

# **GIRL CHILD TRAFFICKING**

*A Study of Institutional Responses in India*

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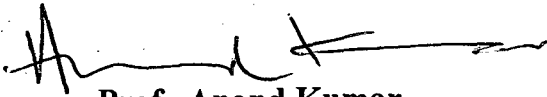
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**CERTIFICATE**

This is to certify that the dissertation titled "GIRL CHILD TRAFFICKING: A Study of Institutional Responses in India" has been submitted by Vaishakhi Mallik in partial fulfillment for award of the Degree of Master of Philosophy. This dissertation has not been submitted for any other degree to any other University and is her own work.

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*Vaishakhi*

VAISHAKHI MALLIK

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## **INTRODUCTION**

### **GIRL CHILD TRAFFICKING** *Theoretical Considerations*

*"From the earliest hymns of the Rig Veda sons were looked on as great blessings. At least one son was almost essential; to perform funeral rites for his father and thus ensure his safe transit to the other world... The intense family feeling of Hindu India enhanced the desire for sons, without whom the line would disappear.*

*Girls, on the other hand, were incapable either of helping their parents in the other world or of perpetuating the line, for on marriage, according to orthodox theory, they became members of their husbands' families. The necessity of providing them with dowries also lessened their desirability. There were thus very practical reasons why girls should be unwanted, and in a civilization so heavily weighted in favour of the male it is surprising that there is little evidence of the exposure or infanticide of girls. Rajput families in later times certainly often destroyed their infant girls, and the same may well have been done by the very poor at all periods..."<sup>1</sup>*

#### **The Problem**

Trafficking of girls (and women)<sup>2</sup>, though, have objectively been mentioned in history in this part of the world and there has been plethora of writings on the status of women too, yet there has been a conspicuous and stark absence of any attempts at theorizing the issue of girl child (or women) trafficking. There has emerged, during immediately preceding decades, considerable amount of literature on the deplorable plight of women (courtesy spurt in the women's movements since 1970s) and gender inequality across various fields of understanding human society. However, there has been hardly any forward movement beyond mere acknowledgement or at most objective elaboration, as far as girl child trafficking is concerned. The discourse has, unfortunately, been constrained to some shocking and gory

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<sup>1</sup> Basham, A.L.: 'The Wonder That Was India', Rupa & Co., New Delhi, 1995, p.154

<sup>2</sup> Though there is a lack of consensus on the precise definition of trafficking, the following is the most widespread according to the United Nations General Assembly, 1994: "The illicit and clandestine movements of persons across national borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption." (See Chapter II for a detailed discussion on the issue)

reports by UNIFEM (United Nations Development Fund for Women), other international and national non-profit organizations, and journalistic writings within India and outside, but there has been little attempt at any meaningfully theoretical or academic exercise in this direction.

Historically, trafficking in women (or girls) has been found to be as ancient as the civilization itself.<sup>3</sup> Patriarchy<sup>4</sup>, socio-economic set-up, certain religious injunctions<sup>5</sup>, market forces, commodification of women since time immemorial<sup>6</sup>, poverty<sup>7</sup> and gendered perceptions<sup>8</sup> have been stated to be the forces that not only subvert the status of women and girls, but also under extreme conditions compel them into forced prostitution and even sexual slavery. Notions of virginity and myths belying modern medicine also have, of late, opened widened channels for girl child trafficking (mostly to satiate the customers of prostitution or end users in the process of trafficking).

The absence of any serious discourse at the theoretical or academic level can be considered as the primary propelling force that inspires this academic endeavour. This endeavour, however,

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<sup>3</sup> "In the early centuries of the Christian era, however, there was a trade in slave girls between India and the Roman Empire in both directions and slave markets existed in the sixteenth century Vijaynagara Empire". Ibid. P.154.

<sup>4</sup> "There was deterioration in the position of women. A daughter came to be regarded as a 'source of misery'. Women could not attend the Sabhā; they were excluded from inheritance and along with Shudras, could not own property; whatever was earned by women became the property of their husbands or sons." 'The Gazetteer of India, Vol. II, History and Culture', Dr. P.N. Chopra ed., Department of Culture, Ministry of Education and Social Welfare, 'Rig Vedic Civilization', 1992, P. 45.

<sup>5</sup> For example, Pumsavana sanskara (ritual) among Hindus that is undertaken for procuring a male child.

<sup>6</sup> "Asura marriage (by purchase), in which the bride was bought from her father, was looked on with disfavour by all the sacred texts, though the Arthashastra allows it without criticism. There is evidence that marriage by purchase...existed even in Vedic times..." Ibid. P. 170

<sup>7</sup> "The Arthashastra, in many ways liberal than the religious law books...the sale of children into slavery is explicitly forbidden except in dire emergency". Ibid. P.154.

<sup>8</sup> 'In most societies, women and men are not only perceived as different but are also differently evaluated, and these supposed differences in characteristics and capabilities justify power differences between them'. Encyclopedia of Sociology, Macmillan, Vol. II, 1992, P.748-9.

is not just constrained to delineating and figuring out a theoretical premise per se; it also touches upon the current literature, variety of case studies, institutional responses, et al.

### **Existing Theoretical Premises**

Prostitution, sale and purchase of girls, the trafficking and transshipment, sexual slavery, pedophilia and other related issues have been found to have existed at all times and virtually at all places. References have been made in the local literatures about such issues and history has also testified many such records. It is difficult to make any claims about the magnitude of this issue especially when it comes to the commodification of girls and their transshipment for the purpose of sexual exploitation. It is only now that we have some staggering figures that have been made available to us by several government, non-profit agencies and the media. But these figures can at best be judged as rough estimates and something falling short of conjecture. Most of these estimates emerge as outcomes from diverse range of methodologies that are employed by the researchers.

However, no one actually knows the exact places of origin, routes, transit points, destinations, and the number of mafias and agents involved. It is also difficult to ascertain the size of this illegal industry in terms of money, manpower etc. Nevertheless, it is an issue that is just beginning to emerge among the media and civil society groups and is trying to find space in mainstream sociological research with rising levels of concerns being registered with regard to this illegal trade. But nothing meaningful as such can be elaborated upon at this point of time. With no reliable figures available and information provided being mostly quite sketchy,

## THEORETICAL FRAMEWORK

S.NO	SCHOOL OF THOUGHT/SOURCE OF INFORMATION	VIEWS ON CRIME (SIMILAR TO GIRL CHILD TRAFFICKING AND PROSTITUTION)	REASONS ATTRIBUTED	SOLUTIONS PROPOSED	ROLE OF INSTITUTIONS PROPOSED
1.	Organic/Functional Theorists	Usually termed as social deviance, dysfunctionism.	Poor social organization and breakdown of mores, norms and values.	Mainstreaming the marginalised, social change through reform, awareness and development.	Effective government, zero tolerance for corruption, rational-legal bureaucracy, strengthening various institutions of society.
2.	Marxists/Conflict Theorists	Usually term it exploitation of subordinated sex (economic) due to alienation or collaboration of agents with bourgeoisie.	Exploitation of proletariat (poor) by the bourgeoisie; feudal mindset; liberalization, globalization and other market forces.	State-led development; reversing trends of globalization and liberalization; strong state action and punitive justice (as on drugs in China)	Strong state and government action against bourgeoisie, and other elements who use their dominant position and relations of production for exploitation of the 'have-nots'.
3.	Feminists	Exploitation of women by men for self-pleasure, gender imbalance and sexual exploitation; patriarchy.	Patriarchy, gender inequality, socio-cultural texts (e.g. Manusmriti), norms, taboos; loopholes in the law (e.g. adultery); apathetic government attitude (police-mafia nexus, lingering cases at the courts).	Gender equality and strong law enforcement with deterrent punishment.	Strong civil society action to pressurize the state and government to take action and protect women's rights by ensuring their rights and a life with dignity.
4.	Government/State/Judiciary	Illegal Trade and violation of fundamental rights (besides many others).		Law enforcement through arrests and appropriate punishments.	Law enforcement apparatus to ensure maintenance of law by effective administration by maintaining rule of law and rule established by law.
5.	United Nations/other International non-profit organizations	Violation of Human Rights, gender and sexual rights of women.	Reasons inspired by a variety of schools of thought i.e. from those argues by organic, Marxist, feminist and alternative development theorists. Essentially premised on liberal democracy and constitutionalism since renaissance.	Addressing poverty, health, education, governance issues, empowerment and gender sensitization.	Civil society, academia and media (also limited role of the state/government) to work for gender equality, improving health and literacy, empowering of women through income generation activities (e.g. the experiment of gramin bank in Bangladesh and similar self help groups in India), decentralized governance, implementing ideas of alternative development. State to be pressurized to perform.
6.	Development Theorists/Academia (Sections within it)	Outcomes of underdevelopment, poor governance.			



scanty, repetitive and objective, the attempts at theorizing the issue are found mostly far and between.

However, any attempt at situating the issue within the sociological context must consider some of the existing theories. Broadly six such frameworks, it is proposed, can be taken recourse to in order to approximate the problem. Though most of these frameworks are juxtaposed to each other and the proponents of each discount the contribution or applicability of the other. It can, however be said that none of them can actually be discarded and, in fact, most of them overlap and compliment each other.

Six such frameworks are: *Functional, Marxist, Feminist, Legal, Development and (I)NGOs*<sup>9</sup>. Before an attempt can be made at theorizing the problematic of girl child trafficking, it must be said with regard to many of them that no direct linkages could be drawn by this researcher. Most of it has been argued by means of extrapolation. Further, any detailed discussions with regard to the philosophy as such or its contributions to the field of sociology are beyond the scope of present exercise, yet certain relevant ideas have been touched upon.

**Functional** theorizing in sociology emerged in the nineteenth century as a result of an analogy: society is like a biological organism, and hence, its parts can be analyzed in terms of their functions for maintaining the body social.<sup>10</sup> Prominent among the theories that are said

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<sup>9</sup> The abbreviation (I)NGOs represents International Non Governmental Organizations, International Non Profit Organizations and International Voluntary Organizations. It also refers to Non Governmental Organizations in India.

