in Nepal got a widespread support from all corner of the world. Now, it has become a responsibility of the government of Nepal that how it minimises the increasing factors behind the trafficking in person within or outside the country. In the way of combating trafficking in person, Nepal government under any intolerable and unacceptable social and political situation has come forward to minimise the crime of human trafficking (Thapa 2002). Today Nepal's concern is to control the both unsafe migration and prevent the person from becoming the prey on the traffickers. Hence, the government is providing the alternative source to the people to earn their livelihood within the country. The government of Nepal has implemented several schemes in rural as well as in the urban area to tackle the push factors which contributed to the vulnerability to migration and trafficking. The new plan CSSAT (Community Surveillance System for Against Trafficking) provides a positive platform for women and ensures the youth's maximum participation to reduce their vulnerability to trafficking (ILO 2001: 69).

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from becoming the prey on the traffickers. Hence, government is providing the alternative source to the people to earn their livelihood within the country. The government of Nepal has implemented several schemes in rural as well as in the urban area to tackle push factors which make the person vulnerable to migration and trafficking. Importantly, after the ratification of Palermo Convention for Suppression of Transnational Organised Crime in 2011, the government has focused on multi-agency or collective action against human trafficking within or outside of Nepal (NHRC 2015: 96). As a matter of fact, today Nepal more emphasised on the three “P” frames - prevention, prosecution and protection which is actually seen as an inner meaning of the collective action of the state structure against human trafficking.

The structure of legal proceedings of Nepal against human trafficking took an extended period to reach today's position. Before commencement of the new 2015 Constitution of Nepal, the Interim Constitution dealt with the issue of human trafficking and human security in Nepal. For example, Article 29 of the Interim Constitution of Nepal, 2007 addressed all forms of trafficking in person and placed the procedure for punishing the culprit involved in the crime. It looked at all types of forced and bonded labour to abolish the serfdom. The provision of the Interim Constitution has mentioned that slavery in all forms is a gross violation of human rights and is a punishable offence.

In 2015, a landmark legal intervention of the new Constitution of Nepal concerning banning human trafficking in the country was cherished by all stakeholders.²⁸

Neelam Sharma, a Director of Free Slaves country, unequivocally said,

²⁸ According to the new constitution of Nepal it has come to know that “every person has the right to be protected from trafficking and slavery”. The Articles 29 (3) and (4) of the new Constitution says that every person has right to go against exploitation, and no person shall be subject to neither trafficking nor one be held in slavery and servitude. The Article 24 gives the right to the people to fight against untouchability and discrimination in all forms. The provision of this Article is not only mitigating the evil practices of the society, it will also end the factors like social and economic discrimination behind vulnerability to migration and trafficking.

‘It is a historic moment for Nepal and the victim of modern-day slavery because the new Constitution is going to address our issue of slavery and trafficking in a better way’ (Synder 2015:2-3).

Further, the study would examine the constitutional provision and its legal measure against illegally transportation and kidnapping the person in Nepal. In its first attempt the Muluki Ain of Nepal will be discussed below.

Human Trafficking of the Muluki Ain

The Chapter 11 of the Muluki Ain describes Human Trafficking inside and outside as a punishable offence in Nepal. There are total five sections which are related to illegal transportation of body of person within and outside the country (Das and Ebb 2008: 92). These are discussed below.

- 1) **Nobody** is allowed to take anybody else outside the borders of Nepal or sell him/her there, enticing him/her with the purpose of selling a human. If he/she is taken to a foreign land to sell and if the one who does so is arrested before he has sold him/her, he/she will be imprisoned for ten years, and if arrested after having sold, he/she will be imprisoned for twenty years. If the person who buys is found inside the borders of Nepal, he/she will also be punished as equal to the one who sells.
- 2) **Nobody** is allowed to separate or entice to separate a minor under sixteen years of age or a mentally disturbed one of any age from his/her guardianship without permission of the legal guardian. If he/she is separated or enticed, then one who involves in the crime will be fined an amount up to five hundred rupees or imprisoned up to three years or be given both punishments.
- 3) **Nobody** is allowed to make anybody else his/her servant, slave or bonded labour. The one who makes anybody else a servant, slave of bonded labour will be imprisoned for 3 to ten years, and the court will also be able to have the one convicted pay appropriate compensation to the one concerned.
- 4) Anybody who intentionally helps to commit a crime as mentioned in No. 1J2J3 of this chapter will receive half of the punishment that the major culprit receives.

- 5) If a human is sold or bought in accord with No. 213 of this chapter, the amount of the buyer will not be returned and the one who sells will be fined based the amount in addition to the punishment mentioned in these numbers.

In brief, we have seen above the section 1,2,3,4, and 5 of Muluki Ain (Chapter 11) of 1963 define the crime of trafficking in human beings as an act of taking any persons, by fraud or enticement, out of the territory of the country with an intention of selling, is a punishable crime with terms of 10 to 20 years for judicial custody. Any individual involved in the buying and selling persons is liable for punishment (Kapur and Jyoti 2000). Similarly, clause two and three on trafficking in Human beings prohibits strictly acting of enticing the person to separate him or her from their parent in guardian without the consent of his or her parent legal guardian. Such an act is punishable by a term of 3 years for judicial custody or a fine of five hundred rupees or both.

Human Trafficking (Control) Act, 1986

In 1986, the Human Trafficking (Control) Act was enacted to combat the growing traffic in women and girls for sexual exploitation. Section 4 of the Human Trafficking control Act considers the following acts as the crime of trafficking in human being:

1. Selling of a human being for any purposes;
2. Taking any person to foreign territory to sell;
3. Involving any women in prostitution by enticement, allurements, fraud, threat, or coercion, or by any other way or means; and
4. Abetting, assisting or conspiring and making an attempt to carry out any of the acts as mentioned above as per section 8 of the Act, liable of following punishments:
 1. 10 to 20 years of arrest for the crime of selling a person.
 2. 5 to 10 years of arrest for the crime of taking a person to a foreign territory with an intention of selling them.

3. 10 to 15 years of arrest for the crime of forcing women into prostitution.
4. 5 years of arrest for the offence of abetting, assisting, conspiring, or making an attempt to accomplish the acts mentioned above.

Trafficking in Person and Transportation (Control) Act, 2007

The government of Nepal brought the Trafficking in Persons and Transportation (TPT) Control Act, 2007 with aims at combating trafficking in person in Nepal and also from Nepal to destinations outside the country including India, Bangladesh, Pakistan, South East countries and Middle East countries (Department of States 2010: 246-249) As today Nepal is becoming a source country for human trafficking, it is found that traffickers, recruiters and agents of sex racket are also from the Nepali society. Therefore, the contribution of informer or whistleblower and witness is considered as a necessity to prevent trafficking and testify the evidence in favour of victims. However, sometimes informers may be reluctant to come forward with their testimony for fear of retribution. Therefore, the TPT Act 2007 provides security and protects the identity of the whistleblower to bring the culprit to the justice. Regarding the preparation of victim's centred benefits, the TPT Act 2007 provisions rights to victims to have a translator to uphold the court procedure. Because, in the maximum case, victims are unaware of the legal procedures and they don't understand the language of the court proceeding. At that time, they would not be able to judge and express them (Sarasa 2011: 23).

With the provision of having the counsel and interpreters, they will be in a position to know what is happening and how best they help the prosecutor to protect their rights and life. The manner in which safety of trafficked victims has become a questionable issue, demand for judiciary intervention and extra security measure placed before the Supreme Court of Nepal. In this regard, a key provision of safety of victims within the TPT Act, 2007 brought by the Court to conduct the camera trials. In the camera trial, there has been the provision to maintain confidentiality and protect the identity of Victims and

those involved. It will also prevent disclosing an identity of the witness to uphold the Court procedure further (Table IV.1).

Table IV.1

Trafficking in Persons and Transportation (Control) Act, 2007

Legislation	Section	Provision relating to Trafficking
Trafficking in Persons and Transportation (Control) Act, 2007	5	Protection of identity of whistle blowers.
	6	Once the trafficked person has authenticated her statement in court, it may be admitted by the court as evidence even if she does not appear before the court again.
	10	Shifting the burden of proof from the prosecution to the accused.
	11	Right to appoint an interpreter/translator if the trafficked person requires.
	12	Duty of government to rescue victims of cross-border trafficking
	17	Compensation to the trafficked person to be compulsory paid by the offender.
	27	Provision for camera trials
	26	Police protection for victim of trafficking while attending the court.

Source: UNODC (2011)

The landmark Judicial Verdict of the Court of Nepal

Trafficking in person takes place in both external and internal in Nepal. It can be viewed as a girl is trafficked within Nepal and she can also be trafficked and transported to India. Regarding external trafficking, Nepal has extra territorial law to prevent human trafficking. For instance, Human Trafficking and Trafficking (Control) Act 2007 and Trafficking and Transportation (Control) Regulation 2008 cover the crimes of HT and organ transplantation

and exploitation of women and labour exploitation within and outside the country. The HTTCA 2007 has another important feature such as if criminal or trafficker is citizen of Nepal and commits the crime outside country, or trafficked innocent person to foreign country India, then the Nepali Supreme Court or the High Court punish culprits and provide fifty percent of fine imposed on culprit as compensation through these two Acts.

The government of Nepal with the help of regional organisation SAARC and its Convention for Prevention and Protection (Control) Trafficking in Women and Children 2002 can make extradition request to country of her treaty partner and bring the culprit to the justice by the Supreme Court of Nepal also (Mishra 2013: 214-215). Besides, National Central Bureau for Nepal shares important information through International Criminal Police Organisation's (ICPO) secure global Police network. The NCB of Nepal maintains the record and consults to Nepalese ministries and governmental bodies about legal affairs such as extradition.

The role of judiciary of Nepal against trafficking in person is a vital part of anti-trafficking measures. It can be studied through the important judgments of the Supreme Court, Appellate Court and District Court of Nepal. The Supreme Court of Nepal has cognisance of the fact that a fair and systematic procedure can only bring the positive changes and do justice to the victims.

In 2013, the Supreme Court, first time after six years of implementation of HTTA 2007, ordered the government of Nepal to review and revise the section of the Human Trafficking and Transportation (Control) Act (HTTA) of 2007. Particularly, the section 15(6) of HTTA of 2007 makes the law if person who gives the statement in the Court at the beginning changes the statement latter or if a person is not cooperating with the court, then such person shall be punished. In this section court see the violation of rights and security of the person. So, it ordered to amend the 15(6) section of HTTA of 2007. In the following areas of HTTA of 2007 the Supreme Court gave a remarkable direction to the government of Nepal by saying that safety of person is his/her fundamental rights (Thapa 2015).

In the crime of HT we notice the safety of witness and informant is very important to punish the culprits and provide justice to the victims. The landmark judgment and direction of the Supreme Court for safety of witness and informants is remarkable in Nepal. The Supreme Court ordered to the government to strengthen the Section 17 and Section 26 of HTTA of 2007. The Supreme Court ordered to the concerned department of police to arrange the protection to the trafficked victims and informant as per section 26 of the HTTA of 2007. It also ordered to the Government of Nepal to establish compulsory fund to provide immediate compensation for the victims under the Section 17, just after the decision of the Courts through the concerned police officers. The case study of Tara Devi has explained the Court verdict and Judicial Procedure in Nepal.

In Permanent Resident vs HMG on the FIR of Tara Devi, Tara Devi²⁹ was lured by a man on the pretext of marriage and later she was sold to a brothel owner for sixty thousand in India. After few days, she was rescued by the Indian police and sent to Nepal. The question was raised whether the crime had been committed under the Human Trafficking Control Act, 2007 for the sale of women abroad. Since there was absent of witness, it seemed to be a tough to prove the testimony and references.

Despite the lack of evidence or nil witness, the court explicitly said that the activities amounted to trafficking and statement of the victim need to be considered trustworthy until otherwise proved by the defendant. Hence, the decision of the Court to take the statement of the victim as the first guide or evidence of the prosecution system against trafficker has encouraged the prosecutors to bring the culprit to the justice.

In the context of cross-border trafficking, in Urmila Thapa Magar case, Urmila³⁰ was crossing the border with the acquaintance (Thomas 2010: 65). The border police prevented them from crossing the border, and the case went

²⁹ Criminal Case No. 1042 of 2051 BS, See also, Dr.Thomas, Sarasa (2011), *Response to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka*, UNODC, New Delhi.

³⁰ The case of trafficking in person named Urimila Thapa Magar v Krishna Prasad Pudasaini has been studied from the Criminal Appeal No 1610 of the year 2051 BS in Kathmandu Court.

to the court. The border police apprehended the trafficker even though the girl was still in the territory of Nepal. Now the question was raised whether the case falls under cross-border trafficking or not. The Court held that the crime of transnational trafficking which contains the higher penalty under the laws of Nepal, if, firstly, when the case is proved as a trafficking and secondly, trafficking is for the purpose of taking the person to another country. Nevertheless, the landmark verdict of the Nepali Court succeeded to protect the victim of trafficking and rendered the extra-territorial power to the government of Nepal to prevent trafficking in person within or outside the country.

In addition, the District Court of Makwanpur gave a landmark judgment in favour of trafficked victim Rani (name changed). Though the court took a long period of time to testify the evidences and complete the procedure, judgment ensured the justice and rights of victim. According to the police record and her statements, it has come to know that she was trafficked from Makwanpur district of Nepal to a brothel in Mumbai in 1994 for Indian Rs. 30000. Indian police helped her to return back to Nepal. After returning on 12 April 1995 she filed FIR in the district police station. The trial was held in Makwanpur District Court. The District Court took her testimony on 13 April 1995. Though the District Court of Makwanpur took a long time for procedure and victim also died due to HIV infection, finally it ordered perpetrator Mrs. Syanktan to be imprisoned for 10 years and fined Rs. 30000 under the provision of HTTA of 2007 and Trafficking in human Beings (Control) Act of 1986.

Miscellaneous Legislation with Regard to Trafficking in Person:

Nepal has a number of other legislations to address the crime of human trafficking. Importantly, they will cover the issue of child rights, bonded labour, employment, regulating of the job placement agencies and criminalizing many offenses like procuring, buying and selling human beings, importing or exporting people which are not explicitly dealt by the HTTA of 2007.

As we have already discussed above the government of Nepal has started the scheme for community surveillance system against trafficking (CSSAT) as an emerging model for prevention. It is as mechanism which looks after the socio-economic problems and people's vulnerability to trafficking also (Kapur and Jyoti 2000: 17). It aims at organizing the collective participation of the community to prevent trafficking. Therefore, it stresses on gender equality, socio-economic opportunities for all sections of people, increasing access to education and skill development program for youth mainly girls and women. It adopts a preventive approach to addressing the problem at its source.

It has built up the " Protection Triangle" as a network of people between ordinary citizen, women, in particular, local authority and school teachers. The protection triangle launched three major training for women and men in rural as well as urban areas of Nepal. For example, at the village level, CSSAT began its first paralegal training in Sidhupalchok district with 24 paralegal committees. They have worked effectively to promote awareness and protect women and child rights and eventually, achieved tremendous changes in the society.

There is policy and scheme implemented by the government of Nepal with regard to prohibition of HT for physical and sexual exploitation (Nair 2005: 190-194). Concerning the menace of child trafficking for physical exploitation Nepal brought law to prohibit and punishes person involves in the crime through Child Labour Act 2000 and Children Act 1991.

As we have noticed placement agency became a part of the sex racket, today the number of trafficked Nepali migrant workers is increasing day by day. They are trafficked to foreign country with fake documents (IMO 2015). Therefore, government checks procedure of leaving the country on overseas work to provide safety to migrant workers through Foreign Employment Act 1998 (Table IV.2).

Table IV.2**Miscellaneous Legislation Relevant to Trafficking**

Legislation	Section	Details of the Provision
Children's Act, 1991	16	Prohibits and punishes involving a child in an immoral profession.
	18	Prohibits employing a child in work which may have an adverse impact on the life/health of a child.
Foreign employment Act, 1998		It has provisions which in general prescribe a number of safeguard and requirements to be met before leaving the country on overseas work.
Child labour (prohibition and regulation) Act, 2000	3 (1) and 3(2)	Prohibits and penalizes employment of children below 14 years. And prohibits and penalizes employment of any child in hazardous work.
Muluki Ain	Chapter 11 (1)	Taking any person out of the country for sale is prohibited.
	11(2)	Prohibits separation of minor/person with mental disorder without the guardian's consent.
	11(3)	Making someone a servant/ slave/ bonded labor is prohibited and punishable. Also, compensation is to be paid to such person.

Source: UNODC (2011)

At an international level, Nepal's position as state party of major human rights instruments is discussed and explains its role against trafficking in person (Table IV.3).

Table IV.3**Status of Conventions Signed/Ratified by Nepal**

Name of Convention	Status
UNCRC	Signed on 26 th January, 1990 and Ratified on 14 th September, 1990.
Optional Protocol to CRC on sale of Children, Child Prostitution, Child Pornography	Signed on 8 th September, 2000 and Ratified on 20 th January, 2006.
Convention on the Suppression of Immoral Traffic and of the Prostitution of Others	Date of Accession: 10 th December, 2002.
ILO Convention 138 Minimum Age for work	Ratified on 30 th May, 1997. Minimum Age Specified: 14 years.
ILO Convention 182 Convention concerning the Prohibition and immediate Action for the Elimination of the worst Forms of Child Labour	Ratified and Nepal has been involved in the outlawing of the <i>Kamaiya</i> system of bonded labour which involved children as well as adults.
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Signed on 5 th February, 1991 and Ratified on 22 nd April, 1991.
SAARC Convention of Preventing and Combating Trafficking in Women and Children for Prostitution 2002 and SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia	Signed on 5 th January, 2002.
UN Convention against Transnational Organised Crime	Signed on 12 th December, 2002 and ratified in 2011

Source: UNODC (2011)

Table IV.3 mentioned above explains the government of Nepal has signed and ratified the major international convention of ILO 138 of minimum age for work in 1997. Importantly, it has also signed and ratified ILO 182 Convention to define the nature of a worst form child labour exploitation including the *Kamaiya* system of bounded labour which involves poor children and minor

girls. At the regional level Nepal signed SAARC Convention to combat trafficking in women and girls for prostitution which gives Nepal extra territorial power after 2002. It has also ratified UN Convention against Transnational Organised Crime in 2011.

Gaps in the Legal Framework on Human Trafficking in Nepal:

In Nepal, there are many legal provisions for the protection of human security and human rights. Theoretically, the government of Nepal has made a several provisions but, in the practical, they seem an inadequate (Datta 2012: 86).

In prosecution process, trafficking is not often seen as organized crime. So, provision relevant to organized crime is not used to trial or prove the testimony of victims of organized cross-border trafficking. The prosecutions over all seem not satisfactory and judges who are dealing with the issue of trafficking never seen sensitization the issue of trafficking. There are also gaps in protection mechanism. These are;

- 1) Financial support for poor people who are vulnerable to trafficking is not sufficient. On the other hand, atmosphere for the safety of victims are not systematically set up, and the program for protection of witness has not been established.
- 2) In prevention measures, we see training for police personnel and security staffs at border areas are done sporadically. So, they never make out the tricks of traffickers and eventually, innocent women and girls are easily trafficked from Nepal to India or other destinations in the world.
- 3) While there are some initiatives, have been taken by the community, civil society and NGOs about women and child protection, but these are not enough to prevent trafficking.
- 4) Since recruitment agencies are often seen as a part of sex rackets and busted by police, there is no satisfactory monitoring system for checking their background and licensing of recruitment agencies in Nepal.

Key Recommendations for Nepal

Nepal needs to go all out to change and implement correctly all the ratified policy and the laws. For example, a systematic implementation laws provide a standard blueprint and a comprehensive legal framework to tackle trafficking in person in better ways. There should be sympathy and sensitivity from the government official towards the victim who has been trafficked. Since there is no constitutional provision to prevent the organised crime or cross-border trafficking, the issue of trafficking within or outside the country must be seen as organised crime in criminal procedure and substantive criminal law. So, it may also prevent trafficking in person through the open border. Regarding conduct an efficient prosecution system Nepal must have separate designated courts and trained and skilled judges to deal with violence against the security of women and children. Regarding recommendations for protection, the study says that sometimes government officials never ready to accept the victims of cross-border trafficking. Owing to their callous attitude, the victim falls prey again to traffickers and re-trafficked. So, Nepal should always be ready to accept their national who have been trafficked.

The rescue operation can't give the new life to the victims of trafficking unless victims are provided social and economic security by the government after rescuing operation. Therefore, rescue operation of police must go along with adequate rehabilitation and must be done in a gender sensitive way. The state must commit finances to more and better schemes to rehabilitate the victims. There must be the agenda for the protection of the witness and create an atmosphere free from fear within which all the evidence can be trialled and testified in the favour of the victim (Maiti Nepal 2015). The anti-trafficking measures must be theoretically and practically corrected and implemented. Importantly, employment and recruitment agencies must be carefully monitored. The government of Nepal needs to organise a greater awareness program on the recruitment agencies and employment rights to control the menace of trafficking in person in Nepal. Therefore, it needs to formulate the law and apply the policy with the help of NGOs and civil society. Similarly Nepal needs to cooperate her neighbour states especially India to prevent cross-border trafficking.

Lastly, the cross-border trafficking between Nepal and India can't be tackled without both countries cooperate and move ahead by matching their policy, laws and action.

The Role India against Human Trafficking:

No doubt, India is a source, destination and transit country for trafficking in women and girls for commercial sexual exploitation (Ashok 2016: 3). According to Virendra, demand for Nepali girls and women from Nepal and north-east region of India is on rise in Indian cities mainly Mumbai, Delhi Uttar Pradesh, Kolkata, Haryana, Punjab and Rajasthan due to huge flesh market, demand for prostitution and the low sex ratio caused by sex selection abortions (Mishra 2015: 45). If we see the legal intervention in India, India ranks Tier 2 country position with regard to the legislative action against human trafficking (U.S. Department of State 2016: 2-3). It means that India does not fully meet the TVPA's minimum standards. But, by looking at the work force and strict surveillance it can be assumed that India's legal action is thriving to meet those standards soon. The legal action of India against the crime of human trafficking is based on constitutional provision, legal Acts, IPC of 1860 and Cr.Pc Act of 1973.

An Article 23 of the Indian Constitution deals with prohibition trafficking in human being and forms of forced labour (Nair 2005: 194-197). It is a legal intervention of the state which is justifiable by the law of the land and the Court of India can directly enforce it. On the other hand, an indirect intervention of the state can be viewed through Article 39(e) and Article 39(f) of the Constitution of the Directive Principles of the State Policy. Both Article 39 (e) and 39 (f) deal with individual rights and condemn the forced labour against a consent and age of the individual (Metha 2016: 650-667).

Though, the provision in the Directive Principles of State Policy does not mention the term "Trafficking", it discusses a term "exploitation" which is considered an essential element in trafficking in person (Table IV.4).

Table IV.4

Constitutional provision against Human Trafficking in India

Article 23	Fundamental Rights prohibiting in human beings and forms of forced labour.
Article 39(e)	Directive Principle of State Policy directed at ensuring that health and strength of individual are not abused and that no one is forced by economic necessity to do work unsuited to their age or strength.
Article 39(f)	Directive Principle of State Policy stating that childhood and youth should be protective against exploitation.

Source: UNODC (2011)

As we have seen the provision of the law against human trafficking in Table above mentioned above, it has come into being that the crime of human trafficking is against fundamental rights of a person. Article 23 of Indian Constitution secures the rights of the individual. It says that trafficking in person is an illegal trade in a human being for the purpose of physical and sexual exploitation (Department of States:171-176). It directly deals with the movement against exploitation. In the Table number 21, we have also noticed that the Directive Principle of State Policy (DPSP) is functioning as a protective measure and prevents a person from exploitation (39f). Now we discuss the provision of 1860 India Penal Code against HT in India below.

1860 Indian Penal Code and its Provisions against Trafficking in Person:

Today, in the legal criminal procedure, 1860 of Indian Penal Code against trafficking in Person is considered a structure to define the nature of the crime and Code of Criminal Procedure 1973 show the mechanism by which the Court of India conducts the criminal trial or prosecution (Nair 2010: 107-168). The study will discuss Code of Criminal Procedure further while examining the Court procedure against human trafficking in India later.

Trafficking in person is not a new occurrence in India. India under the British regime also witnessed several crimes of abduction, buying and selling the minor girls and women, etc. At that time the Indian Penal Code (IPC) of 1860 aimed to deal with crime including procuring, buying and selling, importing or exporting person mainly women, girls with force for the purpose of trafficking, marriage, slavery and others (Sarasa 2001). The IPC of 1860 and the Section 366A, S 366 B, S374, 293, 294, 317,359, 373,375, 339, 340, 341, 354, 359, 373, 376, 366A, 366B, 496, 498, 509 and 511 are significant with regards to TIP.³¹

Immoral Trafficking Prevention Act, 1956 (ITPA, 1956)

It castigates trafficking of women and children for commercial sexual exploitation (Mishra 2013: 253-269). Some of the major elements of the ITPA, 1956 for combating trafficking include procuring, inducing or taking a person for exploitation, detaining a person in premises where prostitution is carried on and soliciting (Nair 2005: 186-190). Regarding rescue the victims and rehabilitation, the Act also provides the rescue operation on the directions of a Magistrate.³² To ensure gender sensitivity during the investigation of cases, the ITPA 1956 provides the women police officer during the search procedure and the interrogations period to make the console atmosphere for women and girls victims (Table IV.5).³³

³¹ Section 366 A makes the procurement of a minor girl below the age of 18 years from one part of India to another is punishable and Section 366 B makes the importation of a girl below the age of 22 years is punishable offence in India. See also, S 374 it makes it clear that compelling any person to labour against their will is punishable according to IPC of 1860 (Nair 2005: 194).

³² Section 16 of the ITPA, 1956

³³ Section 15 of the ITPA. 1956

Table IV.5

Immoral Traffic Prevention Act, 1956

Legislation	Section	Prevention measure
Immoral Trafficking Prevention Act, 1956 (ITPA)	3	Brothel keeping
	4	Living on the earnings of prostitution of others.
	5	Procuring, inducing or taking person for prostitution.
	6(1)	Detaining person in premises where prostitution is carried on.
	6(2)	Presumption of offence if a person is found with a child in a brothel.
	7	Prostitution in the vicinity of public places.
	8	Seducing or soliciting.
	9	Seducing of a person in custody.
	15	Two women police officers to be present during search and interrogation is to be done by a women police officers.
	16	Rescue on Magistrate's directions.
17	Intermediate custody in a safe place, not with those with a harmful influence over her.	

Source: UNODC (2011)

We can see Table IV.5 mentioned above which shows the Section of ITPA 1956. As it has been shown inside the Table, it is a legible to understand that procuring a person for prostitution and keeping the brothel in the public place is a punishable offence by the Section of 5 and 3. Importantly, ITPA 1956 has made it clear that a person involves in the crime of TIP and carry out the profession of prostitution in the public place by procuring victims is illegal act of living on the earning of prostitution is a punishable offence in India (4).

India has other punitive laws to deal with human trafficking. Importantly, some of them cover many themes as children, women rights, Juvenile Justice (Care and Protection of Children), Child labour, pledging of the person for labour and marginalized groups in India (Nair 2010: 107-127) (Table IV.6).

Table IV.6

Legislations with regard to Trafficking and Physical Exploitation

Legislations	Section	Details of the provision
Prohibition of Child Marriage Act, 2006	12	Child marriage void, if after the minor is sold or trafficked or used for immoral purposes.
Children (pledging of labour) Act, 1993	4-6	Penalties for pledging labour of children (less than 15 years).
Bonded labour system(Abolition) Act, 1976	16	Prohibition of compelling a person to render bonded labour or forced labour.
Child Labour (prohibition and Regulation) Act, 1986	3	Prohibits child work in certain employments.
Juvenile Justice Act, 2000	2(vii)	A child in need of care and protection includes one who is vulnerable and likely to be trafficked.
	24	Prohibits employment of child for begging.
	26	Procuring juveniles for hazardous employment or bonded labour is

		punishable
Scheduled Castes and Scheduled Tribes (prevention of Atrocities) Act, 1989	3(vi)	Compelling or enticing a member of SC or ST
	3(xii)	Using a position of dominance to sexually exploit a SC and ST women

Source: UNODC (2011)

Today, the government of India with its child and women welfare agency are coming forward to prevent a child from being exploited and used for illegal activities. In the context of child protection and ensure prohibition of trafficking in children, India has made a list of Act and policy. The Table mentioned above, explains that there are penalties for pleading labour of children less than 15 years through the Section 4-6 of Children (pledging of labour) Act, 1993. Similarly, the Bonded Labour system (abolition) Act 1976 (Section 10) prohibits the act of forcing a person including a child and minor girls for labour (Mishra 2013).

Recently, India brought Juvenile Justice Act, 2000 to protect the right of children and stop child exploitation. In the first section of the JJ Act 2000, the Section 2(7) explains that a child in need must be given care importantly who are vulnerable and likely to be trafficked for physical, sexual exploitation and for begging (24). It also suggests that procuring juvenile for hazardous employment for bonded labour is a punishable offence.

Human trafficking is a global problem. In spite of having a worldwide movement, a menace of evil practice of trafficking in person has been increasing rather than decreasing. If one country seems a source of trafficked victims, then other looks a recipient of victims. Therefore, it is now being recognised as a global problem which can only be resolved with a support of every country in the world. India has signed and ratified the number of the convention for preventing human trafficking and transnational organised crime (Table IV.7).

Table IV.7

Status of Conventions Signed/Ratified by India

Name of convention/ protocol	Status	Comments
UN convention on the Rights of the Child	Date of Accession: 11 December, 1992	In India Juvenile Justice Act, 2000 also focuses on children rights and protects a trafficked child and vulnerable child to trafficking and provide care and protection.
Convention on the suppression of Immoral Traffic and of the prostitution of Others	9 May, 1950	It has become the basis of the ITPA, 1956 in India, which also focus on core statute on trafficking for commercial sexual exploitation in India.
ILO Convention 138 Minimum age convention and ILO Convention 182	Recently ratified by India in 2017	A very positive step of government of India to protect rights of children.
Option Protocol to CRC on Sale of Children, Child Prostitution, Child Pornography	Signed on 15 November, 2004	Child protection and stop child exploitation in the all form the first priority of legal intervention against trafficking in India.
ILO Convention 182 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst forms of Child Labour	Recently ratified by India in 2017	A stringent step of India against child exploitation and prevent child from being used and exploited for illegal business.
Convention on	Ratified on 9 July,	India is a huge a

the Elimination of All Forms of Discrimination Against Women (CEDAW)	1993 a declaration/reservation	diverse country with society in patriarchal in nature. There is discrimination in the name of gender. The legislation CEDAW can mitigate the gender discrimination in India.
SAARC convention of Preventing and Combating trafficking in Women and Children for Prostitution 2002 and SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia	Signed on 5 January, 2002, at the Eleventh SAARC Summit in Kathmandu on 4-6 January, 2002	In the regional level SAARC convention of preventing and Combating trafficking will not only provide a anti trafficking prevention measures in India but it will also provide a prevent the cross-border crime between the two countries.
UN Convention against transnational Organised Crime	Signed on December 12, 2002	
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children	Signed on December 12, 2002	
Protocol against the Smuggling of Migrants by Land, Sea and Air	Signed on December 12, 2002	

Source: UNODC (2011)

India's journey against trafficking in children, women and girls for physical and sexual exploitation had begun a long time back when it had first time emphasised on a prohibition of immoral traffic and prostitution in 1956. It was found that India had a zero percent toleration for the crime of TIP. We see India has ratified SAARC Convention for Prevention and Protection (Control) Trafficking in women and children in 2002. With SAARC Convention India has strengthened the measures against cross-border human trafficking and it can also bring the culprit to the justice with the help of provision of SAARC Convention for preventing human trafficking. After 61 years again India has shown her generosity and clear position against the criminal offence of trafficking in person including children and women by ratifying ILP Convention 138 and ILO Convention 182 to protect rights of children and prevent them from being exploited in 2017 (Table IV.7). Recently, India ratified international ILO Convention of 138 and Convention 182 against child labour exploitation (Press Trust of India 2017: 3-7).

It seems India has taken stringent steps against physical exploitation of children and set an example in front of the world. Both ILO Convention of 138 and 182 are considered as a watch dog for child rights and prevent children from being exploited. The ILO Convention of 138 which sets the minimum age for admission to employment and the Convention of 182 which penalise and prohibits the worst form of child labour including trafficking for forced labour, the use of children for prostitution, pornography and illicit activities or hazardous work. Importantly, according to Article 2 of ILO Convention of 182, it works as the supplement for Convention of 138 on the minimum age required to participate in a work which is the worst form or hazardous.

For example, Article 3 (b) of 182 deals with protection of children below 18 years old from being used to commit a crime and prohibits procuring or selling the child for prostitution and production of pornography.