<sup>8</sup> “Analogies of this kind had a long tradition—beginning as early as the Greeks, moving through early Christianity and the limited scholarship of the Middle Ages, to the organismic imagery of Hobbes and Rousseau—but it was August Comte who explicitly welded organismic analogies to sociology...It was Herbert Spencer who used the organismic analogy to create an explicit form of functional analysis.” *Encyclopedia of Sociology*, Macmillan, Vol. II, 1992, P.730

to exist within the discourse of Functionalism are those of Anomie and Deviance. These theories, it appears, can be employed to explain the issue to some extent.

For sociologists, anomie is most frequently associated with Emile Durkheim. Durkheim (1893-1956) used the French word *anomie*, meaning 'without norms', to describe the disruption that societies experienced in the shift from an agrarian, village economy to one based on industry. It has been referred to as a state of society and not of individuals, although individuals were affected by these forces. By this Durkheim did not mean to imply literal normlessness but, rather, a state of relative normative disorder. In this state, without adequate normative direction, people did not know what to expect or how to behave. Robert K. Merton's use of 'anomie' is very similar to that described by Durkheim. He (1949) used the concept of anomie to describe how social structure produced individual deviance. According to him, when there existed within a society a disjuncture between the legitimate goals that members of a society are to aspire to and the legitimate way of achieving these goals, then that society was in a state of anomie. For both Durkheim and Merton, frustrated aspirations were an important cause of norm violation and deviance.

It would be simplistic to argue that girl child trafficking is abetted or is a resultant primarily of anomie or deviance or both. However, it would also be extremely naïve to conclude that there is no anomie or deviance in the Indian society and that it has no role to play in fueling and sustaining the issue under present concern. In fact, if one looks at the places of origin and destinations of girl child trafficking, a state of relative anomie and subsequent deviance can easily be cited.

For example, most of the places of origin reel under immense penury, underdevelopment, absence of livelihood resources, and several other problems that act as fertile grounds for anomie and deviance. Many of these areas lie in the Eastern, Central and Northeastern parts of India and encompass the states of Bihar, Bengal, Assam, Orissa, eastern Uttar Pradesh, Madhya Pradesh and the northeastern states. It would not be imprudent to add Nepal and Bangladesh in this list since socio-economically, historically and geographically these countries happen to be part of the process of cross-culturation and acculturation which is happening to their neighboring regions within India. Reason behind including them in this list is because of the fact that a sizeable number of trafficked girls into India come from these countries. These areas and states not only compete for the last positions in the Human Development Index of the country but many of their districts match with those whose figures register lowest at the global level.<sup>11</sup> The existence of such abject poverty and deprivation of human capabilities when compounded with poor records of law enforcement and exploitative socio-cultural set up, one comes across just the right combination of forces that propel anomie and deviance. With such forces well entrenched in these parts of the country on the one hand, and economically well-off regions taking advantage of the forces of globalization, liberalization and privatization on the other, an ever widening gap between the two is what has been resulting. At the same time, with considerable increments in the purchasing power of

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<sup>11</sup> "Extreme poverty is now heavily concentrated in two particular regions of the world: South Asia and sub-Saharan Africa. They have among the lowest levels of per capita income among all the regions...It is remarkable that there is no country in sub-Saharan Africa—or indeed in the world—where estimated infant mortality rates are as high as in the district of Ganjam in Orissa." Sen, A.: 'Development as Freedom', OUP, New Delhi, 2002, PP-99-101. According to the same source, the literacy rates for females and males in the districts of Kishanganj (Bihar) and Bahraich (Uttar Pradesh) are 10/33 and 11/36 respectively. These rates are at par with those of Burkina Faso (10/31) and Sierra Leone (12/35). Ibid. See P. 101.

the latter regions but with no significant mutations in the traditional gender biases, what we see is a spurt in the demand for trafficked girls, prostitutes, etc.

It would be little far fetched to say that with attempts at commodification of women over the past decade and a half by means of electronic/print media (also films, televisions and pornographic material), market forces, poor law enforcement, lack of civic action and delayed justice the demand and supply side of this trade operate unabated and undeterred.

Further, with weak law enforcement, rules cease to operate and a situation of normlessness or 'anomie' results. In a situation of 'anything goes', norms no longer direct behavior and deviance is encouraged. However, individuals respond to a situation of anomie in different ways. In particular, their reaction is usually shaped by their position in social and class structure.

It would be a mistake, however, to believe that the demand for trafficked girls emerges only from customers of prostitution. A recent report by leading national weekly points out that such demand is also fueled by areas of extremely low sex ratios. These areas, like Haryana and Punjab (in some districts where the sex ratio has fallen below even 850/1000), have a clandestine demand for trafficked girls to meet marital requirements. A sizeable number of these girls are also trafficked outside the country through international mafia groups and their agents.<sup>12</sup> With very high levels of *missing women* in the country and in several other international locations where there are trafficked and no let up in the situation on the one

hand, and factors that influence the supply side (as discussed above) on the other, it can fairly be expected that the size of this illegal industry is definitely going to inflate in the coming years.

Thus, as per this rationale (which sounds close to those of the development theorists and some others too as would be seen later when they are discussed), anomie and deviance, inherent in underdevelopment primarily along with other factors, can be utilized in explaining the issue of girl child trafficking in India. Deviance, it is argued, occurs since members of society are placed in different positions in the social structure and class position. Members tend to deviate because they do not have the same opportunity of realizing the shared values. Both, anomie and deviance, it can be argued, feed on each other. If anomie leads to deviance, deviance leads to further anomie. Though there are positive/negative aspects of anomie and deviance, as has been argued by sociologists, but that discussion has been omitted to avoid unnecessary obfuscation of the present concern and diversion from the necessary arguments.

Quite similar to the Functional theories and yet almost opposed to it are ideas those of the **Marxists**. Marx, alongwith his lifelong collaborator, Engels, paid serious attention to the women's question, and they made important contributions in their attempt to address it. Marx and Engels referred to some abstract recognition of the humiliation of women in modern society in some of the early works. They specifically mention the suffering of proletarian

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<sup>12</sup> "Taking the sub-Saharan female-male ration of 1.022 as the benchmark...yields an estimate of 37 million (missing women) in India." Sen, A.: 'Development as Freedom', OUP, New Delhi, 2002, P.106.

women, with the disintegration of the proletarian families, and with the problem of prostitution.<sup>13</sup>

An attempt at extrapolation with regard to Marxist sociology help us in reaching conclusions that might have been drawn by taking recourse to the same ideology as such. Girl child trafficking in this case would appear to be a resultant of alienation of the poor from the mainstream economic forces or collaboration of intermediaries with the bourgeoisie.

According to this theory, one can explain the issue in terms of exploitation of proletariat by the bourgeoisie, feudal mindset of the economically well-off sections, and commodification of the 'other' sex as part of the globalization of market forces. Thus, the demand side is domain of the 'haves' (the bourgeoisie) and supply side of the 'have nots' (the proletariat). And it is this tilted relation of power in favour of the bourgeoisie that propels, sustains and governs this illicit trade in girl child trafficking. Besides the bourgeois-proletariat polarity that has been employed here, alienation of a large section of society is argued to be the primary force. Studies have shown existing dissatisfaction between married spouses and indulgence in extra marital affairs. With the change in life styles, availability of much more money than earlier, late marriages, increase in the rate of divorces and little time for family or relationships, the demand for sexual gratification from multiple partners has been seeing an upsurge. Though this demand has exclusively been from men, all women cannot be, however, excluded from the demand side though the satiation of it has rarely been found from trafficking.

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<sup>13</sup> For more discussions on the Marxist problematization, see Sinha, Shalini: 'Patriarchy and State', M.A.

Marx stressed that the capitalist economic system, rather than industrialization as such, is the primary source of alienation. It is a system, he argued, of maximization of profit rather than the satisfaction of real human need. Trapped within this system, both capitalists and workers are alienated from their true selves. Members of both groups are preoccupied with self-interest in a system, which sets man against man in a struggle for survival and personal gain.

And then one can perceive the metropolis-satellite linkages, which help us better understand the strategy and chain in this trafficking issue.<sup>14</sup> It would be naïve to perceive the dynamics between just two players—the demand and the supply sides. It is a whole chain, a sequence and, perhaps, even hierarchy. Like during colonial situations where the raw material changed several hands from colony to the metropolis, in this trade also there are innumerable number of players too—local agent, local buyer, transporter, pimps, international mafia. Clearly, the points of origin are proletarian areas while the destinations are those where higher profits can be fetched. Finally, it is the market that governs the profit rules for the players from bottom to top and also decides the appropriate price of the commodity. The commodity, as with other commodities, is an item of consumption and its sale or resale is arbitrarily governed by rules of depreciation. As it would be elaborated later, once a girl is trafficked (as a commodity) she is exploited for life until she is eventually dumped.

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Dissertation (unpublished), University of Delhi, 1987, P 7.

<sup>14</sup> The 'satellite metropolis linkages' is analogy within the Dependency Theory. Dependency theory gained importance in the 1960s as an attempt to analyze contemporary third world underdevelopment as a result of asymmetrical contacts with capitalist nations. Andre Gunder Frank, an early proponent, asserts that contemporary underdevelopment is itself an outcome of the international division of labour controlled by capitalist countries. Frank referred to the 'development of underdevelopment' and the domination of development efforts by advanced countries, using a 'metropolis-satellite' analogy to denote powerful center out of which innovations emerge and a dependent hinterland held in its sway. He spoke of the chain of exploitation—or the flow and appropriation of capital through successive metropolis-satellite relationships, each of which participates in the perception of relative inequalities even while experiencing some enrichment.