In South Asia, India can be looked as a country with its massive population and a huge landscape. Despite an implementation of strict law and order, it is ostensibly noticed that governing body of the state is chasing several problem within a country. Of these, no doubt, human trafficking for sexual commercial

exploitation, organs transplantation and physical labour are the noticeable today. Many girls and women are trafficked to India from Nepal, Bangladesh and Sri Lanka by both the Indian traffickers and traffickers from the place of victims of trafficking. We have already discussed in the previous chapter that trafficking in person is conducted by both single- handed as well as in a joint operation as a sex racket. Regarding arresting, prosecuting and punish traffickers India's action seems stringent and all the work of criminal procedure would against crime is conducted by the Court according to the law of the land mainly Indian Penal Code 1860 and 1973 of Criminal Procedure Code.

The Court Procedure in India against the Criminal Offence

A criminal offence such as trafficking in person from Nepal to India or within India is heard in the district court, then may proceed to a High Court for appeal and eventually, to the Supreme Court for the final verdict (Nair 2005) . At the preliminary stage of the hearing, the prosecution presents its case before a magistrate. All evidence collected by the police during their investigation will be produced in court. The arrested person is given a chance to be heard or given more time to set up his or her defence. The magistrate decides whether there is sufficient evidence for trial or not. If the judge determines that the investigation is not satisfactory, the case will be sent back to the investigating officer for additional investigation. If the magistrate determines that there are insufficient evidence and no offence, the arrested person will be discharged and released. If it is decided that there is sufficient evidence, the case will proceed further to trial in the higher judiciary. The arrested person could remain in custody until the trial is concluded.

During the trial, the prosecution presents its evidence of case against the detainee (arrested person) and the defence has the right to submit arguments against the case. An arrested person is given a chance to be heard by the court and explain the facts and circumstances appearing in the evidence against him or her. Both prosecution and defence can present evidence and call witnesses for examination and cross-examination. After final arguments have been made, the trial is concluded with a verdict of the court.

There are mainly three different ways to initiate and reach out the conclusion during the judicial procedure like arrest, prosecute and acquittal or punish the culprits by the court of India. Since India has a feature of the single unitary legal system in the whole country along with its hierarchical nature, all the court from bottom to top follow only the law of the land. And, the Court gives its fair judgment over case with its provided jurisdiction. However, The Supreme Court of India has a higher authority and its rule or verdict would overwhelm the judgment of the High Court and other Subordinate Courts.

Regarding the criminal offence of human trafficking an action of Indian judiciary, there is a separate Indian Penal Code of 1860 (IPC of 1860) and the 1973 Criminal Procedure Code (Cr.PC of 1973). If on the one hand IPC of 1860 enlists the various crimes and their punishment, then CrPC of 1973, on the other hand, reveals a procedural law which lays down the method or technique to be followed by the Court of India (Nair 2005 : 186). According to CrPC of 1973, Indian Criminal Law applies to both citizens of India who commits a crime inside or outside India and citizen of a foreign country who commits the crime in India.

The Code of Criminal Procedure of 1973 along with the provision of IPC of 1860 explains that with regard to the criminal offence of Narcotic Drugs and Psycho Tropic Substance Act, and Foreign Exchange Management Act, Indian police can arrest, initiate the prosecution and the Court punishes the trafficker or criminal from India or Nepal (foreign country) when he is caught by Indian police while committing the crime in India.³⁴ For example, offences

³⁴ It has been noticed that CrPC 1973, 5(41) with its provision clearly describes that (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

1[(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

(1) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(2) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

committed by the subject of India or Nepali citizen, in the first place the nature of the crime is recognised, considered, determined, and after arresting the culprit an initial stage of an investigation, and a prosecution will be conducted by Indian Police and the Court according to Code of Criminal Procedure 1973.

The Code of Criminal Procedure of 1973 (Cr.PC 1973) and Indian Penal Code 1860 are a comprehensive set of rules that defines the nature of crimes, the power of police, judiciary and lays down the principle to be followed in the conduct of an inquiry or trial. With regard to the crime of human trafficking it has been noticed that if the crime is committed by Nepali citizen alone or joint operation between Indian and Nepali traffickers arrested in India while committing the crime of trafficking person from Nepal to India, the initial Court procedure and trial will be begun in the Indian Court according to CrPC of 1973. During police investigation and prosecution in India, the sole power and authority is vested in police and judicial system of India (Cr.PC 1973: 34).

The four important parts of the criminal procedure are followed against arrested person from the foreign country during an investigation of the case. These are,

- 1) Any criminal from a foreign country may be initially held without official charges for up to 24 hours.
- 2) He/ she may be detained for up to 3 months or longer for complex crime, while the investigation is ongoing.
- 3) The trial process can be lengthy and may extend for up to several years in a particularly complex case. And
- 4) India judicial system can allow culprit to hire or bring their lawyer.

(d) To prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer.

In the context of an investigation, arrest or conducting a trial against a criminal to punishing, it has also been noticed that if a citizen of India commits the crime of anything or human trafficking in Nepal or another foreign country, then he or she is subject to the judicial system of India. At that time India requests its extradition treaty partner to extradite or surrender the culprit to India. But, it is a matter of the foreign country, whether she is a partner of an extradition treaty or not, to consider India's extradition request following its domestic laws and procedures by an assurance of reciprocity. However, in the maximum case extradition treaty will suffice to bring culprit back to India to punish him.

Concerning the second part of the criminal procedure for arresting and punishing criminal, it is noticed that India is a member of INTERPOL of 190 countries. India's National Central Bureau (NCB) stands for assistance and support the country to work together with other nation on cross-border crimes. Importantly, in the context of transnational crimes such as trafficking in person and arms smuggling between India and Nepal we see a connection of INTERPOL department of both India and Nepal. It is helping each other to share the information, investigation on criminal cases and draw the plan to staunch the crime wave in the region.

Landmark Judicial Pronouncement against Human Trafficking in India:

The legislation and constitutional guarantee as a legal intervention of India against trafficking can also be seen in the form of important verdicts given by the Supreme Court and the High Court in India. In India, judicial intervention into the matter of ensuring the Constitutional guarantee of rights to live in dignity and stop trafficking in girls, children and women for CSE (commercial sexual exploitation) and physical exploitation is always considered preventive measures (Nair 2005). There are judgment made by the Supreme Court and High Court of India over particular cases of human trafficking in favour of trafficked victims and their rights. There have been some principles laid down by the High Court and the Supreme Court, which have had a positive impact on intervention of the judiciary against trafficking in person in India. The verdict of the Court of India mainly focuses on 1) victim's rights, 2) the

appropriate direction to the government, 3) fair trial and investigation, and 4) the protection of the victims of trafficking.

The recent landmark judgments of the Supreme Court and High Court of India against brothel owners, traffickers, and pimps have become exemplary action against the crime of human trafficking. The judgment of the Court is made in favour of trafficked victims and to punish culprits are based on the investigation of the cases, verify the evidence, process of prosecution and the record of the testimony of victims. Importantly, during trial, prosecution, testifying the facts of the crime and the final decisions are taken by the Court through the provision of ITPA of 1956, Criminal Procedure Code 1973 and Section of IPC of 1860. There are many judgments so far given by the Supreme Court and High Court which brought revolution in the process of taking a strict and speedy trial against exploitation of human being. Besides, with the landmark judgment of the Court, government set up the committee, infrastructure for rehabilitation or shelter home, the schemes for provision of the reintegration of victims with their family, provision of their health development and economic provision of their livelihood and dignified life in India. The major landmark judicial verdicts and intervention are discussed below.

Gaurav Jain vs. Union of India and other (1997 8 SCC114)

Petitioner; Gaurav Jain vs Respondent Union of India & ORS

Date of Judgment; 9/7/1997

Bench K. Ramaswamy

In Gaurav Jain vs. the Union of India case, the farseeing vision of the Supreme Court judges was noticed (Nair 2005: 224-235). The issues of right to be free citizens; right not to be trapped again are the part of the judgment. The Supreme Court held that trafficked victims (sex worker) are also a part of society and children of sex worker also need protection to stop them from becoming more vulnerable to being trafficked and exploited in the future which may continue the cycle of human trafficking and slavery in India. So, they should be segregated from their mother and allowed to mingle with other and become a part of the society.

The writ petition was filed by Gaurav Jain by focusing on the issues of right to be free citizens; right not to be trapped again; readjusted by economic empowerment, social justice and self-sustenance thereby with equity status in society. The Supreme Court of India gave important direction to government to make a depth study of the problems of prostitution, child prostitutes and schemes for rehabilitation of children of prostitutes. It has come up with the law to recognise and treat the victims of heinous crime of human trafficking as a citizen of India.³⁵ Therefore, judgment pronounced that before investigation rescued prostitutes or trafficked victims should not be treated like criminal.

The judgment also brought the ways for provision to render a correct method to rescue and rehabilitate to victims. It is also found that decision of the Court gave importance to the life of children of prostitutes as meaningful and valuable to the nation.

In this case the Supreme Court of India took the drastic step against exploitation of children for sex trade and provides a social status to trafficked victims.

It was the second time after Lakshmi Kant Pandey vs. Union of India case (1984) that the Supreme Court made a direct declaration that children are a 'Supremely important national asset' and 'the future well-being of the nation depends on how its children grow and develop'. So, every child has right to live like children of other normal society. Eventually, the Supreme Court declared that 'children of prostitutes should not be permitted to live in the inferno and the undesirable surrounding of prostitutes homes'.³⁶ To have fair and smooth investigation in the process of crime and break the nexus between criminal and corrupt police official the Court also order the CBI (Crime Branch of India) to look into the matter seriously and investigate correctly.

³⁵ According to Article 6 of Universal Declaration of Human Rights, everyone has the right to recognition everywhere as a person before the law. The victims of flesh trade are equally entitled before the law to the recognition as equal citizens with equal status and dignity in the society.

³⁶ 1997 8 SCC114

Vishal Jeet vs. Union of India and Ors on 2 May 1990, 3 SCC 318³⁷

The petition was filed under the provision of Article 32 of the Constitution of India to seek direction for –

- 1) Inquiry against police officials under whose jurisdiction the malady of forced prostitution, Devdasi were flourishing.
- 2) For rehabilitation of the victims of this malady (Thomson 2011: 26-33).

The direction of the court regarding an inquiry and eradication of the malady of prostitution was declared according to the existing law of the land. For example, Art 23 (1) deals with traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Article 39(e) (f) makes government of state has obligation to safeguard the interest and welfare of the children and girls of the country. Similarly, the Section 373, 372, 366A and 366B of IPC of 1860 and the Juvenile Justice Act, 1986 Sections 13 and 15 were also used while taking the judgment.

The historic decision of the Supreme Court brought the new movement in the context of protecting the rights, liberty and life of person in India. In this case it has been noticed that the scientific and rational spirit of judiciary never allow the obnoxious and abominable crime against human being in the name of God and Goddess. The court declared that if someone acts to force girls and women into prostitution in the occupation of Devadashi and Jogni system, then his or her action is considered an illegal and punishable offence. In this regard, the judgment of the Supreme Court of India in Vishal Jeet vs. Union of India case of 1990 did the landmark verdict and brought three important directions.

These are,

- 1) Call for evaluation of the measure adopted by the central and state governments to ensure the implementation of laws against Jognis and Devdashi system in India.
- 2) The court called for the severe and speedy legal against exploiters such as pimps, brokers and brothel owners. lastly,

³⁷ Please see; Equivalent citations: 1990 AIR 1412 1990 SCR (2) 861 , Bench: Pandian, S.R (J) and Reddy, K Jayachandra, Date of Judgment 02/05/1990

- 3) Sitting up of a separate advisory committee providing rehabilitative stay homes for effectively dealing with the Devdashi system and Jogins tradition in India.

Before Supreme Court's verdict against Devdashi in 1990, the issue related to the crime of trafficking in person through practice of Devdashi system was not a debatable topic in the mainstream of India. After the judgment of Vishal Jeet vs. Union of India, crime like domestic violation, rape and trafficking in women and girls became the burning issue in India. Importantly, judgment for sitting up of a separate committee to investigate the matter regarding the crime of human trafficking provides investigation of practicing of Devdashi system, the fair trail, punishment and dignified life to trafficked victims. Finally, it brought a law to prevent a sexual exploitation of girls in the name of God and Goddess in the temple.

A landmark Judgment of the Delhi High Court

Shyam Sundar Lal Gupta vs. High Court of Delhi and Ors (Ministry of Welfare, Lt. Governor of Delhi, Chief Secretary of Delhi, Delhi Administrative and SHO Kamala Market Police Station)

An honorary chairman Shyam Sundar Lal Gupta (petitioner) filed a writ petition in the Delhi High Court on behalf of the Honest Organisation.

The record of the fact of petition explains that petition (Crl. W. No.532/92) where Chairman Shyam Sundar Lal Gupta vs. Ministry of Welfare, Lt. Governor of Delhi, Chief Secretary of Delhi, Delhi Administrative and SHO Kamala Market Police Station (respondents) was to seek the intervention of the High Court for directing the concerned officials to ensure the appropriate enforcement of the provisions of the ITPA of 1956 (Thomson 2011: 28). After summoned the various officials, NGOs working in the field and listening to their statement before the Court, the High Court of Delhi initiated several proactive steps. The High Court came to know the fact that *Delhi became a top destination for trafficked girls and women from different parts of India as well as from Nepal and Bangladesh*. And, the demand for prostitutes

increased year by year and girls and women had been trafficked for Commercial Sexual Exploitation (CSE). The High Court also came to know that failure of concerned body and agencies of the government to prevent crime have resulted in growing the menace of human insecurity and crime of human trafficking. Therefore, the Delhi High Court ordered and gave specific direction to the concerned agency of the government to rescue, rehabilitate and reintegrate the victims of trafficking.

Besides, the senior official of the state in which the highest number of cases of missing and trafficking in girls and women had been registered were also called and summoned. For example, the senior officials of Uttar Pradesh, Bihar, and Rajasthan were also summoned to ensure that the provision of ITPA of 1956 is well functioning or not. Importantly, the concerned officials of Delhi were made accountable to ensure the provision of ITPA of 1956 in order to combat trafficking and re-trafficking in person. At the same time the High Court had also declared for empowering the victims socially and economically. Judicial intervention of the Delhi Court had made remarkable changes in the trafficking scenario which has been widely appreciated. The positive outcome of the judgments of the High Court was clearly seen particularly in the police functioning as well as law enforcement scenario in Delhi. The landmark decision of the High Court of Delhi impacted on law enforcement body of other states in India as well.

As a result of the Court verdict, it was noticed that during 2001 to 2003, 28 traffickers/ criminals were convicted in Delhi as comparison with the previous year record where the conviction of traffickers and other exploiters was rare and almost nil (Nair and Sen 2005: 127). As a part of such judicial activism the court ordered the closure of several Kothas (brothels) in Delhi under the law of ITPA of 1956 and facilitated the promotion of the interest of women and children within a human rights paradigm by bringing policy and programmes for effective response.

Prajwala vs. Delhi High Court in 2004

A writ petition was filed in the Delhi High Court by Aparna Bhat (petitioner) filed a petition on behalf of NGO Prajwala in the High Court of Delhi on 27

February 2004 vide CrI. W, 532/1992 to seek judicial intervention in the field of speedy criminal procedure, camera trial and trafficked victim's protection in India (Thomson 2011: 30-33). According to the record of petition, after rescuing trafficked victims from brothel in Delhi they were repatriated and rehabilitated to their hometown in several parts of India including Andhra Pradesh. Before, repatriation and sending to their hometown, they were sent to Delhi shelter home to take statement as evidence against traffickers and exploiters.³⁸ Since these girls were spending considerable time in the rescue home in Delhi, their statements should have been recorded by the Trial Court in Delhi during that period. However, due to the delays in the Trial Court, it was not done and the victims were again called by the Trial Court in Delhi.

The government agencies of Andhra Pradesh had taken cognisance and tried to get in touch with victims. As their effort failed, Prajwala NGO based in Andhra Pradesh was asked to find those girls. The NGO found these girls were reluctant and unwilling to go to Delhi again because they did not want to undergo any trauma and agony again. Eventually, NGO requested to Trial Court of Delhi to facilitate to record the evidence from the hometown of victim itself. However, the Trial Court did not approve of the request placed by Prajwala NGO. Later, matter was therefore taken to the High Court of Delhi.

The Delhi High Court directed the government counsel to look for alternatives. After searching for many alternatives ways, government and counsel and NGO found the best alternative that a video conferencing facility (Thomas 2011: 31-33).

The Delhi High Court confirmed the alternative facility to record evidences of the victims through taking video conferencing. The court also directed the Andhra Pradesh government to make appropriate arrangement for the same and provide the protection to the victims. This was a historic decision of the Delhi High Court, as for the first time in India interstate video conferencing was used in criminal trials. It will also helpful in protecting the rights and interest of trafficked victims.