Thus, it is argued that under contemporary capitalism, women's bodies are sold in the market as commodities: what sells is not only the material body per se, but also (and this according to one researcher is 'important') the narrative structures that construct such bodies as commodities. According to the same researcher, prostitution remains one of the professions today, which is degraded. Often, as is argued, structurally induced material factors such as poverty, deprivation, and its interaction with patriarchal cultural settings that marginalize women from access to education and the job market for instance, render commercial provision of sex services a 'survival strategy' for large masses of women.<sup>15</sup>

Alienation, as Marx has used it, refers to the isolation of individuals from a community—a detachment from the activities, identifications, and the ties to relatives and friends that a community can provide. It can be well argued that the clientele and suppliers both belong to alienated mass. Thus, the birth of *nouveau riches* (demand side) and girl child peddlers is both a product of market forces and as well as alienation. The relations of production on the other hand force many impoverished parents to lay off their girl children (who are traditionally labeled and economically termed as unproductive and a liability). The issue that compels the proponents of functionalism and liberal democracy for reform and good governance, the same concern force the proponents of the latter (the Marxists) to recommend revolutionary changes.

The problem with Marxist discourse, as critics have often pointed out, is that the economic factors, as they eventually reduce their arguments to, are crucial for understanding the social



world, but society cannot be reduced to economic determinants only. It is too complex to be reduced to a set of economic propositions, or any single determinant set of propositions, that imply unilinear causality.

The **feminist** framework is the third one among the six suggested for purposes of understanding the said problematic better. Unlike the previous two as discussed above, it has a different dimension altogether. It believes that gender is the organized pattern of social relations between women and men, not only in face-to-face interactions and within the family but also in the major institutions of society, such as social class, the hierarchies of large-scale organizations, and other occupational structure. The social reproduction of gender in individuals sustains the gendered societal structure. It is argued that in most societies, women and men are not only perceived as different but are also differently evaluated, and these supposed differences in characteristics and capabilities justify power differences.

Its proponents argue that in all societies, the belief that women and men are inherently different provides the moral justification for allocating certain kinds of work to women and men, and for relegating the rearing of children to women. Religion, language, education and culture (both popular and high) teach and reinforce the society's values for women and men. The result is gendered moral order. This gendered moral order is sustained by 'gender identity' and 'gender-role differentiation'. Gender identity refers to the way in which people view themselves along feminine/masculine lines. Gender role differentiation, however, is fairly universal across societies. Men and women are assigned different behaviors, tasks,

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<sup>15</sup> De, Gitika: 'Women, Work and Identity: A Sociological Analysis of Motherhood and Prostitution', M.Phil

rights, obligations, privileges, and resources. For example, (stereotypically), men are aggressive, competitive, and instrumentally oriented, while women are passive, cooperative, and expressive.

Besides gender, patriarchy has often been used as an essential category of analysis through which the nature of girl child/women's oppression, both theoretical and social, has been mirrored. However, as one study points out, debates within the feminist movement shows that there is no unanimity about the meaning and status of such a term. It says that the term patriarchy has been used 'in great variety of ways'. The same study says, 'It has been discussed as an ideology which arose out of men's power to exchange women between kinship groups, as a symbolic male principle; and as the power of father (its literal meaning). It has been used to express men's control over women's sexuality and fertility and to describe the institutional structure of male domination.'<sup>16</sup> What is noteworthy is the fact that Sinha claims it were radical feminists who "first made use of the concept of 'patriarchy' to understand the sexual division of labour in society". According to her, there exists 'a patriarchal organization in society determined by essentially a male hierarchical order, that enjoys both economic and political power'. It would be difficult to disagree with her view that patriarchy is sexual system of power, rooted in biology, that is in the women's reproductive role rather than the economic or history.<sup>17</sup>

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Dissertation (unpublished), CSSS, SSS, JNU, New Delhi, 1999, P 84.

<sup>16</sup> Sinha, Shalini, *Ibid*, p 6.

<sup>17</sup> See Sinha, Shalini, *Ibid* P 13.

As far as India is concerned, one historian points out that patriarchy (in its literal sense) was not the norm from the beginning or in very early Indian history. The norm was matriarchy. But how and when did it replace matriarchy is still unexplored...<sup>18</sup> With regard to the position of women in India during the Vedic times, the historian tells us that there was 'no equality of sex as men could have more than one wife while women could have only one husband and must be loyal to him'. The same historian informs that 'the deterioration is more perceptible in the Gupta Age'. As against the Vedic age where women 'could hold property and widows could remarry', in the times of Guptas 'widows could not marry again' and 'women had no right to real property'.

Whatever might have been, the argument of matriarchy, in the beginning of early India, cannot be overstretched. Society was always patriarchal in India across temporal and spatial dimensions and that the status of women was always considered inferior to men in almost all fields of social organization. Several historians and authorities on the subject have testified this. According to another well-known source, during the 'Rig Vedic Civilization', 'family, which was the foundation of the social and political organization, was of the patriarchal type, matriarchy being unknown... The patriarch was the head of the family. He had in theory, absolute power over the life of the children and full control of the family property which he

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<sup>18</sup> "There was no place for individual enterprise. Whether for hunting or for animal keeping, for safety or for settlement the tribe had to work collectively. Hence distribution also was collective and equal... Woman has held the mysteries of birth; she was the mother of the tribe. She roasted the meat and was the keeper of the tribe. The earlier *Vish* (clan) was matriarchal. In the Rig Veda and the first canto of the Mahābhārata the early tribal fathers (Prajāpati) were known by their mothers' names viz., Aditi, Diti, Danu, Kadru, Vinatā and Pulomā. These original mothers were supposed to be the sources of mankind. How and when the mother was set aside by the leader of the herd and the patriarchal system replaced the matriarchal is not known. Basham, A.L.: 'The Wonder That Was India', Rupa & Co., New Delhi, 1995, p.150.

could divide in any way he liked...'<sup>19</sup> Later, during the 'Later Vedic Civilization', the source notes, 'There was deterioration in the position of women. A daughter came to be regarded as a 'source of misery'. Women could not attend the Sabhā; they were excluded from inheritance and along with Shudras, could not own property; whatever was earned by women became the property of their husbands or sons.'<sup>20</sup> As far as prostitution was concerned, it definitely existed during the times of Buddha (sixth century B.C.) as is well evident from several historical sources (including the Jatakas) and Arthshastra of Kautilya mentions that the 'old vices of drinking, gambling and *prostitution* were regulated by state license'<sup>21</sup>.

The women in India have been worshipped for centuries as goddesses and representing power (*shakti*), when seen as consorts of gods. But this has rarely been translated into practical aspects of societal organization where they are treated more as 'objects' by the male dominated society in India, as in other parts of the world, rather than as human beings that deserves an equal status. There is no denying the fact that women constitute nearly fifty per cent of our population but they are still treated in an unfair and unjust manner in all walks of life. Majority of studies show that personal insecurities shadow women from cradle to the grave. They are the last to eat, the last ones to be educated, the last to be hired for work and from childhood to the last days of their life they are abused in a variety of ways because of their sex. Discrimination and exploitation on the basis of sex constitutes a serious issue and

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<sup>19</sup> 'The Gazetteer of India, Vol. II, History and Culture', Dr. P.N. Chopra ed., Department of Culture, Ministry of Education and Social Welfare, 'Rig Vedic Civilization', 1992, P. 45.

<sup>20</sup> 'The Gazetteer of India, Vol. II, History and Culture', Dr. P.N. Chopra ed., Department of Culture, Ministry of Education and Social Welfare, 'Later Vedic Civilization', 1992, P. 50.

<sup>21</sup> Ibid, p.145)

which means that half the human race is unable to realize its actual potential and is condemned to standards of inhuman existence.

One of the fatal impediments to women's development is the phenomenon of continuing and increasing violence against them. Women in the Indian society have been victims of humiliation, torture and exploitation for as long as we have written records of social organization and family life.

The entrenched gendered perceptions and status of women have been a resultant of thousands of years of institutionalization and through a process of social reproduction and this can be easily corroborated through innumerable sources. As noted above, girl children have always been regarded as 'misery', 'burden', 'liability' etc. and it is this mindset of the patriarchal set up that not only forces poor families to sell and abandon daughters and even commit female foeticide but also use them as commodities to gratify insatiable, inhuman and perverted male desires. Several case studies, with regard to the aforesaid mindset that promotes and sustains girl child trafficking, would elaborate upon this point in Chapter IV of this dissertation.

As far as the legal framework is concerned, the fourth one among the six suggested, it can be said that the study under present concern operates essentially within the framework of Immoral Trafficking Prevention Act (ITPA), 1986. This Act, in fact, was an Amendment of Suppression of Prostitution and Immoral Traffic Act, 1958. As per the 1958 Act, it was deemed essential to safeguard women against social and moral exploitation. The policy of the Government of India, then, in respect to prostitution provided for abolition as distinguished

from regulation.<sup>22</sup> The 1958 Act prohibited: 1) running of brothels; 2) living on earning of prostitution; 3) letting out or permitting use of residential accommodation for prostitution; 4) seduction of girls in custody; 5) public soliciting. Interestingly, it is ironic that a sex worker can practice her profession inside a house but cannot solicit clients on the streets and also that the law has nothing to say with regard to the customer who visits or invites the prostitutes. (See Chapter III for a critical examination of the 1986 Amendment Act).

However, it would be important to mention here that laws of the land are usually a resultant of the dominant socio-cultural and socio-economic forces of the land rather than mere foreign imports. Even when systemic or regime changes occur, the major changes usually occur with regard to the political and economic relations of production. Religious or social laws are generally left either untouched or reformed after a long drawn out social movement or massive social pressure. Most of the biases or tilt in the laws of the land in India since time immemorial to this day in favour of men, though acknowledged by social reformers and activists, were brought to notice by the women's movement in India in the last three decades or so through academic writings, demonstrations, rallies and seminars.

A considerable number of women's studies on traditional laws in India view that the law of the land had always been influenced and constructed since time immemorial by those whose main agenda was to perpetuate and sustain gender inequality and rendering a subjugated

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<sup>22</sup> As a signatory, the International Convention on the Suppression of Immoral Traffic in Women and Children at Geneva, 1921, the then Government undertook legislation to prevent immoral traffic. The Indian Penal Code was accordingly amended in 1923 to make the procuring of a girl under 18 years of age for immoral purposes an offence. However, as different measures have been in force in different areas like Bombay, Madras, U.P., Punjab, Bihar, M.P., etc. an all India Act was considered necessary and the legislation was passed and enforced

status to women. It is important to note that it is not being argued here that one should judge the past by the lens of the present or not on the merit of the then existing laws, but it is quite tempting to agree with the sentiment of several academic and non-academic works that blame the exploitation of women by men folk in the historical past through social and legal structures which have led to the present deplorable status of women.

A primary obligation of any judicial or law enforcement system is to ensure citizen's need for social justice. It is unexpected from a public system that it should perpetuate societal imbalances. With rising awareness levels among civil society under whose pressure public institutions and non-governmental organizations are promoting and advocating reform, judicial systems and law enforcement agencies cannot remain as roadblocks to change. Instead, they are supposed to provide equal treatment to those seeking protection of their rights under Right to Equality (Art. 19).

But what is being argued is that as to how do judiciary and law enforcement agencies go beyond the written word when they feel that their primary duty is to maintain the rule of law, as in the first case, and law and order, as in the second, because the law enjoins them to do so. It is here that the view about the Indian State takes a contradictory position. On the one hand the governance strategists and think-tanks claim to be supportive of the judicial and police reform which then would gel with the overall reform and development model, while on the other there are innumerable antiquated laws which are more than a century old and whom the judiciary and police claim to be bound by.

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in 1958.' See Renuka, 'Emancipation of Indian Women: A Sociological Analysis', M.Phil Dissertation

Except for the existing laws of the land, i.e. Constitution of India, which is of recent origin, most legal texts (e.g. Dharamshāstras) that governed men-women relations had been harsh and at times extremely unjust to women. The claim that the laws have perpetuated and strengthened the forces of patriarchy in this part of the world can be also extended to the modern day Constitution of India. This claim is, however, not wholly untrue and that such an allegation can, in fact, be supported by several lacunae in the existing laws of the land.

Take for example, one of the senior sitting Delhi High Court judge (name has been kept confidential) said, "The duty of the judges is only to interpret the law as it is mentioned in the Indian Constitution and the Indian Penal Code and not to see how they are framed."<sup>23</sup> Not only Judges but also private advocates and lawyers say with reference to the question whether the laws on violence against women are sufficient, "existing laws are sufficient; but law is not the answer. Most of the cases end up in a compromise. We need to change the social perception of men and women towards women" (as told to this researcher during interviews with some Supreme and High Court Advocates).

The futility of some provisions (e.g. Section 497 of Cr. PC regarding 'Adultery') in the law is worth highlighting here. As the discussion unfolds itself, it must be kept in mind that these laws are supposed to be respected by every citizen of the country and these are the same laws from which victims hope to get justice from. To understand the gravity of the situation lets

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(unpublished), Centre for the Study of Social Systems, JNU, New Delhi, 1977, Pp. 55-56.

<sup>23</sup> For a detailed discussion on legal and institutional response, see 'Domestic Violence: A study of Selected Areas of Indian Capital', Centre for Social Research, New Delhi, 2001



take a hypothetical case for analysis [which actually has been filed by thousands of petitioners (victims) and won by the respondents (perpetrators)].

Let there be a young married couple, wherein the husband may be called 'Mr. H' and the wife 'Ms. W'. Let there be two more adults, a male 'Mr. M' and a female 'Ms. F'. Now let's take two situations. First, where Ms. W develops extra marital relations with Mr. M and second, where Mr. H develops extra marital relations with Ms. F. In situation one the husband can file a case of adultery on his wife and can seek a divorce from her while getting Mr. M punished. However, in situation two Ms. W cannot do the same for her husband Mr. H or Ms. F.

**BOX 16: PATRIARCHY WITHIN LAW**

M (MALE) ← W (WIFE) == H (HUSBAND) → F (FEMALE)

SITUATION ONE: <i>(Extra marital Relations between W and M)</i>	SITUATION TWO: <i>(Extra marital Relations between H and F)</i>
<p>➤ Case of Adultery can be registered (Section 497 of Cr.PC); H can get W punished under Law for having sexual relations with M and seek a divorce with W.</p>	<p>➤ W cannot sue H under adultery; W has to prove H's bigamy with F; if bigamy proven, then only F can be punished and Divorce with H can be sought. Thus, only W can be sued under adultery.</p>

Thus, the laws in this regard do not appear to help abolishing this age-old practice of sexual exploitation of girl child/ women, which comes with the baggage of quite long periods of

mental agony, psychological trauma, host of fatal venereal diseases, etc. Still worse, for the girls once trafficked into the trade there is no going back to their origins or for leading respectable lives in society. The law, in the final analysis, still remains a dilemma in itself as it has nothing to say about the consumers of the trade for whom this several billion dollar industry runs in connivance with the law enforcement agencies themselves, on the one hand. On the other, it, as far as the victims are concerned, has no immediate justice to offer than languishing for it for several years. It also provides for shelter homes, like Nirmal Chhaya in Delhi, which become personal homes for many a lucky rescued girls for years of hopelessness and meaninglessness in life!

**Development** and (I) **NGO** framework is not very dissimilar in their goals as such. The difference essentially lies in the agency that is argued to approximate the goal. The immediate goal in this case would be to arrest the spurt in the growth of girl child trafficking and eliminate the prerequisites that propel this industry e.g. poverty, illiteracy, poor health care, gendered mindsets, poor law enforcement, secondary status of women and perception of girl child in the country.

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It was tempting, though, to club these two frameworks but there have been strong reasons to avoid obfuscation of the two. *First*, the idea of development, historically, has usually been seen as one that falls within the ambit or realm of the state (or governments, whether elected or non-elected). The idea of people's or civil society's participation is viewed as something recent and which cannot be traced beyond some decades. *Second*, the scale of issue being such that civil society has always looked up to the state or government to initiate



development.<sup>24</sup> *Third*, the civil society groups, with whatever limited resources they have cannot replace the role of the state or government as such when it comes to issues that affect the entire country. Thus, the two frameworks have been discussed separately.

Having said that it would be imprudent to skip a brief discussion on the idea of development at the time of independence in this country, as elsewhere, and the manner in which it was put to practice. It will help understand the very notion of development, which was of course state led, the key issues that figured during those moments. This will also help us understand later the discourse of alternative development in which is grounded the framework of the (I) NGOs.<sup>25</sup>

When India became independent in 1947, the spirits of the leaders of 300 million men and women were surcharged with a sense of responsibility of unshackling the gory and overburdened immediate colonial past that India had to inherit, with little choice, and a future that could only be better than it. In fact, these spirits were a curious mixture of all sorts.

These ranged from --- a) developing the future India rapidly on the 'consensus' that had emerged within the Indian National Congress (INC) during the national movement; b) establishing *Gram Swaraj* as espoused by the Gandhian hard-liners; c) establishing a *Hindu*

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<sup>24</sup> A much-used phrase, reflecting the mindset of people in Hindi belt, for such notion has been that of *Mai Boa Sarkar*. This popular phrase, which can be translated into 'decisions regarding development and implementation are sole proprietorship of the ruling regime', sums up the issue during first four decades of India's independence.

<sup>25</sup> I am grateful to Mr. Abhishek Chaturvedi, doctoral student with the Centre for the Study of Law and Governance, Jawaharharlal Nehru University, New Delhi, for helping me in understanding matters pertaining to governance and development in India. Prolonged hours of discussions over several months have also helped in situating the issue in a historical perspective.

*Rashtra* on the basis of its 'glorious' ancient traditions; d) converting the state into one that treads on the 'socialist' / 'communist' pattern of development; and, last but not the least, e) making ground for India as a capitalist State, driven by market forces. These, however, represent only the dominant notions and there were, of course, many others too. This was a serious problem that stared at the faces of the makers of the Indian Constitution. It should be little surprising then that, the Constitution of India, has undergone more than 90 Amendments in the last fifty years. Thus, when Jawaharlal Nehru became its first Prime Minister, he faced this multi-pronged dilemma. And, while realizing the pressure of the aforesaid expectations (which are only a parochial version of scores of others) tried to please all the expectations in some form or the other, but at the same time letting the ideology of his own faction within the Indian National Congress and, more so, his own, to dominate.

It was, however, in the middle of the third five-year plan in the mid-sixties and later during the 70s that the experts and others began to get nervous about the prospects of the then State-led matrix.<sup>26</sup> But instead of thinking on some other developmental alternatives which could have been more encompassing, participatory, decentralized and liberalized in nature, as India's next door neighbor, China, was working out during the same period, the Indira Gandhi regime further intensified the centralization of her existing political and institutional inheritance.

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<sup>26</sup> For example, S.A.Dange reacting on the economic fallouts of Nehruvian policy wrote, "midway through the first plan, when the effects the Korean boom wore off, everybody talked of a crisis of falling prices and increasing unemployment, five years later, we all shuddered at the foreign exchange crisis that bore down upon us and madly readjusted the second plan. And now, halfway through the third plan, we have another crisis, this time of rising prices. It looks almost as is we do not feel alive if every five years there is no general oratory about the catastrophe round the corner". Dange, S.A., 'A Study of Nehru', *Economic Weekly*, 1955, pp 298-303.