³⁸ 2006 (9) SCALE 531

The High Court of Mumbai and its Intervention

As we know, Mumbai and Goa have become the top destination and transit states for trafficked girls and women for sex trade in India (Thomson 2011: 33). For example, Kamathipura became India's second big brothel after Sonagachi in West Bengal. Similarly, Goa is not only famous for an attractive tourist spots in India but, it has also become a city of crime. For example, the crime of trafficking in children, girls and women for sex tourism, drug smuggling and commercial sexual exploitation are highly prevalent in Goa. To staunch the crime wave in Goa and Mumbai, the agencies of the government has been struggling at their best. However, judicial intervention of the Mumbai High Court to prevent trafficking in person and providing rights to the trafficked victims is unparalleled and remarkable step in India.

In general, we see the condition of trafficked victims became more worst after they are rescued from brothels. Trafficked girls and women from within country and outside the country from Nepal, Bangladesh and Sri Lanka are considered as part of the crime and they are treated as criminal. Sometimes, they have been prosecuted and remained in the police custody.

In public at Large vs. State of Maharashtra and others (1997 (4) BOM CP 171), the High Court of Mumbai order to setting up of an advisory committee, networking among the various concerned department to provide attention to the rescued person.

Similarly, in Public at Large vs. State of Maharashtra and others (Writ Petition No. 112 of 1996), the Mumbai High Court gave directions to the government agencies to ensure the interest of the rescued girls.

In Prerana vs. State of Maharashtra and others (Writ Petition No.788 of 2002), the Mumbai High Court looked into the subject of the rights of trafficked girls. The High Court gave direction to treat minor girls humanly rather than 'confirmed prostitutes' and part of the crimes' (Thomas 2011: 31-33). It also gave direction for the proper implementation of the JJ Act of 2000 and the ITPA of 1956, keeping in mind the human rights of the trafficked persons.

Budhadev Karmaskar Vs State of West Bengal & Others³⁹

In the context of anti-trafficking measures the Indian Court declared that human trafficking and sex work or trade is a punishable illegal offence. Besides, the Indian Court came up with a plan of providing rehabilitation programme for sex workers in 2010. Indian Court has confirmed to make a efforts for rehabilitation for sex workers as its anti-trafficking measures.

In brief, a decision of the Court to seek suggestion from the Supreme Court Constitute Panel for creating the condition conducive for sex workers who wish to continue with their profession became controversy when the Chairperson of the National Commission of Women (NCW) demands legalisation of sex trade after mistakenly understood and interpreted the Supreme Court's decision to encourage prostitution and bring sex work to a legal banner by creating the condition conducive for sex workers who wish to continue with their profession.

The NCW Chairperson Lalita Kumarmanglam became famous at the national level on her stand to make sex work legally commercialise in India.

She told a daily that 'legalisation of sex work would bring down trafficking of women and lower the sexually transmitted disease' (PIR 2012: 5-7).

Also, Bharati Dev of DARBAR Mahila (NGO) also supported the legalisation of sex trade debate by saying that

"Police very often get paid to let off traffickers. Regulation will decriminalise the trade" (PIR 2012: 5-7).

At the national level, a debate on legalisation of sex work went viral everywhere through social network side. In this regard, the Supreme Court lawyer and then the President of Shakti Vahini NGO Delhi, Ravi Kant opposed the statement of the NCW Chairperson by explaining that prostitution is organised crime and violation of Fundamental Rights. More than 95 percent

³⁹ AIR 2011 Supreme Court 2636; See also case No- CRLM. No.12415 of 2012, the Union of India .

of the women have been trafficked and forced into the sex trade. No women join this inhuman trade out of their choice rather than being forced, tortured and cheated. Further he added that giving prostitution a legal status will be giving a boost to demand for easy sex, young minor girls and women who will be trafficked and they will also be exploited in a sex business. In closing remarks he said,

‘The statement of the NCW Chairperson for legalising prostitution is deplorable. It is a time that Government of India amends the IPTA 1956 and set an example by punishing people who are involved in this organised Crime’(PIR 2012: 5-7).

Judgment of the Supreme Court

The Supreme Court of India has shown its clear position against heinous crime of selling the body of a person for capital gain. The Supreme Court on 26 July 2012 came up with its decision to clarify that its endeavour to provide the right to life and create a condition conducive for sex workers should not be construed as an encouragement to prostitution. The final clarification of the case and debate had ended by a bench of Justice Altamas Kabir, and Gyan Sudha Mishra after additional Solicitor general PP Malhotra had drawn the Court’s attention to its July 19 2012 order in which it had sought suggestion from the SC Constituted panel on creating ‘condition conducive for sex workers.

Both the Judges clarified that Supreme Court constituted panel recommended steps to create a condition conducive for sex workers to live with dignity as a word it is considered for **Rehabilitation as per provision of the Constitution Article 21**. Besides, Justice Kabir added, Supreme Court’s step for providing the constitutional guarantee for rights to a person in need should not be construed to prove court is encouraging prostitution and human trafficking. After hearing the petition, Justice Mishra clarified that good rehabilitation could be a weapon against the crime of human trafficking. Sex workers have a right to live with dignity, but the collective endeavour must be on the part of the sex workers to give up the trade in case they are given alternative platform (J Mishra 2012: 5). In the whole procedure of the Supreme Court, both judges had made it clear that Indian Court has pledged to make efforts for rehabilitation for sex workers as its anti-trafficking measures. But, it should

not be meant as facilitating or providing them assistance or creating a conducive condition to carry on flesh trade for expanding the crime of human trafficking in India.

Everyday a girl in India either falls prey to traffickers or she is raped. No doubt, there is also a justice system in India to arrest, prosecute and punish. But, a law when it goes against the victims, there would be a big question on justice system. Despite the provision for providing shelter home as a protection measure, there is no positive duty cast upon states to render sufficient shelters or for rehabilitation or rescue the victims of trafficking. Similarly, financial support for victims of trafficking seems always an inevitable. They can survive, if they can fulfil their desire and run their world. However, financial support for existing programs to help them to reach out to their need is often insufficient.

In every legal action, the statement of the victim will take into account and evidence requires to be proved to punish the culprit. It is possible when the legal procedure fully testify the evidence with the help of witness. However, in the case of trafficking in person, there is less chance to get witness and eventually, trial takes the time to reach the final stage and sometimes culprit will be acquitted without charge due to evidence and witness. So, they want to flee to search for the new life and eventually, they will get entrapped and re-trafficked again.

It is important to know that ITPA (1956) proportionately harms the victims of sex trade. For example, Sections 4 of the ITPA, 1956 says that punishment for living on the earning of prostitution. However, section 4 goes against to the family of the victims and laws seem to be action against victims and their dependent. In fact, victim stops sending support of her family and condition of family get deteriorated (Thomas 2011: 26-28).

According to Dr. PM Nair, a systematic prevention measure can combat trafficking and re-trafficking in person. He often says that some corrupt and inexperienced government officials, security personnel, immigration officials and politician are involved in trafficking in person (Nair 2010: 40-67).

Accordingly sometimes security personnel in the border areas can't make out the tricks of traffickers. In India training of government official and defence staff and community awareness campaign on human trafficking are done sporadically. It is quite often noticed that prevention measures are slow to respond to newer form of trafficking. There is no set up guidelines for safe migration along the border areas between India and Nepal. Though there are a list of NGOs who do support migrants, systematic checking measures by authority at different level is absent.

In India and Nepal placement agency for providing jobs for women, men and girls has become as an agent to recruit the innocent person and sell them into brothel or forced into domestic help (Ravi 2012 : 8). There are news and information regarding the placement agency where the owner of the particular company is arrested on charge of cheating, luring, and selling girls from Jharkhand, Chhattisgarh, Assam, and Bengal. However, there is a lackadaisical approach of government towards the issue of trafficking and placement agencies based in Delhi, Mumbai, and Kolkata are still recruiting and selling girls for sexual exploitation and they are forced to domestic help.

In India the conviction rate is almost seventy percent less than every year criminal cases are filed and trailed before the Court. The Court procedure in India a long time to give its verdict, punish and convict the culprit. Besides, in 2000 UNOTC has already legislated against the cross-border trafficking in person as an organized crime and India has signed it and ratified in 2011. But, at national level, trafficking in person is not often seen as an organized crime and legal provision relevant to organized crime is not made to bring human trafficking under the large framework. Similarly, the reason behind cross-border trafficking is absent of mechanism such as anti-trafficking unit near the border areas between Nepal and India. Moreover, there is lacking of- A) legal assistance, B) providing information, C) transfer of sentenced person, D) joint investigation in the prevention measures.

We have discussed the significant step of India against human trafficking and the reason behind the failure of legal action to combat human trafficking also. The work of the government of Nepal and India particularly for prosecution,

protection and prevention of human trafficking has also been discussed at all the level of efforts. In the next chapter, the study will discuss the role and function of the various stakeholders including the non-government organisation and international organisations in combating human trafficking in Nepal and India.

Chapter V

The Role of Civil Society, NGOs and INGOs in Combating Human Trafficking

The impact, intensity and expression of human trafficking are well enough to destroy the life of an individual. Therefore, the mechanism of combating trafficking in person, today requires more attention of stakeholders, civil society, organisation and international groups. In the previous chapters, we have discussed magnitude, modus operandi of cross-border trafficking in person and the legal action of Nepal and India against it. We have also noticed there are a huge gap between the laws of both the nations and their implementation to combat human trafficking. Although India and Nepal have formulated and re-formulated their policies time and again, much requires to be done to effectively prevent and deal with the changing dynamics of human trafficking. This chapter discusses the role and function of the various stakeholders including the non-government organisation and international organisations in combating human trafficking in Nepal and India.

The mechanism of an effective anti-trafficking strategy depends on the collaborative, coordinated, and concerned effort of multi-hands, multi-agency and involves multi-disciplinary approach.⁴⁰ Therefore, to understand the anti-trafficking role, the study mainly focuses on structure, objectives, networking, interlinking of the various NGOs, and relations between government and non-governmental organisations and INGOs. The policies and plan of action of organisations depend on advocacy, drawing attention of the decision makers towards risk zone and focussing on objectives to minimise the crime of human trafficking. For instance, it is vital to ensure that the role of one anti-trafficking organisation does not clash with the responses of other organisations.

⁴⁰ A multi-agency approach is meant by involving of different agencies in combating trafficking in a joint and coordinated way according to agreed standardized procedure, be it in preventing the crime, protecting the victims, or investigating the case and prosecuting the traffickers. Law enforcement agencies play a vital role in all these interventions.

Anti-Trafficking Network and NGOs of Nepal

In Nepal, there are more than fifty NGOs and INGOs working against human trafficking. Though most of the entire NGOs hold a single goal or objective to minimise the crime of trafficking in person, they work in different fields and focus on different areas of activities. Some of the NGOs have specific anti-trafficking activities to mitigate the cause of and people's vulnerability to trafficking in the place of its origin. Many other NGOs work for safe migration and empowerment of women and children. Some of the NGOs are working in both rural and urban areas. Their contribution in fighting against trafficking in person is incomparable (Table V.1). According to their focus on various areas of activities, anti-trafficking NGOs can be classified into four groups in Nepal. These are NGOS,

- i) involved in safe-migration issue.
- ii) involved in anti-trafficking and women empowerment issues.
- iii) involved in child rights and anti-trafficking issues.
- iv) Mainly involved in entertainment sectors and anti internal trafficking.

Table V.1

Anti-Trafficking NGOs in Nepal and Areas and Activities

Nature of work of NGOs	Name of NGOs
1) Safe-migration issue	<ol style="list-style-type: none"> a) People's Forum for Human Rights. b) Pravasi Nepali Coordination Committee (PNCC). c) Pourakhi Nepal.
2) Anti-trafficking and women empowerment issues.	<ol style="list-style-type: none"> a) Alliance against Trafficking in Women Empowerment Issues. b) FHI 360 Nepal. c) Gramin Mahila Srijanshil Pariwar, Sindhupalchok. d) Himalayan Human Rights Monitors (Him Rights). e) KL-Nepal (Kingdom investment Nepal).

	<ul style="list-style-type: none"> f) Maiti Nepal. g) Forum for Protection of People's Rights (PPR) Nepal. h) Women Skill Creation Centre Nepal, Makwanpur district of Nepal. i) Rural Reconstruction Nepal. j) Shakti Samuha (SS). k) Tiny Hands Nepal. l) Women Rehabilitation Centre (WOREC) Nepal.
3) Child rights and anti-trafficking issues.	<ul style="list-style-type: none"> a) Child Workers in Nepal Concerned Centre (CWIN). b) Nepal Good Weave Foundation.
4) Entertainment sectors and anti internal trafficking.	<ul style="list-style-type: none"> a) Biswas Nepal. b) Change Nepal. c) Centre for Awareness promotion (CAP) Nepal.

Source: NHRC Report for Trafficking in Person (2015)

Maiti Nepal:

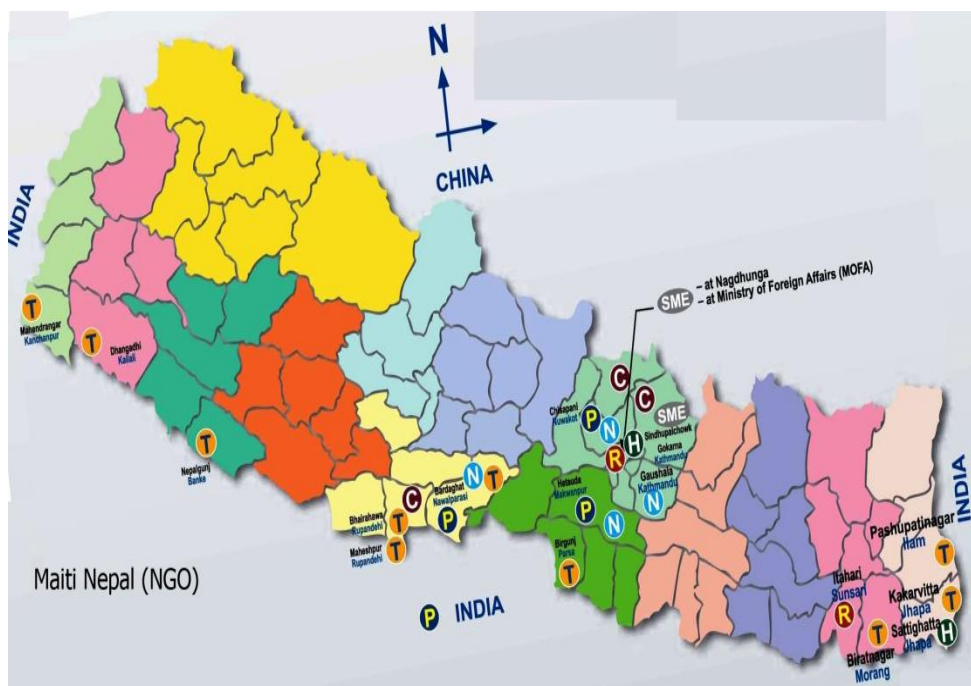
Maiti Nepal is a non-profit organisation based in Kathmandu. It falls under the category of NGOs mainly involved in anti-trafficking efforts and women and children empowerment (Gurung 2008: 4-31). It was established in April 1993. From its inception, it has been working against human trafficking, providing shelter for victims of trafficking, domestic violence and those who are neglected by society (Dutta 2012: 86-118). Maiti Nepal has become a haven for trafficked victims. According to Anuradha Koirala,⁴¹ Maiti Nepal aims to provide services for children, girls and women who have experienced the

⁴¹ Anuradha Koirala (Dijju-elder sister) is the founder of Maiti Nepal. She has consistently and dedicatedly taken unparalleled actions to make society free from crime of human trafficking. She received several awards including the Prabal Gorkha Dakshin Bahu Medal in 1999, and Best Social Worker of the year Award Nepal in 1998. She got Trishaktipatta Award in 2002, German UNIFEM Prize 2007, Queen Sofia Silver Medal Award 2007, The Peace Abbey, and Courage of Conscience 2006. Recently she has received CNN Hero Award in 2010.

untold pain, suffering and often in silence. As a vision of the organisation, she added, it fights for equality of women and children who are vulnerable to be exploited and disliked. Maiti Nepal focuses on both anti-trafficking preventive and protection measures. The major areas of Nepal covered by Maiti Nepal organisation can be seen below (Map V.1).

Map V.1

Major Work Areas of Maiti Nepal



Source: Annual Report of Maiti Nepal (2015)

Besides the major geographical areas covered by Maiti Nepal, it shows the location of its functional offices like headquarters, rehabilitation home (RH) and consultation centres (C). It has set up nine transit homes (T) exactly in the border or check point areas to intercept or combat trafficking in person. For instance, Transit Home is available in the border districts including Jhapa, Morang, Kanchanpur, Kailali, Rupandehi, Nawalparasi, Parasa and Banke. It plans broaden its area of work focussing on remote parts. The major areas of its interventions includes awareness programme, interceptions in combating

human trafficking, skill development and rescue operation (Barthwal Datta 2012: 86-118).