The end of Rajiv Gandhi's (1989) government brought in one of the worst patches in the history of Indian governance and brought the entire governance to a screeching halt. The crisis, in fact, had come with a disguised opportunity to put the Indian governance on the road to 'liberalization', 'privatization' and 'globalization'. India became signatory to World Trade Organization (WTO) which had recently evolved from the General Agreement on Trade and Tariffs (GATT) amidst massive opposition from Left-wing parties and trade unionists.<sup>27</sup>

In comparison to the impetus provided by the government in the economic sector, the push in the arena of social sector, however, did not come with that intensity. This was, perhaps, one of the most important reasons that India witnessed a spurt in judicial activism, akin to the experiences of the United States of America in 1970s, along with public interest litigators thronging the Supreme Court and the Court, in turn, providing directives to elected and non-elected bodies. The concept of governance, in India, got a new dimension during the 90s as besides the executive, even the judiciary began governing with time-specific notices to Central, State governments and administrative boards to overhaul and clean up their mess. It was not that the Central Government was not aware of the pressure to perform and deliver the goods if it hoped to avert another downward spiral, it was only that it started realizing more and more as time passed by that government apparatus, institutions, powers, responsibilities,

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<sup>27</sup> “When we launched the programme of economic reforms in 1991 the objective was to accelerate the pace of social and economic development. It was felt that in the absence of economic reforms, including considerable internal and external liberalization, we would not be able to realize our full development potentials. There was widespread recognition that one reason for our unsatisfactory progress in the past was the over-extension of the role of the state... So liberalization was designed to get the state out of industry and business, and to have it more actively involved in meeting basic human needs like education, health care, safe drinking water.” Singh, Manmohan, ‘Liberalization: Opportunities for Social Action’ in *NGOs and Civil Society*, National Foundation of India Pub., New Delhi, 2002, p. 24.

functions, decisions over the nature and type of local development must be devolved, decentralized and be made more participatory.

It was with this realization and pressure of a holistic development model along with development intellectuals baring endless unpleasant facts and grim realities with regard to literacy levels, poor health, dismal infrastructure, alarming rate of environmental degradation, gross inadequacy of even safe drinking water, electricity and roads, falling sex-ratios, stark gender imbalance at all levels and the inhuman conditions in which more than a third of the Indian population somehow makes its ends meet even after fifty years of 'governance from above' that the Central Government decided finally to create space for citizen's direct initiative, involvement and participation. This new liberal discourse on 'governance and development from below' also meant the retreat and rollback of the Indian State to the core sectors.<sup>28</sup> Thus, various governments at Centre and State levels under the new paradigm are supposed to act as facilitators of 'good' governance only, ensure law and order, intervene to maintain the rule of law and regulate healthy competition.

Thus we see that the idea of development (state-led in this case) has come under question over the last couple of decades. From a broader perspective, globalization and regionalization are overtaking the standard unit of development, the nation or society. The conventional agent of development, the state, is being overtaken by the role of international institutions and market

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<sup>28</sup> "I have, however, come to the conclusion that exclusive reliance on state action is probably an inefficient strategy. We need far greater involvement of local communities in order to mobilize resources, local potentiality, and thus meet local resource needs." Ibid.

forces. The classic aim of development, modernization or catching up with advanced countries, is in question because modernization is no longer an obvious ambition. Modernity no longer seems so attractive in view of ecological problems, poverty and related underdevelopment of large areas and people.

As seen from the brief discussion about India's development experience, it can be said that several development decades have not measured up to expectations. Hence questioning, rethinking and crisis are part of development and not external to it. Development then is a field of flux, with rapid change and turnover of alternatives.

As far as girl child trafficking is concerned, besides the Immoral Traffic Prevention Act (ITPA) of 1986, some other similar laws and an annual ritual of statistically depicting the ever-increasing trade through the National Crime Records Bureau reports, the state has almost nothing to offer on the issue. It did declare 2002-03 as the 'year of girl child', but even with this advocacy most of the events or releases that it undertook pertained to improving sex ratios and school enrollments. Nothing was done to protect the girl child as such from the ever-widening clutches of the flesh trade and those who had got entrapped into it. It therefore would be over ambitious to look for serious answers from the state with regard to girl child trafficking since it does not even figure as an important concern for it. There are, nevertheless, some committed law enforcement agents who have been pursuing in combating the issue with personal vengeance on their own. However, with no forward and backward support from the line agents, their acts get belittled to mere drops in the ocean.

This brings us to our sixth framework—(I) NGOs. It could have been theoretically more appropriate to call this framework as ‘alternative development’, since most NGOs, knowingly or unknowingly, draw inspiration from the ideas and beliefs of this approach. Nevertheless, it has been named after NGOs because of the popularity of the word as such and as a matter of convenience for explanation. The very word ‘non-government organization’ reflects an attitude that the tasks of a government can be undertaken in a non-government manner. The concept became popular during late 1960s and later on almost in reaction to the centralized, high-handed, insensitive, irresponsible, unaccountable and similar characterizations that several governments (throughout the world) came to be labeled as even when the then governments claimed development and economic growth for their countries.<sup>29</sup> The failure of the mainstream models of economic development in their inability to address the massive problems of world poverty and environmental sustainability led to the idea of alternative development. The idea claimed to be one with inclusive democracy, appropriate economic growth, gender inequality, and intergenerational equity.<sup>30</sup> According to John Friedmann, ‘People’s empowerment—their collective self-empowerment—lies at the heart of the practice of an alternative development’.

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<sup>29</sup> It seems that Dudley Seers (Director of the prestigious Institute of Development Studies at the University of Sussex) ignited an unending debate on ‘development’ by questioning the very indicators of the then existing ‘development’. According to him, ‘What is happening to poverty? What has been happening to unemployment? What has been happening to inequality?...If one or two of these central problems have been growing worse, especially if all three have, it would be strange to call the result ‘development,’ even if per capita income doubled’. Friedmann, John: ‘Empowerment—The Politics of Alternative Development’, Blackwell Pub., Oxford, 1995, P.2.

<sup>30</sup> For a detailed discussion, see Friedmann, John: ‘Empowerment—The Politics of Alternative Development’, Blackwell Pub., Oxford, 1995.



NGOs, in this sense, can be situated in the (alternative) development framework. This framework consists of a very large variety of fields (e.g. women, gender, child, literacy, governance, decentralization, environment, prostitution, trafficking, rehabilitation, resettlement, infrastructure, AIDS, Cancer, Polio immunization, etc) but whatever may be the fields the aim is holistic development by eradicating inequality, injustice, oppression, exploitation, violence, disease, illiteracy, poverty and hunger. The framework revolves around civil society and individuals and believes that unless each member of civil society actively participates in the decision making process over the issues that affect their lives, there cannot be any meaningful development. The role of these NGOs is seen as that of a change agent and facilitator of holistic development in society. These NGOs have, over the decades, emerged as powerful stakeholders in the field of governance and act as forceful pressure groups when it comes to larger policy matters and framing of social laws in several countries.

With judicial, law enforcement, governmental and quassi-governmental agencies involved in routine work and other pressing concerns, the issue of girl-child trafficking, it appears, has largely been left for the NGOs, media and other civil society groups. This can be said because as an illegal industry the operations are usually underground and the cases rarely come to light. Secondly, the role of the state and government agencies is more reactive and rarely pre-emptive. It is therefore that the role of NGOs has been extremely significant keeping in mind the mammoth size of the trafficking trade and limited resources of the NGOs, which are involved in combating it. What is deplorable, however, is the large-scale connivance and entrenched corruption among the law enforcement agencies that strengthen hands of the traffickers.

As we **conclude** our discussion on ‘Girl Child Trafficking: *Theoretical Considerations*’, certain significant insights can be drawn. These insights though may not be claimed to be a breakthrough in arriving at a comprehensive or detailed framework, yet the insights might help intellectuals and academicians in evolving an intensive framework and theory for the same. Further, the conclusions herein will facilitate in streamlining the proceeding chapters.

To begin with it can be claimed henceforth that no single framework or approach can be employed to understand the problem of girl child trafficking. Yet, all six frameworks have appropriate standpoints to approximate the problem. Anomie and deviance (Functionalists), alienation and capitalist mindset (Marxists), patriarchy and commodification of women (Feminist), antiquated laws and loopholes within many laws (Legal), underdevelopment and misgovernance (Development Theorists and NGOs)—all have a role to play in creating fertile grounds for girl child trafficking. They also assist in sustaining and further promoting the trafficking business. Second, it would be a mistake to believe that an attempt at enmeshing these six frameworks is being suggested. On the contrary, what is being suggested is that only relevant ideas from within these frameworks can be employed in setting up of a theoretical framework and a discourse. Enmeshing them would be a grave mistake as all of them are worldviews from various standpoints and are a complete package in themselves in terms of philosophies, ideologies and historical moorings. In fact, they can overlap at places but cannot be merged. Third, the issue of girl child trafficking cannot be understood in isolation since it involves variety of other socio-economic evils. For addressing the issue, host of related ones—like underdevelopment, poverty, patriarchy, gender, corruption, delayed/lack of justice,

poor law enforcement, commodification/misrepresentation of women etc—will have to be addressed simultaneously.

#### **OBJECTIVES OF THE STUDY:**

- To study the nature of problem through an exhaustive survey of literature and available theoretical frameworks in the field of sociological studies.
- To define and explain the issue of girl child trafficking.
- To study institutional responses with regard to the issue.
- To understand the social context and dynamics of girl child trafficking through several case studies.

#### **METHODOLOGY:**

The idea of undertaking a sociological research on girl child trafficking occurred to this researcher while volunteering as a Field Investigator in 2002 for a project 'Domestic Violence: A study of Selected Areas in Delhi' for Centre for Social Research, New Delhi. During the course of undertaking this research study some important research questions on trafficking, prostitution and violence against women remained unattended to. Finally, the issues mentioned in a release on women trafficking and prostitution by UNIFEM became the bedrock for ideating on an academic research.

In concomitance with the exploration of the research questions which were delineated, the present study was undertaken. The methodology, for this, broadly focused on approximating the various objectives by taking into consideration secondary sources. The modus operandi of

undertaking this research, keeping in mind absence of fieldwork and other limitations as such, includes discussions with several academicians, police personnel, judiciary, lawyers, NGOs, and other activists. The study has been bereft of any empirical investigations and has, therefore, relied essentially on secondary sources—UN reports (includes UNDP, UNIFEM, UNICEF, ILO), Government of India releases, Institutional and Annual reports of several NGOs, doctoral thesis and dissertation works of research students from leading universities. Besides collecting and reading government reports on the status of crime in India with reference to women trafficking and related documents, reports by NGOs working in this field, an exhaustive literature survey has been undertaken by means of reading books, articles, newspaper reports, magazines and journals working on the aforesaid theme and exploring the socio-economic reasons that promote trafficking in women.

While undertaking this research for almost two years, this researcher attended several workshops and advocacy seminars (e.g. those conducted by PRAYAS, Deepalaya, Population Foundation of India, Gender Training Institute, etc.), which provided the opportunity to have primary interactions with those working on the said issue and gathering first hand information. The researcher also got the opportunity to meet and discuss the issue of girl child trafficking with several eminent persons in the field. Prominent among them were Dr. Jyotsna Chatterji (Joint Women's Programme, Delhi), Nisha Aggarwal (Assistant Director, Department of Social Welfare, Government of NCT, Delhi), Dr. Milly Chatterji (Head, Research and Counseling, Centre for Social Research), Meenakshi Lekhi (leading advocate in Supreme/High Court of India), etc. In the absence of much full-fledged books on the issue of human trafficking, the aforementioned interactions were essential. Regular visits to several

libraries of Delhi (e.g. JNU, Teen Murti, Centre for Women and Development Studies, Ratan Tata Library, Centre for Social Research, Institute of Social Studies, Joint Women's Programme, South Asian Coalition for Child Servitude/ Global March Against Child Labour, Census of India, National Crime Records Bureau—Ministry of Home Affairs, Sampradaan Indian Centre for Philanthropy, Deepalaya, etc.) provided considerable assistance in understanding the existing studies and literature. As mentioned before, there is little theoretical work on the said issue, therefore an attempt was made at theorizing it by using the theoretical considerations revolving around the issue (e.g. patriarchy, girl child, anomie, deviance, alienation, feminist theories, gender issues, development studies, the role of state, laws and their enforcement, international conventions, various classical theories, theories on sexuality and virginity, and many more).

#### **LIMITATIONS OF THE STUDY:**

The present study, like usually most others, is constrained by certain unavoidable or deliberate handicaps. In short, there are three chief limitations that restrict the scope of this work. The first is an unavoidable one due to the nature of the academic programme as such. However, the other two may be termed as those that provide compactness and strength to it.

The study being devoid of any primary data collection can be put as the first constraint. In other words, the study is based mainly on secondary sources. The second limitation is that the area of study has been restricted to India and at times marginally overlaps with its borders with Nepal. Lastly, the study avoids premising itself on any single framework. In fact, a

combination of concepts from wide ranging philosophical frameworks have been employed to approximate the issue.

### **ORGANIZATION OF THIS STUDY**

The study is distinctly divided into three parts that deal with—the issue, case studies and institutional responses; and yet an undercurrent can be strongly observed too. Distinct because, every part is self-sustainable in itself and can be treated as an entity. Nevertheless, all of them also act in complementarity with each other. This complementarity has been achieved by intertwining them with an undercurrent that derives its strength from the theoretical framework as evolved in the Introduction.

While the first chapter focuses primarily on the issue of girl child trafficking as such; the second one explores its living images through six case studies that reveal the various nuances mostly from the point of view of the trafficked. The last chapter deals with the several institutions responsible for understanding and checking the spread of the issue and, quite logically, their responses. With the laying of theoretical foundations during the introduction of the issue through an intense discussion, it cements the remaining parts of the study by constantly putting them into perspective.

**CHAPTER 1****UNDERSTANDING THE ISSUE**

The cities of New Delhi, Mumbai, Kolkata, Kathmandu, Dhaka, Lahore offer to their *la crème de crème* one of the most lavish and prosperous lifestyles. Most of the members of this society possess state of the art amenities that span from late model Mercedes and BMWs to some sprawling ‘farm’ houses. These five star-studded metros have a magnetic appearance that can match any world-class tourist destination and to a countryside being or an adventurer, caught up in eastern hallucinations or historical moorings, this *ultima thule* may even sound as a paradise.

If, however, one walks down the streets of some socially forbidden areas of these cities, which offer commercial sex in abundance, one unravels a vast majority of populace that sits on the volcano of global catastrophe---HIV/AIDS. These areas contain some thousands and lakhs of girls and women who had been trafficked at some or the other point of time in their life. These girls and women live in horrifying conditions, are usually ill-fed, most of whose children do not go to schools and most of whom allow or force their children into menial work that can bring them any money.

Child trafficking, child prostitution, forced sex, child labour and other similar forms of violence against children are not something new to this South-Asian subcontinent. Infact,

this is the other face of the 'civilized' world of which the South-Asian region has been one of the most important and foremost cradles.

It is indeed difficult to find one single concept or theory from within the realm of social sciences or outside it that might help one explain such contradictions and dichotomies. In fact, the concepts that the six frameworks (as focused upon in Chapter I) provide us with, do give us some crucial leads. But even as they are employed, most of it will still have to be extrapolated and stretched within the philosophies of these frameworks themselves as well as into the others. For example, what legalists might refer to as female criminality (say the status and role of a pimp), feminists might defend her as one trapped within the larger patriarchal set up. Similarly functionalists might posit her as one abetting deviance and dysfunctionality, Marxists may situate her as one sustained by the bourgeoisie.

As discussed in the introductory paragraphs of this chapter, it may be stated that as the socio-economic divide and lifestyle variations get more and more acute, the issues that thrive at the fault-lines demand fresh appraisals and widening of our horizons too. Girl child trafficking, the issue under present scanner, is one issue which too has changed some of its attributes over a period of time in India. From one directed towards the meeting of medieval courtly pleasures of the *nawabs*, courtiers and feudal lords who needed fresh supplies to keep their harems and other pleasures replenished, the consumers now come from a much diverse background. Even as the patrons have changed over centuries and generations, the mindsets have largely remained same. Interestingly, even as the law of the land has changed with India becoming a republic five



decades ago, a sizeable number of traditional beliefs and customs pertaining to exploitation and subjugation of women have also continued to exist. Like caste, girl child trafficking and prostitution (one of the oldest trades of the world) not only exist as strongly as it used to do in the past among the majority, according to several data sources, they are actually becoming one of the biggest industries. In fact, the issue of girl child trafficking has adjusted to lifestyles informed by the process of modernization with relative ease, as it was adapted to the medieval traditions.

With regard to this, it can be said that the end goal is to force girl children and women into exploitative situations for profit of recruiters, traffickers and crime syndicates as well as other illegal activities related to trafficking such as forced domestic labour, false marriage, clandestine employment and forced adoption. Thus, trafficking has the distinct components of recruitment, movement through transportation, forced or slavery-like labour and third party profit. However, it is pertinent to mention here that this study pertains to only those trafficked girl children (or women) who are forced into prostitution.

The traffickers are similar to some Latin American drug lords who while executing their vicious plans via their agents manage to acquire for themselves a kind of above the law status and the people who finally get, if at all, held up by the police/ intelligence sleuths are usually the agents. And even these agents often very easily manage to get themselves acquitted from the judicial clutches. This creates a sort of dilemma for the predated who once entrapped in the clutches of the local agents, mafia groups, brothel pimps and others are usually for long periods and sometimes for life are unable to get out of this nexus. If

at all they manage to, a very miniscule number, escape and reach their origins, they are pushed back into the same ghettos of commercial sex.

These trafficked girls and women<sup>1</sup> are often those who have been recruited, transported, transferred, harbored or received, by means of the threat or use of force or coercion, abduction, fraud, deception, abuse of power for the purposes of forced prostitution, sexual exploitation, forced labour, or slavery-like practices. Such women, akin to refugee victims of sexual violence, share the experiences of physical and psychological trauma.

With regard to understanding the issue of girl child trafficking, this chapter has been divided into several sub-headings—definition, the traffickers, modus operandi, inside brothels, groping for reasons, the consequences.

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<sup>1</sup> “Although a distinct issue, the trafficking of children is often discussed together with the trafficking of women. This is not only because the same mechanisms and processes often apply to both, but also because much of the available data on trafficking of women is not clearly disaggregated by age. For example, many reports on trafficking of women state that the majority of women coerced into prostitution are between 16 and 24 years of age. However, 16 and 17 year-old girls are children according to the UN Convention on the Rights of the Child (CRC) and the ILO Worst Forms of Child Labour Convention (182)” — *Panudda Boonpala & June Kane, Trafficking of Children: The problem and responses worldwide, A preliminary version of a forthcoming ILO-IPEC report on the trafficking of children for distribution at the 2<sup>nd</sup> World Congress against Commercial Sexual Exploitation of Children, Yokohama, December 17-19, 2001*

In a recent release by UNIFEM (United Nations Development Fund for Women) on trafficking in South Asia some noteworthy statistics were highlighted some of which have been reproduced *ab infra* -

- At least 25,000 children are engaged in the major metropolitan cities- Bangalore, Kolkata, New Delhi, Hyderabad, Madras and Mumbai (*Government of India, 1991*).
- Some sources quote that 500,000 girl children below the age of 18 years are victims of trafficking in India (*'India Today' magazine, 1990*).
- In Mumbai alone, "40,000 girls between the ages of 10-16 years are selling their bodies from their doorsteps" (*National Commission for Women, 1997*).
- Estimates suggest the participation of more than 2 million women in commercial sex work of which 25 per cent are below 18 years. More than 90 per cent of them are of Indian origin, and about 5 per cent from Bangladesh and Nepal. (*UNIFEM, New Delhi, 1998*)
- About 15,000 to 20,000 child sex-workers are reported to operate near the Lahore Railway Station (*Country Report, Pakistan, 1998*).
- There are about 5000 commercial sex workers in Kathmandu alone of which 1000 are children. More than 20 per cent of the women are under the age of 16 years. (*UNICEF, 1997*)
- 5000-7000 Nepalese girls are trafficked to India every year (*Maiti, an NGO, Nepal*)
- About 200,000 Nepalese women and girls were sold in prostitution in India, and 10 per cent ranged between the ages of 14-18 years (*Child Workers In Nepal, CWIN, 1987*).
- At least 50 per cent of the 100,000 commercial sex workers in Mumbai are Nepali girls. (*SAFHR (South Asia Forum for Human Rights), 1997*)
- About 300,000 Bangladeshi children have been trafficked to brothels in India over a period of time (*BNWLA, 1998*)
- Over the last 5 years, at least 13,220 children are reported as being trafficked out of the country and it was possible to rescue only 4,700 of them (*Country Report, Bangladesh, 1998*).
- Nearly 2 million children are abused and trafficked globally every year. South Asia and Southeast Asia take the lead in the volume of trafficking in children for sexual exploitation. (*Situation Report India, 1998*)

*But this must be the tip of the iceberg as UNIFEM itself corroborates that "a large number of cases go unreported". Reliable estimates are few, and empirical data is limited on the number of children who are trafficked. Existing studies in the South-Asia region provides only a partial picture of the extent and magnitude of the problem, often limited to the numbers involved in commercial sex work.*

## DEFINITION

Before going further, it would be pertinent here to state the meaning of human trafficking<sup>2</sup>. Though there is a lack of consensus on the precise definition of human trafficking, the following is the most accepted as coined by United Nations General Assembly, 1994:

"The illicit and clandestine movements of persons across national borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for profit of recruiters,

<sup>2</sup> The term 'human trafficking' has been used to refer to various conventions, both global and regional, that prohibit trafficking in humans. The reason behind using this term is the fact that the issue of girl child trafficking occurs as a component under this umbrella type term.

traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption.”