Maiti Nepal conducts awareness programmes almost every month in villages, markets and urban places and mostly focuses on vulnerable communities like the poor girls and women of rural Nepal belonging to low caste community. Its awareness campaigning rang from distribution of posters to organising drama on the street of village bazaars (market). In fact, it finds that real origin human trafficking lies in the rural catchment areas. Therefore, it has divided its programme into three levels. Firstly, in the village level it holds awareness programme in the form of organising rally and public gathering in the market places, streets and door to door. It takes help of students of local schools.

Secondly, at the national level, it conducts the programme in the headquarters of districts. On the occasions like Human Rights day, Anti-Child Labour Day and Women's day, it takes out huge processions in Kathmandu as well as other parts of Nepal.

People are made aware of the crime of human trafficking through 52 episodes of the Kantipur FM channel in national as well as provincial level. And finally at the regional level its volunteers and official visit various theatres of trafficking crimes in Nepal- India borders and various destinations in India. For example, it conducted number of awareness programme in Darjeeling district of West Bengal (India) and Kakarvitta, Jhapa district of Nepal. Both districts are vulnerable and continually hit by cross-border crime of human trafficking.

It is also takes primary preventive measure. It targets most vulnerable border areas, nearby check points between Nepal and India, and has set up desks for intercepting victims. The objective is to save innocent girls and women, and provide ways and means for them to return back to their home safely. According to report of NHRC in 2014, a total of 635 children and women were intercepted at the border between Nepal and India and were prevented from being trafficked (NHRC for TIP of Nepal 2013-15). In 2015, post-earthquake, Maiti Nepal intercepted total 725 children and women at the border (NHRC 2013:15). However, if the organisation finds girls and women crossing the

border along with their relatives and husband, even then it makes them aware of the crime of human trafficking and safe migration. In the year of 2014, total 1778 children and women crossing the Nepal-India border with relatives and parents were provided information by Maiti Nepal on safe migration and human trafficking (NHRC 2015: 9-54).

Interception in Kakarvitta

On December 14, 2016 during field study in Kakarvitta in Jhapa district of Eastern Nepal this researcher came in contact with Maiti Nepal's Kakarvitta branch officer Govind Pradhan. He described the role of branch office or transit home of Maiti Nepal at the border for intercepting and combating trafficking in person from Nepal to India. It was around 11.30 am.

This researcher had an encounter with four girls from Kathmandu and one of them a girl named Rita (name changed) was transporting her three female friends to Delhi in the pretext of attending the marriage ceremony in Darjeeling. All girls were intercepted by Maiti Nepal in a place named Panitanki nearby border.

After two hours of inquiry, three revelations were made. Firstly, all three girls were cheated by telling that they are going to attend the marriage ceremony of friend of Rita in Darjeeling but, they have to visit first Rita's another friend Anita in Delhi. Secondly, three girls were asked not to contact their parents in Kathmandu during journey. Thirdly, when Maiti Nepal team stopped them in the border check points, Rita called her mother and forced her to go to headquarter of Maiti Nepal to seek permission to allow her to cross the border.

However, doubt, incertitude and curiosity about the case forced this researcher to visit headquarter of Maiti Nepal in Kathmandu. When he began his study of the case of four girls after two days, he came to know that one day parents of four girls visited Maiti Nepal where Rita's mother requested organisation to allow them to cross the border to visit Darjeeling. But, she was surprised and shocked when she was informed that her daughter Rita had a plan to go to Delhi instead of Darjeeling and there was no marriage ceremony in Darjeeling. Besides, parents of three girls were never informed regarding their visit to

Darjeeling. Maiti Nepal's anti-trafficking measure despite its limited resources is fairly effective and it has protected several lives in this manner (Picture V.1).

Picture V.1

Members of Maiti Nepal asking Question during Interception Time



Source: Maiti Nepal (2014)

The very sight of members of Maiti Nepal in yellow dress enquiring about passengers and making them aware of the crime of human trafficking is both inspiring and far reaching (Picture V.1).

The mechanism for skill development is an integral part in overall process of prevention of human trafficking. Maiti Nepal empowers vulnerable persons especially girls, women and children at risk of trafficking. The programme for skill development and empowering people in need embraces mainly three major ways. *Firstly*, girls and women are trained for artistic work, sewing, weaving, tailoring etc. *Secondly*, providing financial help to poor girls and enabling children to go to schools and put them on the correct path to a better future.

And thirdly, it trains and gives all important instructions to survivors of trafficking and domestic violence to begin a new journey of life. Besides, it

also gives opportunity to survivors who want to be part of organisation. Survivors of trafficking can become field officers, coordinators of awareness programme and some of them eventually become team leaders of transit home to intercept and arrest the traffickers at the border. According to the 2014 Annual Report of Maiti Nepal, a 21 year old orphan girl of Talakhu VDC, Nuwakot who was first brought to Maiti Nepal NGO in Kathmandu in 2002, is now a Bachelor level student and she also completed her Auxiliary Nurse Midwife (ANM) course. She recently joined in government health institute and is no longer a potential victim. Picture V.2 gives a review of the training room of Maiti Nepal where girls are being trained by member of organisation.

Picture V.2.

Training Room of Maiti Nepal NGO



Source: Maiti Nepal, ATSEC, Kathmandu (2014)

Picture V.2 above mentioned shows the training session of Maiti Nepal for skill development of poor and vulnerable girls and women.

Rescue operation is an integral part of preventive measures of trafficking in person. Rescue will free victims from the clutches of brothel owners or master, and lowers chances of getting re-trafficked and re-victimised. Similarly, it

attempts to end the painful life of prostitute in brothel and provides a new dignified life to the victims.

Though rescue operation is not a final solution to stop vulnerable people from getting trafficked in the catchment area, Maiti Nepal's fight or struggle for rescuing the trafficked victims never goes in vain. It rescues trafficked victims from within the country and abroad and repatriate them to give a new dignified life. Before going for rescuing the victims, NGO first collects information from their internal resources and takes help from police department for security and safety of victims. In 2014 Maiti Nepal rescued 183 victims of trafficking and rehabilitated (NHRC 2015: 9-32). Of these, the highest 11 victims were rescued from Delhi. Besides, four girls of Sindhupalchok district of Nepal were rescued from Kuwait (one), Delhi (one) and Pune (two girls).

After rescuing, it provides social and legal counselling to survivors of trafficking and victims of domestic violence to have a new life with bright future. It rehabilitates survivors who don't want to go to their village or don't have any option.

Gramin Mahila Srijanshil Pariwar (GMSP) Nepal

Gramin Mahila Srijanshil Pariwar (Rural Women Creative Forum) is non profita anti-trafficking NGO in Nepal. It is involved in women empowerment and anti-trafficking in girls and women in Nepal. Its main office is situated in the tiny foothill of Sindhupalchok district of the central province in Nepal. GMSP was registered with Sindhupalchok district Administration office on August 10, 1993, as per the Organisation Registration Act, 2034. It works for women empowerment issues, preventing abuses, domestic violence and discrimination against women and girls in the name of gender. Besides, it provides necessary supportive assistance to poor women and girls. It collaborates closely with women's groups to empower them and combat human trafficking. To prevent human trafficking, it promotes the equal platform for women and girl child and protects their rights in society (*).

As a social organisation, GMSP aims to work in an integrated manner for the development of health and intellectual growth of women mainly to eliminate

vulnerability to domestic violence, discrimination and trafficking. As the major goal of GMSP, it mainly focuses on the method to reduce the crime against women and girl child in both private and public places. Besides, it is empowering the communities with awareness, livelihood programmes, promoting rights and development in society for all. The major objectives of GMSP are as follows.

- i) To lessen the potential risk of human trafficking by engaging women, children, poor and underprivileged families in income-oriented programmes as the option for migration and reducing the risk of falling prey to traffickers.
- ii) Advocating for strict implementation of laws related women and children, and necessary step against human trafficking. Identifying issues and possible areas of cooperation to work with other relevant NGOs at the local and regional level for conducting the awareness programme and upgrade the anti-trafficking network.
- iii) Joining hands with other local, national and international INGOs for coordination and cooperation on areas of mutual concern. It also forms various groups to make a network to intervention at the grass root level, VDC, District, national and international level (Table V.2).

Table V.2
Details about the programme and
Work area of Gramin Mahila Srijanshil Pariwar

S. N	Name of the Project	Major Programmes	Work Area	Budget (Rs)	Donor Agency
1	Prevention of the trafficking and commercial sexual exploitation of the children in Nepal	Formation of community vigilance groups and their capacity building. Coordination with the VDC-Level child protection committee. Study	Five village development committees	4,46,300	Geneva Global

		material support.			
2	Research and training on anti-trafficking measures within relief/ recovery efforts in Nepal	Training and capacity building. Women's protection. Research and publication	Sindhupalchok District	9,90,000	Freedom Fund
3	Earthquake response programme in Sindhupalchok	Drinking water and sanitation programmes. Livelihood and income generation programmes. Temporary and permanent shelter programme.	Four village Development Committees	495,247 29	Lutheran World Federation Nepal
4	Prevention of Slavery/ Trafficking and Social Reintegration and Empower of the Survivors Program	Forming of anti-human trafficking women groups and networks. Advocacy and lobby for women's rights	Six Village Development Committees	41,35,53 1	Free the Slaves, USA
5	Rehabilitation Programmes for Trafficking Victim	Operation of rehabilitation centres for victims. Psycho counselling and health service for the affected person. Capacity building through education and income generation programmes.	Central Development Region	31,40,00 0	Women and Children Office, Sindhupalchok

6	Programmes to organise girls and Women for Prevention and Protection from Human Trafficking	Forming women groups. Awareness to change perception	Five Village Development Committees	41,97,000	OXFAM ⁴²
7	<i>Naya Bato Naya Pahila</i> Programme	Operation of income generation programme Formation of child protection committee and capacity building training	Seven Village Development Committees	11,50,000	World Education Nepal
8	Safe Foreign Employment assistance Programmes	Social mobilization, forming women groups and capacity building. Awareness and psychological counselling service. Awareness about HIV AIDS and regular health check up.	Four Village Development Committees.	10,00,000	Global Fund for Women

Source: NHRC (2013-2015)

The progress and plan of action of GMSP is given in Table V.2. Village development and empowering female in the society by providing economic and social facilities are considered as a core part of the objectives of GMSP. To accomplish the given task, the organisation seeks financial help from national and international organisation. For example, the OXFAM and Free the Slaves in USA have funded 41, 35,531 and 41, 97,000 respectively for village development committee that conducts the awareness programme

⁴² OXFAM is an international confederation of 17 Organisations working in approximately 94 different countries worldwide to find solutions to poverty and injustice around the world.

against trafficking in children, girls and women in Sindhupalchok district and other rural parts of Nepal.

Ganga Tamang and Jamuna Tamang (name changed) were two sisters from Baramachi-4 Pahirotol, Sindhupalchowk which devastating earthquake on April 25, 2015.⁴³ They lost everything in devastating earthquake. Later, they started staying in the shelter home provided by the social organisation in the relief camp in Kathmandu (Nepal). In the camp, they used to meet different agencies and people every day. One day they came in contact with a man named Raja (name changed) from district of Nuwakot. Both the sisters were impressed by Raja when he showed much sympathy for the plight of the two sisters and offered jobs for both in the Gulf. He told them the job was only possible means to rebuild your home and survive in society.

Two innocent girls trusted Raja and handed their documents to him. On 21 August, 2015, both Ganga and Jamuna flew to Mumbai from Kathmandu airport. In the next morning, girls heard Raja while bargaining the price of two girls with someone over the telephone. They managed to contact their family in Nepal and made urgent request for help. GMSP was informed about their plight. It took all the necessary efforts to rescue them. Eventually, both sisters were saved by GMSP with the help of Maiti Nepal and its branch Maiti Mumbai in India.

Alliance against Trafficking in Women and Children (AATWIN)

AATWIN is a non-profit NGO based in Kathmandu in Nepal and established on 6 June 1997 as a network of anti-trafficking organisations. It works at national and international level against human trafficking (Barthwal Datta 2012: 102-107).

Its objectives are enumerated in Table V.3. Realising the widespread problems of an illegal transportation of Nepalese girls and women from Nepal to other countries including India for sexual exploitation, AATWIN started working on

⁴³ Based on the interview with GMSP program manager Mr Ravi Lochan Paudyal with regard to rescuing operation of two Nepalese girls from Mumbai to Nepal as conducted on 17 April 2016 in Sindhupalchok district in Nepal.

policy changes and implement the stringent action to tackle human trafficking. It believes that human trafficking is the global phenomena. A single unit or an effort of one organisation is never effective as the modern trend of human trafficking involves several sex rackets and criminals from across the country. AATWIN wants to set up an active networking platform against trafficking in person.

It is pursuing the anti-trafficking measures along with conducting awareness campaigns. The role of the AATWIN in the post-earthquake situation is discussed here based on the information collected from the field study done on 15 April 2016. The members of AATWIN Beno Gurung and Santa Baral responded the questionnaires.

Table V.3

Objectives of NGO AATWIN

i)	One of the principal objectives of AATWIN is to connect the plan of action of all the NGOs against human trafficking to make a single stringent action and advocate and suggest government to amend the weak laws and implement the strictest laws against human trafficking.
ii)	The focus on research and studies to design the practical style to conduct awareness campaign against human trafficking is also a vital part of the objective of it.
iii)	To make AATWIN as a national and international resource centre for women's rights, child's rights and anti-trafficking unit.
iv)	To equip civil society with human and physical resources to upgrade the human resource of person those who are vulnerable and in need.

Source: NHRC (2013-2015)

The census of 2068 BC shows the total population of District of Makwanpur as 4, 20477 where female constituted 49.15%. The source of income of rural

people depends on agriculture. Among the poor community, the Tamang community has the highest percentage living in the district.

However, the terms like education and science and technology are new to them. After earthquake their condition deteriorated and percentage of uneducated, poor and marginalised people increased. Makwanpur was the most affected district after Nawakot and Kavre and human trafficking in the pretext of foreign employment or jobs in India became a casual phenomenon. Hetauda became the central point from where victims of Makwanpur are transported to different destinations.

While “answering the questions made during interview Beno Gurung attributed primary reasons behind increasing rate of trafficking to superstitions, bad incidents during childhood, short cut money, jealousy and corruption in security check-post in border areas, insufficient and inadequate legislation contribute to the vulnerability of people to trafficking. She added, political instability and lack of socio-economic opportunity for development of the people are also the factors behind trafficking in person in Nepal and Nepal to India”.⁴⁴

Santa Baral stated that given the past seven years record of Makwanpur, children mainly in the age between 6 to 10 years were sold illegally in the Indian circus by their brother, mother and father.

“AATWIN rescued and reintegrated the girls and boys who spent more than 20 years in circus and could not able to flee from the clutch of their master”.⁴⁵

Effort of this organisation and its awareness programme succeeded to reduce the rate of trafficking for physical exploitation in the circus from Makwanpur district. AATWIN has set up awareness camp and also sets up desk in the passport office and at Kathmandu airport to intercept and organise awareness movement. In 2014, 2181 women and in 2015, 1873 women were made aware of illegal visa, human trafficking and the problem of foreign employment (NHRC of Nepal 2015).

⁴⁴ An interview with Beno Gurung with regard to the primary reasons behind increasing rate of trafficking in Nepal on 22 December 2016 in Kathmandu Nepal.

⁴⁵ An interview with Beno Gurung, AATWIN (NGO) with regard to the primary reasons behind increasing rate of trafficking in Nepal conducted on 22 December 2016 in Kathmandu.

Shakti Samuha (SS)

SS is a Kathmandu-based non-profit NGO of Nepal (NHRC 2013-2015). It has been working against modern day slavery for last two decades (Mishra 2015: 33). As per the record of SS, in 1996 when more than five hundred women were rescued from Mumbai's brothels by Indian police with anti-trafficking operation, it came to notice that 128 women victims were from Nepal. Though the government of Nepal never showed much interest in bringing victims back, some of them managed to reach their home in Nepal. Later, they had to undergo health problems and social boycott in Nepal. Finally, they all decided to form an organisation which works mainly to combat human trafficking and protect innocent girls and women from falling prey to traffickers. Shakti Samuha was thus established in 1996 which has won a list of awards for rescuing more than 2000 Nepalese girls and women within Nepal and outside the country including India, Bangladesh and Gulf countries.⁴⁶

SS works for both prevention and protection and empowers the survivors of trafficking to lead a dignified life in society (Datta 2012:95-103). It intervenes at three levels namely grass root, national and international. SS also helps in police investigation, interception of an illegal movement of the person and in conducting awareness programme mainly in the check post in border with India.

Charimaya Tamang, a survivor of trafficking and co-founder of SS shared the mission of organisation during interview. She stated

“the mission of SS is to protect women and girls living in vulnerable condition. SS works for survivors of trafficking who are rehabilitated and re-integrated after rescuing operation. This is prevent them becoming prey to trafficking once again which actually happened many times in Nepal”.⁴⁷ She further added, “SS focuses on prevention mechanism which contains the work and programmes of SS at the VDC level, district level and national level”. For example, the prevention measures include works below,

⁴⁶ The information and the record of trafficking case study and data are based on publication of Shakti Samuha like “Marga Nirdeśhak”, “Shakti Publication”, “In search of Self Reliance”, and “Procedure for Safety and Personal Protection”.

⁴⁷ An interview with Charimaya Tamang conducted on 6 April, 2016 in Chuchepati, Kathmandu.

- Organise awareness programme and minimise the risk of trafficking.
- Coordinate local, national and international organisations for one goal and one result.
- Protecting vulnerable girls and women from prey to traffickers.
- Targeting unsafe routes and check-post to help border police to arrest traffickers and pimps to control human trafficking .

Another objective of SS is to protect the girls and women from re-trafficking. Therefore, it works for providing proper repatriation, rehabilitation and re-integration.

To achieve this objective, it renders emergency support, promotes skill development and capacity building programme, involvement in livelihood activities and psycho- socio counselling. In this regard a rehabilitated victim mentioned.

“I am twenty years old and from Damak, Jhapa district (east region) of Nepal and staying in shelter home of SS for the last seven months. It was my bad luck when I trusted my sister’s friend ...that witch (*tyo Bokshi*). My sister’s friend lured me for job and dumped me in Dubai. I was undergoing several problems over there. After eleven months of suffering in Dubai, I was helped by SS to return to Nepal. Had Shakti Samuha not helped me, I would have committed suicide in Dubai. Although I am facing health problem and my mental position is not stable, I am happy here. Sometimes, my parents visit me here and brought sweets. I wanted to study but could not complete my SLC due economic crisis. One day I shared my dream of completing the study with Sir (male member of the organisation) and Guroma (madam, a female member of the team). They provided me with the opportunity to study here. I have a plan to complete SLC (school leaving certificate) and do job in Kathmandu”⁴⁸.

By studying the fact given by trafficked victims, it can be assumed that SS has been working at all the levels to gather all forces together against human trafficking in Nepal (Table V.4).

⁴⁸ An interview with survivor girl in the head office of Shakti Samuha in Kathmandu conducted on 17 December 2016.

Table V.4**Number of Trafficked Survivors and all NGOs involved in different fields for Preventive and Protection of Victims of Trafficking in Nepal**

Nature of work	2013/14	2014/15	After earthquake of April 25, 2015	No. of NGOs involved in different work
Interception	9057	8997	3864	9
Rescue and repatriation	1551	1971	955	9
Reintegration and skills oriented work	1438	1801	698	11
Missing persons application received	1858	1906	261	4
Missing persons found	421	493	96	4
Referral for counselling and medical purposes	3673	3627	970	11
Legal support (FIR and Prosecution)	988	1355	382	11

Source: NHRC of Nepal (2015)

Table V.4 reveals overall performance of NGOs of Nepal against the crime of trafficking in person. The number of victims rescued by NGOs was 1551 in 2013/14 which increased by 1971 in 2015/16.

The Role of NGOs in Combating Human Trafficking in India

Rate of trafficking cases has increased at an alarming rate in rural parts of India. According to NCRB 2015 report, West Bengal, Assam and Tamil Nadu became vulnerable states. In India non-governmental organisations (NGOs) have long started begun the movement to address the problem of human trafficking. Most of them focus on phase based intervention like rescuing the victims, awareness programme against trafficking in person and support activities including researching and documentation and advocacy. There are many anti-trafficking NGOs which are working for the security of women, children and girls in India. Among them Bachpan Bachao Andolan Delhi, Shakti Vahini Delhi, FREESET Kolkata, Prerana Mumbai, Guria Swayam Sevi Sansthan Varanasi, Sanlaap Kolkata, MARG Darjeeling, Kachanjunga Udhar Kendra Siliguri Dooars Jagaran and Lakshya Social Welfare Organisation Tindharia (Darjeeling) have been playing crucial roles.

Shakti Vahini (SV), New Delhi

Shakti Vahini (SV) is non-profit an anti-trafficking NGO in India. It is well known both because of role against human trafficking and for its strategy, techniques, method for rescuing victims of trafficking in India. It also helps other NGOs to rescue the victims of non-Indian domicile. For instance, Maiti Nepal and Shakti Samuha NGOs of Nepal so far rescued many Nepalese women, children and girls from Delhi with the help of Shakti Vahini.

SV states that if there is no justice and rights for poor and vulnerable citizen of India, then the democratic platform of the government is undermined. Therefore, it stresses on justice, security and rights for all. It helps people those who are poor and disadvantaged to access to justice and rights. It empowers the poor and disadvantaged people to seek remedies for injustice and get dignity in the community again. It follows human rights based approach to provide security and justice for those who are vulnerable and fall prey to traffickers (Shakti Vahini 2015: 6-41).

Its President Resikant points out that key factor behind trafficking in person are illiteracy, poverty and poor law and order in the society. Many innocent poor girls and women from Assam, Chhattisgarh, Jharkhand and Bengal are trafficked and sold in Delhi, Mumbai, U.P, Bihar, Rajasthan and Haryana. SV started movement to make rural people and urban people aware of human trafficking. It believes that today common man can bring a positive change in society. It has 24/7 Help line numbers 9852909025 and 42244224 so that anyone can inform about any suspected case of Human trafficking.

Rescuing Operation- SMILE

Operation Smile was first launched by Ministry of Home Affairs of India in 2015. Total 1200 missing case was referred to SV by the state police of Odisha, Chhattisgarh and West Bengal under the Operation Smile in 2015. SV helped the state police in searching the missing children and girls and women in Delhi. The ‘Operation Smile 2, was launched by the Ministry of Home Affairs, Govt. of India in 2016 with mission to search the missing children and girls and to restore them in their respect states. It has strengthened the NGO-Police partnership.(Bhalla 2017: 7-13)

To accomplish the rescuing operation, SV provides training classes to police officers to strengthen their skill about the methodology to extract more information from trafficked victims. It also makes police officers understand about the various provisions of POCSO Act, JJ Act, Protection of Child Rights Act, and relevant Sections of IPC. In January, 2016 total 35 police officers were trained about ‘Operation Smile 2’ in the programme organised by the Crime Branch Delhi and SV in New Delhi. During the programme the President of SV remarked that

“Operation Smile is a welcome initiative of the government of India which will connect the CWCs, shelter Homes, police and NGOs across the country. Delhi being an important destination for the victims of human trafficking we request all the state police to come to Delhi for searching their children. Our team in Delhi will provide assistance to the state police and facilitate them to visit the probable children’s home and the Child Welfare Committees in Delhi,” said Ravi Kant of Shakti Vahini. He added, there should be Standard Operating Procedures (SOP) for investigation of the missing children cases. Picture 3 shows the successful story of role of SV in rescuing ‘Operation Smile 2’ (The Times of India 2016).

Picture V.3

Successful story of Operation Smile 2



Source: Times of India (2016)

The role for busting the sex racket and placement agency by rescuing the trafficked victims is one of the objectives of SV. It busted several human trafficking rackets and helped Delhi police to arrest traffickers. On November 15, 2015 a complaint from Child Welfare Committee Gumla, Jharkhand was received by SV to rescuing a 15 years old minor girl of Jharkhand. SV reported missing complaint vide FIR No 73/150/363/367 IPC, 23/26, JJ Act, Inter-state Migration Labour Act and AHTU in Gumla, Jharkhand. A rescuing team was constituted under the supervision of Addl. Commissioner of Police Alok Kumar and members of CWC and NGO SV (Shakti Vahini 2015: 28) . Collecting the information about suspect Prakash in Shakurpur Delhi through secret informer, SV informed Delhi police to check house in Shakurpur area. Subsequently, on the basis of information police team checked H.No. E-104, 5th floor in Shakurpur and found Placement Agency named Dipika Placement Service Centre. It was run by two persons namely Prabhakar Singh and Md. Israfil. After rigorous enquiry and interrogation, both traffickers Prabhakar and

Israfil disclosed their involvement in the kidnapping of the victim girl and other minor girls. Later, three girls were rescued by police in Shakurpur, Surajmal Vihar and Paschim Vihar, Delhi (Shakti Vahin 2015: 39).

According to SV both culprits used to bring the minor girls from Jharkhand and took Rs. 35000 from employers for each girl. They have been involved in this illegal business since last five years. Israfil would also collect the monthly payment from the employer and use the same for their own use. Unfortunately, nothing was paid to victims except they are raped and beaten badly. Both traffickers were arrested by Crime Branch under the Sections 360, 367 and JJ Act 23 and 26. The manner in which it is working in the remote catchment areas of Jharkhand, Bengal and Odisha, the crime rate of human trafficking is likely to be reduced in the future.

FREESET, Kolkata

FREESET is a social enterprise or fair business trade organisation located in Sonagachi red light in West Bengal. According to Justice Ventures Association, it was set up by Kerry & Annie Hilton in 2001 in Kolkata after seeing the condition of women and girls who are forced into prostitution in red light area of Sonagachi in Kolkata (JVI 2013: 1-3). The aim behind establishing and beginning the business are to uplift the economic condition of women, empower them to be independent economically and importantly, prevent women and girls from becoming vulnerability to trafficking. Besides, it also focuses on creating positive employment opportunities for victims of trafficking by giving job opportunity.

After examining the cases of two girls working as prostitution, FREESET concluded that the primary reason behind the trafficking of girls and selling the human flesh is the economy that is about money and to have good life style. There are two cases of girls working in FREESET after leaving the sex trade.

Firstly, Sonali a thirteen-year-old girl was kidnapped from her village and sold at Rs. 2000 in Sonagacchi. Later she was beaten, harassed and forced into prostitution. She worked for many years and sold her body and dignity. Recently, she is working as an employee in the bag industry of FREESET in Kolkata. Secondly, Bashanti, a daughter of the poor family, was sold into the sex business in Sonagacchi by her mother to provide food for the rest of the member of the family. Now she has become a part of the organisation FREESET and working for freedom and enjoying the new life. More than 200 trafficked victims are the employee today in the organisation. They are given the new life and hope for the livelihood. All the members of the organisation use to pronounce only one line that is 'business for freedom' happily. (*) Therefore, it aims to provide business or economic opportunities to the poor people in the society especially girls and women who are always vulnerable in

Kanchanjunga Uddhar Kendra (KUK), Darjeeling

It is a small NGO situated in the small town called Siliguri, Darjeeling district of West Bengal. It is working against human trafficking and conducting preventive measures like awareness programmes for protection and security of women, girls and children. This NGO's headquarter in Pradhan Nagar municipality in Siliguri. The connection of KUK with other NGOs in the hill station, other states within India and outside indicated a fine network of action against trafficking in person.

KUK has the connection with Maiti Nepal, Dooars Express, Mankind Action for Rural Growth (MARG), Darjeeling Jesuit's SEED, Lakshya Social Welfare Organisation, etc. So far KUK has successfully rescued 600 children, young women, men and girls from traffickers, brothels and bounded labour with the help of partner NGOs (Darjeeling Times 2015).

According to Rangu Souriya a co-founder of KUK,

'The reason behind of trafficking of Nepali and tribal girls, particularly from Dooars and Darjeeling district, are mainly the economic problems, unemployment, incomplete primary education and seeking for short-cut money. Moreover, globalisation and the new way of lifestyle have

impacted badly these young girls. A girl from low-income family can't adjust with the modern artificial and fashionable affairs in the society and eventually, with frustration she commits a mistake by trusting anyone who provides her jobs. Hence, she would fall prey to traffickers'.⁴⁹

It always keeps eyes open on the illegal activities nearby border areas as this district has borders with Bhutan, Bangladesh, Nepal and little above through Sikkim with China also. For instance, it has set up its transit home in Panitanki, Naxulbari near Kakarvitta India and Nepal border to make people aware of human trafficking.

By visiting the rural areas and tea estate where there are several reported cases of hunger death of Darjeeling and Dooars, it makes local people aware regarding justice, human rights and against physical and sexual exploitation of women and girls. KUK aims to reduce the rate of trafficking in girls and women importantly in the tea estate of Dooars and Darjeeling district. Many tea labours migrate for seeking jobs outside the village due to shut down of the factory. Many of them have not returned or still in missing. Importantly, girls and young women from the same locality are still trafficked due to closing down of tea gardens.

SUNLAAP, Kolkata

It is a feminist NGO established by Indrani Sinha in 1987 in Calcutta. The primary work of this NGO is to focus on human rights and security. It works against trafficking of women and children for commercial exploitation and forced prostitution. It mainly focuses on counter human trafficking measures. It is the only organisation in the South Asian region to approach historically the problem of trafficking in person (SUNLAAP 2007: 5-26).

It works on issues related to

- i) Domestic exploitation, sexual exploitation and bonded labour.

⁴⁹ An interview with Rangu Souriya conducted on 23 July 2016 in Darjeeling

- ii) Advocacy for supporting the government policy with regard human trafficking, child labour, bonded labour and domestic violation.
- iii) Sensitisation of stakeholders on the issue of anti-trafficking measures to the rescue operation, and socio-economic reintegration of trafficked person.

It collaborates with several international donors, unions and sub-national state departments. To make people aware of human trafficking and abolish child sex slavery, Sunlaap's member Harleen Walia, Maiti Nepal NGO and Gary Hangen of international justice mission jointly made a documentary film named "THE DAY MY GOD DIED".⁵⁰

Other NGOs in India

It is a project of the Cable News Network (CNN) with the goal to end the modern-day slavery. The principal objective behind establishing CNN Freedom is to start the movement against human trafficking, raise the voices of the victims, highlighting the success stories and unfold the criminal nexus in human trafficking. Similarly, the leading international non-government organisation the Fair Labour Association (FLA) investigates the recruitment of labour in the industry and factory. Recently FLA has begun to inquire into the hiring of underage labour in the chocolate industry with the support of Nestle's cocoa supply industry (Mishra 2015: 119-198).

The FLA President Auret Van Heerden suggested that

"Our investigation on recruitment policy of the industry has strengthened with the help of Nestle's cocoa supply we for the first time succeeded to trace and assess the data of hiring process of each and every worker in the industry. The joint investigation system has eventually become an ambitious plan of the FLA to eradicate forced labour and child labour in the cocoa production cycle (Ibid 2015: 119-198)." Therefore, Nestle's cocoa supply chain became the first

⁵⁰ A documentary film based on modern day slavery was directed by Tim Robins with the help of Sunlaap, Maiti Nepal and Gary Hangen of the international justice mission. It narrates the story of trafficked survivors, their painful experience in the past and their health problem as infected with HIV and their preparing to die of AIDS.

chocolate maker industry to checking illegal recruitment of labour and taking action against the child labour violations.

UNICEF

United Nation International Children's Emergency Fund (UNICEF), World Tourism Organisation (WTO) and the international advocacy group End Child Prostitution, Child Pornography, and Trafficking (ECPAT) are international organisations against human trafficking working in this region. They have launched the code to combat commercial sexual exploitation of children around the world (UNICEF 2012: 10-32). All the member countries have taken the responsibility to protect the minors from becoming the victims of sexual exploitation. The code as the principle and goals of the organisation against modern-day slavery has been widening across the world. According to the report of the organisation, the Code has already covered 23 countries. The primary objectives of the Code are to identify the criminal activity, arrest traffickers and stop sex tourism around the world substantially and efficiently.

UNICEF has usually been associated with the health and nutrition programmes in India as well as Nepal related to children and women. However, UNICEF also recognizes the fact that threats to human lives arise not only from natural disasters but also man-made catastrophe, the most lethal being the crime of human trafficking (UNICEF 2000: 28). Hence, staying true to its mission of ensuring holistic growth of every child in India, the organization had launched the Integrated Child Protection Systems in collaboration with the Ministry of Women and Child Development of India in 2009. At the community level, UNICEF and its partners work directly with 250,000 adolescent girls in 42 districts across 10 states, with a focus on empowerment of girls to acknowledge and address violence, child marriage, child labour, trafficking and sexual exploitation.

Moving on to intergovernmental level, UNICEF has also partnered with **South Asia Initiative to End Violence against Children (SAIEVAC)** in order to strengthen the National Child Protection Systems in the region (UNICEF 2012). At present, UNICEF is actively involved in setting up the proposed **National Action and Coordination Group (NACG)**. The NACG is expected

to enhance coordination and networking among the civil society and the government, to further the agenda of Violence Against Children, set forth by the UN Study on Violence Against Children (2006).