Since this study deals with the trafficking of girl child, therefore it is important to define the term --- child.

“Child” has been defined in the Convention on the Rights of the Child (CRC) ratified by India, as a person below 18 years of age.

However, the definition differs in various legislations in India from 12 years in the Indian Penal Code (IPC) to 18 years for a female child in the Child Marriage Restraint Act.

In the Immoral Traffic Prevention Act (ITPA), 1956, the term ‘child’ refers to a person who has not completed the age of 16 years.

The Child Marriage Restraint Act has fixed the age of 18 years keeping in view the underdeveloped physical and gynaecological condition of the girl child, which renders sexual relation and pregnancy harmful and even life threatening to her below that age. From this perspective the sexually exploited child is more at risk, being forced into multiple sexual relations.

Hence, we may use the more widely accepted definition of child as being below 18 years of age for the purpose of defining commercial sexual exploitation of the child or children of women victims.

However, notions of adulthood usually depend on the class structure and formal education. As against the urban educated society, where the notion of adulthood and the age of marriage usually goes beyond the age of eighteen years, among the rural illiterate and low income group, notions of adulthood and the age for marriage crucially depend on female puberty, which happens much before eighteen years of age. In concomitance with this is the related issue of virginity. The common notions and beliefs of virginity in India complicate the issue of defining a 'child' further. This complexity can be seen in the fact that virginity of a girl has significance in our society to such an extent that, a girl is considered a girl even at the age of thirty if she is still unmarried; on the other hand, a girl at the age of twelve or thirteen gets married, she is considered a woman. This can be further elaborated on the basis of the cultural beliefs of our society which says that 'consumation' of a girl is the 'signal' to determine the status of a girl, as a girl child or a woman.

Another contradiction that can be pointed out is that according to the Indian Constitution, a girl cannot begin with a marital life before she attains the age of eighteen; whereas the fact of our society is that even young adult girls end up becoming mothers. Hence, it can be said that, sociologically, it is difficult to determine the age of a child, to be termed as a child.

## THE TRAFFICKERS

The traffickers, in this case, are usually men who specialize in the *procurement* of girls from remote and economically backward areas by buying, luring, duping into marriage, abducting, misleading, etc.; their smooth *transshipment*, and; their *delivery* to brothels or prospective buyers for monetary gains. These are usually in their middle age, who have frequented the cities several times and have the knowledge of hotels to stay in and the brokers to contact. They mostly work in a group of two or more. Male and female traffickers are sometimes referred to as '*dalals*' and '*dalalis*' respectively. These are commission agents who are either employed by a brothel owner directly or operate independently. According to a report<sup>3</sup> published in Human Rights Watch/Asia, professional agents who recruit for the bigger brothels may be paid up to Rs.6000 (\$ 200) per girl. It also says that most traffickers are small-time local recruiters who earn considerably less. In either case, in order to stay in business they need patronage of local mafias and the protection afforded by bribes to the police.

Female traffickers are often known as '*didi*' or '*phupu didi*', which literally means paternal aunt. These are largely women returned from prostitution who have reached an age or stage where they are not in demand by the customers. They are employed as recruiters because they are local women who are exceptionally well-placed to identify potential victims for trafficking because they already know the local girls and their families. Most of them are women who are desperately trying to escape the abuse and debt bondage of the brothel system themselves. They had themselves been forced into

prostitution and had been told by their brothelkeepers that the only way they could procure their release was by getting a substitute. An attempt at situating a female trafficker (who also at times play the additional role of pimps/ madams) within the sociological perspective forces one to take recourse to concepts and notions of virginity, female sexuality, depreciating value due to ageing, female criminality, social stigma, etc. One study, with regard to virginity and demand for young girls, points out that 'customers are turning to younger prostitutes because they believe them to be AIDS free'.<sup>4</sup> Pushed to the wall and already a part of an illegal underground system, it becomes easier to take to the role of female trafficker or pimp at a point where social stigma disallows her to rejoin the mainstream and her own subsistence comes to stake<sup>5</sup>. The person in question is perceived as a representative of female criminality, who herself gets so socialized to the system that she often manages to remain away from the law enforcement agencies with all scrupulousness.

It is not a matter of astonishment to say that even family members --- uncles, cousins, stepfathers --- also act as traffickers. Village girls and their families are also deceived by young men who arrive in the village offering marriage and all comforts of urban life. The girls and their families, due to poverty and a dream of better life, go through a local ceremony of marriage (usually duped) and leave the village never to be seen again. The

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<sup>3</sup> "Rape for Profit – Trafficking of Nepali Girls and Women to India's Brothels": Human Rights Watch/ Asia (October 2000, Volume 12, Number 5(A)).

<sup>4</sup> Gathia, Joseph: 'Child Prostitution in India', Concept Publishing Company, New Delhi, 1999, P 34.

<sup>5</sup> '...industrialization and urbanization lead women to commit crime under two major circumstances, (1) when their subsistence is at stake and (2) when their self esteem in family and community is at stake'. Dahiya, Minakshi: 'Women Criminality – A Limited Sociological Exploration', CSSS, SSS, JNU, New Delhi, 1996 (unpublished), P 16.

girls ultimately end up in brothels in the cities. Such marriages are sometimes arranged by distant relatives or friends and then the girls are abducted and left in brothels.

Thus what aids traffickers, is the relative anomie, normlessness, proletarianization and breakdown of familial ties among the marginalised and the poor on the one hand, the pull factor of urban life and the push factor of girls as a socio-economic liability due to acute poverty, on the other.

### **MODUS OPERANDI**

It is important to understand the process of girl child trafficking from one end to the other (i.e. origin to destination), including the political, economic, social and cultural contexts in which it occurs. Political inaction, large scale economic imbalances, gender insensitive social order and a culture that attaches little or no importance to the girl child creates a fertile ground for traffickers to conduct their activity and the process of trafficking a flourishing business. The regions that become easy catchment areas are usually those marked with retrogressive or self-centred political mindsets, dismally poor inhabitations and feudalistic social mindsets. On the other hand, areas of demand and delivery are ones whose political leadership is usually occupied with much larger issues of governance, where there is high buying power, a social order where there is little time for individuals within families and neighbourhood to interact with one another and a culture where there are no limits to deriving physical pleasures.



Girl children may become victims of trafficking by force, persuasion, coercion or trickery. However, what is most surprising is the fact that very few girls who are eventually trafficked for prostitution are either kidnapped/ abducted or trafficked by force. In a social set up where little significance is attached to girl children, where the girl children are seen as '*paraya dhan*', where the tradition is to marry off the girl to socio-economically higher families and where a marriage sans dowry is seen as a windfall gain, offers for marriage or promises of involving girl children with lucrative salaries in cities are often readily welcomed. More so, when such an offer is made by near or distant relatives or new found friends, who infact are sleeping agents, such proposals are seldom declined. Once the agreement is reached between the two parties and the girl child is procured, the sleeping agent becomes active and is rarely seen again. As some case studies in Chapter III would reveal, it is usually after traveling safe distance by the trafficker that the girl child comes to know that she has been trafficked. In several instances such revelation occurs as late as meeting with the first customer.

The medium of transport is least of an issue for the trafficker as the trafficked girl voluntarily accompanies the trafficker believing in the promises made by the trafficker in sheer ignorance. It is therefore rarely witnessed that a trafficked girl attempts to reach out to law enforcement agencies or to any other social individual for rescue or help. By the time she realizes that she has been trapped into the mechanizations of the scrupulous network and attempts to break-free, not only it gets too late but also the networks have enough knowledge to thwart any such attempt.

In a crime that spins billions of currency notes, it would be foolhardy to conceive that the department of trafficking or the responsibility of it would be left to one single trafficker from the point of procurement to the point of delivery. What is being emphasized here is that trafficker is a very general term and quite loosely used as a blanket term. It actually denotes and represents host of specialized service providers. These can be small time peddlers to extremely resourceful international transshippers. Within this spectrum of low end to high end service providers, exist persons like informers, travel agents, tour agents, sleeping and active agents, local and intermediary level buyers and sellers, etc. First, there is the recruiter or, in some cases, an agent who prompts the child to move. This recruiter identifies the child and gains acquiescence of his or her caregivers, sometimes by deception, sometimes through an agreed payment. Or may also be a friend, family member or an acquaintance who persuades the child to go with the trafficker.