Carlson CEO Marilyn Carlson Nelson took a decision to sign the universal travel industry's "Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism" (The Code) in 2004. By taking the decision Carlson aimed to:

- Establish a clear policy regarding commercial sexual exploitation of children.
 - Provide training to employees.
 - Integrate a clause stating the common non-acceptance of child exploitation in supplier contacts.
 - Provide information to customers and "key persons" at the destinations.
- And
- Report the progress annually.

According to UNICEF Bulletin 2015, it has been working extensively in Nepal's 14 most earthquake hit districts. It supports the Nepal and India' anti-trafficking unit to strengthen committees in the 14 most affected districts and 42 border areas. Similarly, it is working with the Department of Immigration to ensure that immigration officers receive effective training to prevent possible cases of trafficking at the border areas. UNICEF has entered into partnership with several NGOs of Nepal and India. Both Maiti Nepal and Shakti Samuha NGOs are working with UNICEF in the field of interception at the border and to conduct surveillance and awareness programme in Nepal.

UNODC

Among all the UN bodies, the one that immediately calls for attention in the context of human smuggling and trafficking is UNODC or **United Nations Office of Drugs and Crime**. The first sentence of UNODC begins with highlighting the definition of human trafficking and smuggling of the body of a person.

It says that trafficking in person has become one of the profitable businesses in the world where traffickers and brothel owners earn a handsome amount at the cost of the life of an innocent girl, men, children and women. UNODC identified more than 85 countries which are affected by trafficking in person where 51 % victim is women followed by 21 % men and 20 % girls and 8 % boy (UNODC 2016: 23). UNODC has collaborated with several government agencies in India regarding rehabilitation activities, the most noteworthy being the rehabilitation of girls and boys from the shelter care homes of the juvenile home complex in Calicut, Kerala. With the enabling support from the government of Kerala, it has till date been able to support a victim care support initiative for children in after-care homes, as part of UNODC's regional victim support project. This include the training of 600 caregivers in shelter care homes in 9 Indian states namely Andhra Pradesh, Bihar, Goa, Karnataka, Kerala, Maharashtra, Tamil Nadu Uttar Pradesh and West Bengal (UNODC 2017: 2). It also provides training to law enforcement agencies in the region to strengthen their technical capacity and investigation skills to address human trafficking effectively. UNODC has so far trained 13,490 law enforcement officials and established 9 anti human trafficking units in districts of India (Ibid. 2017: 2).

UNODC and UNIFEM are collaborating on the 'Legal and policy review of response to human trafficking in India, Nepal, Bangladesh and Sri Lanka' to prepare a comprehensive matrix of gaps in legislative, policies and institutional responses to human trafficking. The findings will help the four countries move closer to the provisions of the UNTOC and the Trafficking in Persons Protocol. Under the vision of increased joint UN cooperation, UNIFEM and UNODC have committed themselves to address human

trafficking issues collaboratively by thinking, planning and implementing plan and policy together (UNODC 2011: 6-57).

It has begun its work by stressing on the four critical areas namely “Prevention, Protection, Prosecution and Publication”. Prevention includes raising awareness among policing-makers, law enforcement bodies and civil society. It focuses on the role of media to prevent human trafficking. It has set up “Human Trafficking Knowledge Portal” to spread information on human trafficking. It aspires to protect the person those who are vulnerable. Therefore, it helps governments, policy makers, police, NGOs and others to enable them to protect victims of trafficking and tackle human trafficking more effectively. Identification of victims, providing health facility and promoting livelihood are the protective measures of UNODC. It aims to see a greater number of convictions achieved globally.

It stresses on the process of law and prosecution part of the government and implementation of policy altogether to bring the result in the support of victims. It has been noticed that some countries do not have sufficient law and are limited in their application to the sexual exploitation of women and girls. Therefore, it helps the government to make adequate laws especially for combating trafficking and smuggling of person. For example, it offered Vietnam, Armenia, South Africa and Lebanon assistance to sketch anti-trafficking legislation. Vietnam has one of the highest rates for convicted traffickers in the world, and government of Vietnam shouts out to UNODC to a significant part of helping the government to sketch the legislation.

The last part of the anti-trafficking measure of UNODC is a Publication. It is an area of making people aware of human trafficking, provides resources, shares information, and connects all stakeholders and government through the single channel. The publication includes tools, reports, strategy document, campaigning through audio and video bars, playing the drama on the street, technical and issue papers and catalogue of materials. Publication as a strategy against human trafficking, it has launched the ‘blue heart campaign’ to publicise and make people more sensitive towards human trafficking.

Also, UNODC also plays a great role in combating human trafficking at the global level. Its role involves:

- Identifying all those organisations to share the desire to fight to reduce the crime.
- Developing multi-agency and training them to ensure common understanding and agreed goal.
- Jointly assessing local priorities and developing strategies and action plans.

South Asian Association for Regional Cooperation (SAARC)

SAARC, a regional organisation in South Asia came into existence on 8 December, 1985 with primary concerns for social, economic and political security of member states in the region (Uddin 2014: 18-27). The main objectives of SAARC are as mentioned in its Article 1 follows;

- i) to promote the welfare of the people of South Asia and to improve their quality of life;
- ii) to promote and strengthen collective self-reliance among the countries of South Asia;
- iii) to strengthen cooperation with other developing countries;
- iv) to cooperate with international and regional organisations with similar aims and purposes (ICSW 2003: 17-21).

In the context of cross-border or trans-national trafficking in person SAARC had come up with collective plan of action and convention on preventive and combating trafficking in women and children for purpose of prostitution (Kumar 2015: 14-31). In 2002, it established an effective regional cooperation for preventive trafficking in human being for prostitution as well as for

investigation and punishment of those responsible for crime of trafficking (SAARC Convention: 2002).⁵¹

The SAARC member states have decided to set up a toll free helpline and outline platform to fight trafficking in person by tracing thousand of girls, women and children went missing and will go missing in the region (Bhalla 2016 : 2-3). According to India's Women and Child Development Ministry, though there is no accurate figure on the number of people being trafficked within South Asian region, but establishing a common or uniform toll free helpline number, regional cross information sharing, programme on Information and Communication Technology (ICT) and developing a regional strategy can address all forms of sexual abuse, exploitation and trafficking (Nita Bhalla 2016:2-3).

On 3 August, 2016 the Union Home Minister of India Rajnath Singh in his speech in 7th SAARC Meeting of Interior/Home Secretaries in Islamabad mentioned that curbing cross-border terrorist activities and organised crime like human trafficking are major challenges for all nations but, by sharing information and best practices, it is possible to resolve the regional problem (PIB of Govt. of India 2016:6). It has been noticed that all members of SAARC are sensitive and agreed to solve the problem of trafficking in person. SAARC has set up its strong anti-terrorist mechanism and regional task force to minimise the cross-border crime in the region. It has been formed in all the member states to monitor and assess the implementation of the Convention on combating the Crime of trafficking in Women and Children for Prostitution. So far it has met in 2007, 2008, 2009 and 2010 (United Nations 2016: 2). All

⁵¹ According to Article 1 (3) of SAARC Convention 2002, 'trafficking means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other consideration with or without the consent of person subjected to trafficking. To combat the heinous crime of TIP, Convention's Article 3(1) has made a scope of preventive measures by declaring human trafficking is a punishable offence against human race. Besides, it also directs the member state to take an effective measure to ensure that trafficking in any form is an offence under their respective criminal law and it is also punishable by appropriate penalties. Similarly, to ensure the rights and privacy of victims, Article 5 (1) states that during the judicial proceedings member state shall ensure that the confidentiality of the child and women victims is maintained and that they are provided appropriate counselling and legal assistance.

the experts and top rank police officers of members of SAARC are called in annual meeting of regional task force to discuss challenging and relevant issues and effective action against it.

SAARC has taken every possible step against cross-border terrorism, money laundering, drugs trafficking, arms smuggling and human trafficking (Nita Bhalla 2016 :2-3). The member states recognised trafficking in person mainly for women and children for the purpose of prostitution has become a serious problem in region and it affects the security of individual as well as the region. There are articles within the Convention which strictly deal with the crime of Trafficking in person (SAARC Convention 2002: 5-12). The convention of SAARC has contributed in preparing a mechanism to prosecute culprit and punish according to the law of state “ where criminal/traffickers is arrested during committing a crime, no matter either extradition treaty is exist or being followed or not, no matter how previous problem or condition of treaty be obstacle or not (SAARC 1985: 5-8).

The Major Weakness of SAARC Convention:

The scope of the Convention seems limited as it does not include all sorts of human trafficking meticulously. For example, it does not cover forced labour, domestic servitude, illicit adoption, organ removal and non-commercial sexual exploitation. The Convention fails to differentiate sufficiently between trafficking and voluntary migration. In fact, it does not contain provisions that encourage state parties to adopt measures that can control or check the movement women and children as migrants. The Convention lacks systematic task force which function in regular basis and treaty monitoring body to oversee the state compliance under the Convention (Uddin 2014: 24).

Similarly, it does not cover all forms of trafficking comprehensively within its umbrella. So, it is necessary to redefine the term “trafficking” exhaustively. It should ensure the comprehensive integration of human rights, gender and child rights perspective as part of the Convention’s guidelines principles and operative provisions. Interpol communication and sharing information as well

as technology for the purpose of combating trafficking in person should be upgraded and made it punishable offence.

It needs to clarify the responsibilities of the origin, transit and recipient countries with respect to extradition and prosecution of traffickers as well as rescue, recovery, protection, repatriation and social integration of the victims and prevention of trafficking. The Convention needs to create provision, recognition and facilitation of alternative report by the civil society (ICSW 2003: 2-32). Further, the Convention needs to contain provision which will pressurize the member states to protect and repatriate the victims of trafficking rather than stigmatizing them. Although all members accepted to implement the convention on Preventive and combating trafficking in human being, implementation has not happened yet. Therefore, all the members must step forward by minimising their difference to take collective action against the crime of HT.

Chapter VI

Conclusion

The stage of human evolution and its process is relentless and immortal. Since many decades, it has been noticed that an approach of the everyday life of human being has got changed with the upshot of new norms and value of society. The rapid change of individual behaviour has contributed to a new political pattern of society and vice-versa. No doubt, a political and social behaviour of individual looks different with an inception of a modern state system. Daniel Bell in *his End of Ideology* suggested that an ideology of political system came to an end or has been replaced by a new world order which supports the changes, development and modification of life in all forms (Gaubá 2007: 21). The new wave of state order is flourishing in such a way that political, economic and social affairs are clearly noticed even in a situation of working class in the welfare state. No more proletariat suffers in the political system because a capitalist state is now playing a role as a protector of interest of proletariat.

The new wave of political mechanism has impacted upon a daily life of individual and society. David Easton in his *a System of Analysis of Political Life* suggested that individual's behaviour, socio-economic and political life of society, have accumulated in the form of the input device to create an environment of a function of the state system (Gaubá 2007: 93). Importantly, there are correlation and corroboration between a function of state and role of an individual which is directly seen in a smooth function of the state system and secure life of human being. However, today, we are living in the period of high tension. There is poverty, a crisis of social, economic and political rights, women and girls are howling due to an unfinished oppression of patriarchal society and innocent children are still vulnerable to hunger, abduction, sexual and physical harassment.

As we have seen many factors behind the crisis of security of the individual, it has been noticed that one of the grave and noticeable agents are non-state actors and non-conventional threats. They are mainly a terrorist organisation,

sex racket and criminals. They never leave any stone unturned to ruin the life of other. Therefore, the changing pattern of the state system and the concept of security demand more attention, consideration and concentration towards the safety of life of the individual.

Though a counter mechanism has been built and brought about to create an umbrella of security, failure of the state and its agency resembles the undeniable reality which often throws a hundred lives in the throes of victimisation of the crime. Even if state's security is considered adequate to meet the threats, at the same time it falls short of providing protection from non-traditional threats like gender based violence, water crisis, poverty, hunger, lack of access to the primary healthcare and educational institution, socio-economic inequality, etc.

Today, human trafficking is considered a heinous crime against human race in the world and as we have discussed throughout the study, one of the many non-traditional security problems in India and Nepal is trafficking in person. The crime of human trafficking and cross-border linkages between Nepal and India has encouraged non-conventional security discourses, the role of the state's agent to securitize existential threat, recognition of the referent object and measures to find a way out of the security dilemma between the conventional form of security and human security. Human trafficking has proved itself to be one of the most significant threats to the life of women, girls and children in Nepal and India, who are the most vulnerable prey to this malady. The crime of buying and selling the body of a person from Nepal to India for physical and sexual exploitations is a daily routine business in Nepal and India. It won't be impertinent to say that this is more devastating than a nuclear attack to destroy the life of victim.

Trafficked survivors live a life of perpetual death every day. After trafficked, the victim becomes nothing less than a slave. They become a prey to victimisation and re-victimisation of the condition from where they are trafficked and re-trafficked.

Ethnically and socially Nepal looks a garden of flowers. Nepal by looking at different ethnic groups of people resemble flower in the society (Bhattarai

2002: 297). But, these flowers have been sucked and plucked by the clever upper groups. Today, the clever people have captured more properties and the lower economic classes of the people are becoming poorer and poorer. No doubt, each and every ethnic group has its own unique culture, religious belief and value. A complete Nepali culture is made up by assembling the culture of all ethnic groups. If unique culture of lower or marginalised caste is neglected, it will be incomplete to explain the culture of Nepal. Therefore, respect and maintaining the unity in diversity is a permanent solution for backward society of Nepal. However, illegal discrimination, caste atrocity and practising of untouchability against a particular low caste and poor people are still prevailing in Nepal and became a major factor behind human trafficking.

Likewise, illiteracy and poverty are also the root causes behind constructing a big catchment area where traffickers and sex rackets are always ready to go fishing for destroying an innocent life. Increasing poverty provides better catchment areas and hereafter, lives of poor people end in the hands of buyers and brothels owners. In Nepal, poor girls and women are trafficked to India in two ways. Firstly, there is the push factor like socio-economic background which a person can't endure, and therefore, moves out in search of better life. The moment they step out of their home, they become victim to unforeseen trials and tribulations. They don't get to know when they become the targets of traffickers, to be recruited and trafficked to hell. Second, is the demand or pull factor like high aspirations, attraction for the new fashionable world, jealousy, easy money on one hand and demand for prostitution on the other. Of these, the last factor is directly associated with the process of trafficking in person from Nepal to India. For instance, many poor girls from rural parts of Nepal get trafficked to Kathmandu and then to India in view of their high aspirations to become economically independent in their life and desire to live a life like other girls living in the city area. Moreover, the manner in which sex tourism, free sex and demand of young Nepali girls is increasing in Nepal and excessively in India, it is but natural for both Nepali and Indian traffickers to focus on the rural parts of Nepal to make the most of their efforts.

Other than pushing (socio-economic) and pulling (demand) factors, we have also seen that a cultural and historical oppression by patriarchal society of Nepal has had resulted in an extreme development of trafficking of girls and women from Nepal to India. The phenomena of internal and external trafficking of girls and young women due to gender discrimination and in the name of religious practice have been permanently established in Nepali society and India. Whether we call it Devadasi, Jogni and Kumari system but, the purpose behind continuing existence of such a system is nothing but a sexual exploitation in the name of God and temple. Importantly, Dalit girls are the eternal targets of such evil practices.

Apart from cultural, historical and gender-based discrimination, the open border and linkages of sex rackets remain the hunting grounds for the vulnerability of people to fall prey to traffickers. Throughout the study, it has been noticed that the long uncontrolled 1751 km long open-border between India and Nepal is playing two important roles. One, it has continued the historical and old age connectivity of peoples of two countries in terms of socio-economic relations. Secondly, it has also facilitated the connectivity of criminal groups of India and Nepal for many illegal outfits. In maximum cases, kingpin or mastermind of the sex rackets operate the whole method from border areas of India and Nepal, and only the field traffickers are assigned the duty of recruiting the victims and transport them. The study has shown that frontier points mainly Sunauli, Ilam, Kakarvitta and Raxaul are repeatedly used by traffickers to transport the victims from Nepal to different parts of India.

We have seen many districts of Nepal getting affected by the problem of trafficking in person. After a devastating earthquake, the number of trafficked victims has increased three to five folds. For instance, the report of Nepal Police says, 10 cases of trafficking of girls were registered in Dhulakha district of Nepal. According to information, all girls were trafficked to Dehradun in India on the pretext of providing education. Similarly, eight people of Gausala Kathmandu were rescued from Thankot checkpoint while they were being trafficked to India via Jhapa district of Nepal on September 19, 2015 (NHRC of Nepal 2015). Later, two accused persons – Lama of Gumba VDC and Dawa

Tamang of Bhotang VDC of Sindhupalchok district of Nepal were arrested. Besides, after an earthquake, missing girls and children cases were also registered in Nepal every day. The report says that the highest numbers of cases registered in Kathmandu (28%) followed by Pokhara(26%) district of Nepal.

It is noticed that Biratnagar, Hetauda, Pokhara, Surkhet, Kathmandu Valley, Morang, Jhapa, Sindhupalchok and Kavre are the most affected by trafficking in person. The victims are trafficked to India in the pretext of providing jobs in Delhi and Mumbai, education in Dehradun, offer to visit in tourist place in Darjeeling (WB), Mumbai and Varanasi U.P in India, medical check up in Siliguri (WB), Delhi and Kolkata. Later, they are cheated and forced into prostitution, domestic help, fake marriage, factory worker and artist in the circus.

The last five-year record of human trafficking led by poverty, gender discrimination, illiteracy, corruption, is shocking and frightening in Nepal and India. In every year, more than 500 to 3990 people become the victim of trafficking in Nepal and India; whereas the number of trafficking in person from Nepal to India has reached 7000 (NHRC 2013-2015: 9-32). Although the figure of poverty plus factors behind human trafficking has been provided by different organisations, the government of Nepal and India have not taken a blind bit of notice. Therefore, the rate of internal and external migration and trafficking in person has increased instead of decreasing every year. If the plan of action of the government of Nepal had met the needs of the poor people, then every year more than 7000 innocent women and girls would not have been trafficked from Nepal to India and forced into prostitution and physical slavery (Ibid. 2013-2015:9-32). India and Nepal have focused more on transnational economic and diplomatic transactions to become economically and politically stable state but, at the same time, they forget to concern their role to uplift the miserable condition of the people in the countryside. Moreover, the need of the separate task force and intelligent Bureau, the process for reformation of the superannuated laws relating to human trafficking, and training for border police are unnoticed in India and Nepal. Though both India and Nepal have been planning and making policies against

the threats coming from the illegal activities of non-state actors, it seems rhetoric when the question of implementation of the plan of action is raised, and the security and rights of the individual are violated.

So, after every year cases of cross-border trafficking in person between Nepal and India are increasing rapidly.

We know that the victory of good over evil is always inevitable and eternal outcome. Therefore, many who cheer the victory of good always come forward to build a protective and beautiful society by nipping evil activities in the bud. We see organisations like Maiti Nepal, Shakti Samuha, and its members fighting against evil practices of human trafficking in Nepal and from Nepal to India. Similarly, in India, we can see the role of Shakti Vahini, the Marg, Sanlaap India and Bachpan Bachao Andolan in combating a heinous crime of trafficking in person. Media also covers the story of NGOs and state's agency in rescuing the victims, arresting traffickers, bursting the sex rackets. It also informs the individual role of the public servant, sociable man and audacious student to save the society from the crime of human trafficking. If school students sacrifice their lives to bust the sex racket, then a brave man inform the government agency and police to rescue trafficked girl from a brothel. Their sacrifice is always honourable. For example, in 2017, two girl students from the district of Darjeeling (West Bengal) were presented a bravery award by the President of India for their extraordinary sacrifice to bust the sex racket and to combat human trafficking (Thomson Reuters 2017:2-3). Last but not the least, the cross-border crime of human trafficking between Nepal and India is devastating and region-wide can only be controlled with the help of a proper mechanism of skilled mind and cooperation of all stakeholders, civil society and state's agency.

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Appendix 1

TREATY OF PEACE AND FRIENDSHIP BETWEEN THE GOVERNMENT OF INDIA AND THE GOVERNMENT OF NEPAL July 31, 1950

**Kathmandu,
31 July 1950**

The Government of India and the Government of Nepal, recognising the ancient ties which have happily existed between the two countries; Desiring still further to strengthen and develop these ties and to perpetuate peace between the two countries; Have resolved therefore to enter into a Treaty of Peace and Friendship with each other, and have, for this purpose, appointed as their plenipotentiaries the following persons, namely,

- **THE GOVERNMENT OF INDIA**
His EXCELLENCY SHRI CHANDRESHWAR PRASAD NARAIN SINGH,
Ambassador of India in Nepal.
- **THE GOVERNMENT OF NEPAL**
MOHUN SHAMSHER JANG BAHADUR RANA,
Maharaja, Prime Minister and Supreme Commander-in-Chief of Nepal, who
having examined each other's credentials and found them good and in due
form have agreed as follows:—

Article 1

There shall be everlasting peace and friendship between the Government of India and the Government of Nepal. The two Governments agree mutually to acknowledge and respect the complete sovereignty, territorial integrity and independence of each other.

Article 2

The two Governments hereby undertake to inform each other of any serious friction or misunderstanding with any neighbouring State likely to cause any breach in the friendly relations subsisting between the two Governments.

Article 3

In order to establish and maintain the relations referred to in Article 1 the two Governments agree to continue diplomatic relations with each other by means of representatives with such staff as is necessary for the due performance of their functions. The representatives and such of their staff as may be agreed upon shall enjoy such diplomatic privileges and immunities as are customarily granted by international law on a reciprocal basis: Provided that in no case shall these be less than those granted to persons of a similar status of any other State having diplomatic relations with either Government.

Article 4

The two Governments agree to appoint Consuls-General, Consuls, Vice-Consuls and other consular agents, who shall reside in towns, ports and other places in each other's territory as may be agreed to. Consuls-General, Consuls, Vice-Consuls and consular agents shall be provided with exequaturs or other valid authorization of their appointment. Such exequatur or authorization is liable to be withdrawn by the country which issued it, if considered necessary. The reasons for the withdrawal shall be indicated wherever possible. The persons mentioned above shall enjoy on a reciprocal basis all the rights, privileges, exemptions and immunities that are accorded to persons of corresponding status of any other State.

Article 5

The Government of Nepal shall be free to import, from or through the territory of India, arms, ammunition or warlike material and equipment necessary for the security of Nepal. The procedure for giving effect to this arrangement shall be worked out by the two Governments acting in consultation.

Article 6

Each Government undertakes, in token of the neighbourly friendship between India and Nepal, to give to the nationals of the other, in its territory, national treatment with regard to participation in industrial and economic development of such territory and to the grant of concessions and contracts relating to such development.

Article 7

The Governments of India and Nepal agree to grant, on reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the

matter of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature.

Article 8

So far as matters dealt with herein are concerned, this Treaty: cancels all previous Treaties, agreements, and engagements entered into on behalf of India between the British Government and the Government of Nepal.

Article 9

This Treaty shall come into force from the date of signature by both Governments.

Article 10

This Treaty shall remain in force until it is terminated by either party by giving one year's notice.

DONE in duplicate at Kathmandu this 31st day of July 1950.

(Signed)

CHANDRESHWAR PRASAD NARAIN SINGH
For the Government of India.

(Signed)

MOHUN SHAMSHER JANG BAHADUR RAN,
For the Government of Nepal

Appendix 2

SAARC CONVENTION ON PREVENTING AND COMBATING TRAFFICKING IN WOMEN AND CHILDREN FOR PROSTITUTION

THE MEMBER STATES OF THE SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION (SAARC), PARTIES TO THE PRESENT CONVENTION

EMPHASISING that the evil of trafficking in women and children for the purpose of prostitution is incompatible with the dignity and honour of human beings and is a violation of basic human rights;

RECALLING the decision of the Ninth SAARC Summit (May, 1997) that the feasibility of a regional Convention to combat the grave crime of trafficking in women and children for prostitution should be explored;

RECALLING ALSO the relevant international legal instruments relating to prevention of trafficking in women and children, including the Convention for the Suppression of Trafficking in Persons and of the Exploitation of Prostitution of Others, 1949; Convention on the Elimination of All Forms of Discrimination against Women, 1979; International Covenant on Civil and Political Rights, 1966; and the Convention on the Rights of the Child, 1989;

GIVING due regard to the implementation of the recommendations of the various pertinent International Bodies and Conferences including the Fourth World Conference on Women at Beijing (1995);

NOTING with concern the increasing exploitation by traffickers of women and children from SAARC countries and their increasing use of these countries as sending, receiving and transit points;

RECOGNISING in this regard the importance of establishing effective regional cooperation for preventing trafficking for prostitution and for investigation, detection, interdiction, prosecution and punishment of those responsible for such trafficking;

EMPHASISING the need to strengthen cooperation in providing assistance, rehabilitation and repatriation to victims of trafficking for prostitution;

HAVE AGREED as follows:

Article I

DEFINITIONS

For the purpose of this Convention:

- 1) "Child" means a person who has not attained the age of 18 years;
- 2) "Prostitution" means the sexual exploitation or abuse of persons for commercial purposes;
- 3) "Trafficking" means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking;
- 4) "Traffickers" means persons, agencies or institutions engaged in any form of trafficking;

- 5) "Persons subjected to trafficking" means women and children victimised or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means;
- 6) "Protective home" means a home established or recognised by a Government of a Member State for the reception, care, treatment and rehabilitation of rescued or arrested persons subjected to trafficking.
- 7) "Repatriation" means return to the country of origin of the person subjected to trafficking across international frontiers.

Article II

SCOPE OF THE CONVENTION

The purpose of this Convention is to promote cooperation amongst Member States so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children; the repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination.

Article III

OFFENCES

1. The State Parties to the Convention shall take effective measures to ensure that trafficking in any form is an offence under their respective criminal law and shall make such an offence punishable by appropriate penalties which take into account its grave nature.

2. The State Parties to the Convention, in their respective territories, shall provide for punishment of any person who keeps, maintains or manages or knowingly finances or takes part in the financing of a place used for the purpose of trafficking and knowingly lets or rents a building or other place or any part thereof for the purpose of trafficking.

3. Any attempt or abetment to commit any crime mentioned in paras 1 and 2 above or their financing shall also be punishable.

Article IV

AGGRAVATING CIRCUMSTANCES

1. The State Parties to the Convention shall ensure that their courts having jurisdiction over the offences committed under this Convention, can take into account factual circumstances which make the commission of such offences particularly grave, viz.

- a) The involvement in the offences of an organised criminal group to which the offender belongs;
- b) The involvement of the offender in other international organised criminal activities;
- c) The use of violence or arms by the offender;
- d) The fact that the offender holds a public office and that the offence is committed in misuse of that office;
- e) The victimisation or trafficking of children;
- f) the fact that the offence is committed in a custodial institution or in an educational institution or social facility or in their immediate vicinity or in

other places to which children and students visit for educational, sports, social and cultural activities;

- g) Previous conviction, particularly for similar offences, whether in a Member State or any other country.

Article V

JUDICIAL PROCEEDINGS

In trying offences under this Convention, judicial authorities in Member States shall ensure that the confidentiality of the child and women victims is maintained and that they are provided appropriate counselling and legal assistance.

Article VI

MUTUAL LEGAL ASSISTANCE

1. The State Parties to the Convention shall grant to each other the widest measure of mutual legal assistance in respect of investigations, inquiries, trials or other proceedings in the requesting State in respect of offences under this Convention. Such assistance shall include:

- a) Taking of evidence and obtaining of statements of persons;
- b) Provision of information, documents and other records including criminal and judicial records;
- c) Location of persons and objects including their identification;

- d) Search and seizures;
- e) Delivery of property including lending of exhibits;
- f) Making detained persons and others available to give evidence or assist investigations;
- g) Service of documents including documents seeking attendance of persons; and
- h) Any other assistance consistent with the objectives of this Convention.

2. Requests for assistance shall be executed promptly in accordance with their national laws and in the manner requested by the Requesting State. In the event that the Requested State is not able to comply in whole or in part with a request for assistance or decides to postpone execution it shall promptly inform the Requesting State and shall give reasons for the same.

Article VII

EXTRADITION OR PROSECUTION

1. The offences referred to in the present Convention shall be regarded as extraditable offences in any extradition treaty which has been or may hereinafter be concluded, between any of the Parties to the Convention.

2. If a State Party which makes extradition conditional on the existence of a treaty, receives a request for extradition from another State Party with which it has no extradition treaty, the Requested State shall, if so permitted by its laws, consider this Convention as the basis for extradition in respect of the offences set forth in Article III.

3. Extradition shall be granted in accordance with the laws of the State to which the request is made.

4. The State Party in whose territory the alleged offender is present shall, if it does not extradite him or her, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution in accordance with the laws of that State.

5. In States where extradition of their nationals is not permitted under their law, nationals who have committed offences under the present Convention shall be prosecuted and punished by their courts.

Article VIII

MEASURES TO PREVENT AND INTERDICT TRAFFICKING IN WOMEN AND CHILDREN

1. The State Parties to the Convention shall provide sufficient means, training and assistance to their respective authorities to enable them to effectively conduct inquiries, investigations and prosecution of offences under this Convention.

2. The State Parties to the Convention shall sensitize their law enforcement agencies and the judiciary in respect of the offences under this Convention and other related factors that encourage trafficking in women and children.

3. The State Parties to the Convention shall establish a Regional Task Force consisting of officials of the Member States to facilitate implementation of the provisions of this Convention and to undertake periodic reviews.

4. The State Parties to the Convention may also, by mutual agreement, set up bilateral mechanisms to effectively implement the provisions of the Convention, including appropriate mechanisms for cooperation to interdict trafficking in women and children for prostitution.

5. The State Parties to the Convention shall exchange, on a regular basis, information in respect of agencies, institutions and individuals who are involved in trafficking in the region and also identify methods and routes used by the traffickers through land, water or air. The information so furnished shall include information of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction.

6. The State Parties to the Convention may consider taking necessary measures for the supervision of employment agencies in order to prevent trafficking in women and children under the guise of recruitment.

7. The State Parties to the Convention shall endeavour to focus preventive and development efforts on areas which are known to be source areas for trafficking.

8. The State Parties to the Convention shall promote awareness, *inter-alia*, through the use of the media, of the problem of trafficking in women and children and its underlying causes including the projection of negative images of women.

Article IX

CARE, TREATMENT, REHABILITATION AND REPATRIATION OF THE VICTIMS

1. The State Parties to the Convention shall work out modalities for repatriation of the victims to the country of origin.

2. Pending the completion of arrangements for the repatriation of victims of cross-border trafficking, the State Parties to the Convention shall make suitable provisions for their care and maintenance. The provision of legal advice and health care facilities shall also be made available to such victims.

3. The State Parties to the Convention shall establish protective homes or shelters for rehabilitation of victims of trafficking. Suitable provisions shall

also be made for granting legal advice, counselling, job training and health care facilities for the victims.

4. The State Parties to the Convention may also authorise the recognised non-governmental organisations to establish such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.

5. The State Parties to the Convention shall encourage recognised non-governmental organisations in efforts aimed at prevention, intervention and rehabilitation, including through the establishment of such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.

Article X

IMPLEMENTATION

The State Parties to the Convention shall adopt, in accordance with their respective Constitutions, the legislative and other measures necessary to ensure the implementation of the Convention.

Article XI

HIGHER MEASURES

The measures provided for in the Convention are without prejudice to higher measures of enforcement and protection accorded by relevant national laws and international agreements.

Article XII

SIGNATURE AND RATIFICATION

The Convention shall be open for signature by the Member States of SAARC at the Eleventh SAARC Summit at Kathmandu and thereafter, at the SAARC Secretariat at Kathmandu. It shall be subject to ratification. The Instruments of Ratification shall be deposited with the Secretary-General.

Article XIII

ENTRY INTO FORCE

This Convention shall enter into force on the fifteenth day following the day of the deposit of the seventh Instrument of Ratification with the Secretary-General.

Article XIV

DEPOSITORY

The Secretary-General shall be the depository of this Convention and shall notify the Member States of signatures to this Convention and all deposits of Instruments of Ratification. The Secretary-General shall transmit certified copies of such instruments to each Member State. The Secretary-General shall also inform Member States of the date on which this Convention will have entered into force in accordance with Article XIII.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

DONE at Kathmandu on this Fifth Day of January Two Thousand and Two, in nine originals, in the English Language, all texts being equally authentic.

M. MORSHED KHAN
THINLEY

Minister for Foreign Affairs
Affairs

People's Republic of Bangladesh

JIGMI Y.

Minister of Foreign

Kingdom of Bhutan

JASWANT SINGH
JAMEEL

Minister of External Affairs
Affairs

Republic of India
Maldives

FATHULLA

Minister of Foreign

Republic of

RAM SHARAN MAHAT

Minister of Finance and Leader
Affairsof the Delegation of Nepal
PakistanKingdom of Nepal

ABDUL SATTAR

Minister of Foreign
Islamic Republic of

TYRONNE FERNANDO
Minister of Foreign Affairs
Democratic Socialist Republic of Sri Lanka