Once situation is under control of the trafficker, the process of destroying and creating evidences pertaining to the legal identity of the trafficked girl child is set into motion. Along with the change in their legal identity of the girl in question, also begins the transition of her social identity—a process that gets irreversible. In a society where a change of name can easily be executed by taking recourse to legal provisions and which is not viewed by lenses of morality, the change in social identity of a girl child from a married/ unmarried girl to that of a prostitute permanently marginalizes her from the mainstream. As a matter of little surprise, a society that views women under notions of purity and pollution, motherhood and prostitution, where mere suspicions on her character are considered enough in destroying her sanctity, a prostitute (most of whom

are trafficked for little fault of theirs) draws less sympathy and more of condemnation. It is a different matter altogether that a research study by a leading weekly magazine<sup>6</sup> brought to light that a sizeable number of urban Indian married women from 'respectable' families confessed to have had more than one sexual partners before or after marriage. Though the distinction between women who are prostitutes and those who are not, is sharply and explicitly drawn in social arrangements, the slippages between the two categories are not very infrequent in both discourse and practice. According to a study, 'the contractual terms of bourgeois marriage; many women's confessions to 'occasional' prostitution, or sex for favours; the forms of heterosexual 'dating', the description of women accused of promiscuity as 'whore': these provide example of the blurring of the categories of respectable bourgeois womanhood and the prostitute, otherwise maintained in sharp disjunction from each other'.<sup>7</sup> What can be inferred from the aforesaid is that a woman who voluntarily offers her body for personal or professional favours and who herself admits to 'occasional' prostitution, continues to live her life with dignity within the mainstream social realm, as against the trafficked girl who is forced into prostitution and who stands condemned. It can also be inferred that the social system disrespects the institution of prostitution, it, however, allows the act as such. The point of differentiation with regard to these two is that it is condemned and looked down upon in public, but is allowed in private without much discussion about it.

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<sup>6</sup> India Today,

<sup>7</sup> De, Gitika, Ibid, P 66.

## INSIDE BROTHELS

Most of the trafficked girls are sent to brothels where they are forced to prostitute by means of severe torture. The trafficked girl child is no less than a commodity who is frequently sold and resold to other brothels from where she can bring in more money for the owner. Some are also resold and relocated as punishment for escape attempts. They are locked for several days, starved, beaten, raped, and burned with cigarettes until they learn how to service up to at least twenty-five clients a day. Some girls undergo rigorous 'training' before being initiated into prostitution. This training includes constant exposure to pornographic films, demonstration in how to please customers, repeated rapes, etc. (*Soma Wadhwa, "For sale childhood," Outlook, 1998*).

For the up-keepers of the brothel and the customers that frequent them, girl children/women offering their bodies is mere prostitution, but in legal terms, it tantamounts to a rape which is an offence and punishable under section 376 of CrPC (Criminal Procedure Code). Among the five descriptions, any one of which is sufficient to be identified as rape, all five of them are applicable under the present concern. These are: (a) against her will; (b) without her consent; (c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt; (d) with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; and (e) with or without her consent, when she is under 10 years of age<sup>8</sup>. The first three

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<sup>8</sup> Das, Veena: 'Sexual Violence, Discursive Formations and the State', *Economic and Political Weekly*, Special Number September 1996, P.2412.

descriptions are generally found to occur within the premises of the brothel (as would be later revealed in chapter 2), while the fourth description is generally suited to situations or cases where the girl child/woman is duped into a false marriage.

It is one or two years before a girl is allowed out of the brothel. Only when the brothelkeepers are confident that she would not try to escape, she is allowed to go to the cinema or shopping escorted by a guard from the brothel.

According to a study<sup>9</sup>, some of the terms used by pimps, clients and passive pleasure seekers in local parlance for the children in prostitution are '*piece*', '*maal*', '*fresh child*' and their acts as '*power shot*', '*dhandra*', '*ganda kaam*', and '*kothe me kaam*'. The same study says that to call a child a '*piece*' is to simply consider her as a mere thing, which is devoid of life, feelings and emotions. As it is, the child is considered a commodity in the market, but calling her a '*maal*' means that the child is a cheap commodity. '*Power shot*' is a term used in local parlance to describe a situation where a man can '*consume*' more than one child. A man who has '*consumed*' three children has more '*power shot*' than the one who has '*consumed*' only one.

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<sup>9</sup> Debabrata, Roma, 'The Lost Childhood – The first study of child prostitution in Delhi', commissioned by National Commission for Women, New Delhi, 1997.

## SITUATING INDIA

India has the dubious distinction of being source, transit and destination country. In South Asia, India and Pakistan are the main destinations for children under 18 years of age who are trafficked. In India, Karnataka, Andhra Pradesh, Maharashtra and Tamil Nadu are

Approximately 50,000, or half of the women in prostitution in Mumbai are trafficked from Nepal. (*Robert I. Friedman, "India's Shame: Sexual Slavery and Political Corruption Are Leading to an AIDS Catastrophe," The Nation, 8 April 1996.*)

The brothels of India hold between 100,000 and 160,000 Nepalese women and girls, 35 per cent taken on the false pretext of marriage or a good job. (*Radhika Coomaraswamy, UN Special Report on Violence Against Women, Gustavo Capdevila, IPS, 2 April 1997.*)

About 45,000 Nepalese girls are in the brothels of Mumbai and 40,000 in Kolkata. (*Women's groups in Nepal, "Trafficking in Women and Children: The Cases of Bangladesh, pp.8 & 9, UBIBIG, 1995.*)

Kolkata is one of the important transit points for the traffickers for Mumbai and to Pakistan. 99% women are trafficked out of Bangladesh through land routes along the border areas of Bangladesh and India, such as Jessore, Satkhira and Rajshahi. (*Trafficking in Women and Children: The Cases of Bangladesh, pp.18 & 19, UBINIG, 1995.*)

Of the 5000-7000 Nepalese girls trafficked into India every year, the average age over the past decade has fallen from 14-16 years old to 10-14 years. (*CATW - Asia Pacific, Trafficking in Women and Prostitution in the Asia Pacific*)

considered "high supply zones" for women in prostitution.

Every year thousands of girls from the neighboring South Asian countries are trafficked into the red light districts in Indian cities. Many of the girls are barely nine or ten years of age. India, along with Thailand and Philippines, has 1.3 million children in its sex-trade centers. The children come from relatively poorer areas and are trafficked

to relatively richer ones.<sup>10</sup> Receiving children from Bangladesh and Nepal and sending them to Middle Eastern nations is a frequent occurrence. (*Indrani Sinha, SANLAAP India, "Paper on Globalization and Human Rights"*).

Though substantial migration and trafficking occurs within the Indian sub-continent, it is worthwhile to mention here that there are some cultural and historical factors, which

exacerbate the situation leading to the exploitation of young girls and women. Within the country, commercial sex work has its origins mostly in the rural areas. Religious sanction and age-old customs and traditions as well as patriarchal structure of the Indian society are factors that promote this profession in the rural areas. The Devadasi system, the Basavi system, the Jogin system, prostitution amongst tribals like the Banjārās, Rajnat, Dommara and Bedias are all traditional, ritualized and socially organized forms of prostitution.

Trafficking in women and girls is easy along the 1,740 mile-long open borders between India and Nepal. Trafficking in Nepalese women and girls is less risky than smuggling narcotics and electronic equipment into India. This is because, along with trafficking of women and girls, the traffickers do not have to take the hassle of producing paperwork and do not have the threat of constant police-checks. The procurer-pimp-police network makes the process even smoother. Girls may not leave the brothels until they have repaid their debt, at which time they are diseased, with HIV and/or tuberculosis, and often have children of their own, and hence are not accepted by the society.

Needless to say, trafficking of girl children for prostitution is an alarming problem, especially for India, as there is an increase in commercial sex in third world countries of Asia, Africa and Latin America and in Eastern Europe due to factors such as high rate of unemployment, adverse poverty, growing inequalities and increased demand.

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<sup>10</sup> Wadhwa, Soma, 'For sale childhood', Outlook, New Delhi, 1998.

## GROPING FOR REASONS

In order to identify the reasons behind this menace, we can divide them into two major categories, i.e. *the supply side and the demand side*. Although there are many reasons why child trafficking exists, but the immediate cause is the demand for child labour and sexual exploitation of children matched by an abundant supply of children from poverty-stricken families who are easy prey for traffickers. Complementing the forces of supply and demand that encourage trafficking are those associated with a rapidly globalizing world—increasingly open borders, better transport, and increased overall migration flows. This has provided impetus to both those who wish to migrate and those who traffic the unwilling.

### *Demand-side Causes: -*

- Rising demand for children for exploitation in commercial sex can be traced, among other things, to growth in the sex industry at the country and international levels.
- An expanding commercial sex industry in the Asia region employing a large number of minors has increased the demand for the services of sex workers. The clients prefer younger women and virgin girls because of the fear of HIV infections.
- The growth of tourism draws vulnerable children into high-risk situations. Development policies and patterns of development promoting tourism, industrialization, generate the demand for commercial sex. Children can be



bought cheaply for sex, and children and women may be trafficked into the resort in order to meet this increased demand.

- With respect to the demand for cheap labour, it can be said that large number of children are trafficked for the purpose of child labour as well as domestic child labour. This is largely because children may be paid (if they are paid at all) at lower rates than adults. Apart from the benefit of paying the children low rates, other reasons for employing them are that children are simply easier to abuse than adults; they are less assertive and less able to form their own trade unions and claim their rights; they can be made to work for longer hours with less food, poor accommodation and no benefits.<sup>11</sup>

***Supply-side Causes:-***

- Poverty and the desire for a better life is an important root cause of child trafficking. Children from poor or indebted families are vulnerable to the “pull” of higher wages and standards of living. Poor families are often unable to provide for all of their children and thus are forced to send one or more of them to urban areas where they can support themselves.
- Family circumstances of a child can play a significant role in pushing the child to leave home. They leave home in order to escape physical and mental exploitation, domestic abuse, violence and neglect.

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<sup>11</sup> It is important to reiterate that this study is limited to the trafficking of girl children solely for the purpose of prostitution.

- Due to lack of educational opportunities, children often have little alternative but to look for work at a very early age. Furthermore, inadequacies of the education system in terms of poor infrastructure, poor teaching quality, inadequate number of qualified teachers, teacher absenteeism, as well as the lack of learning materials, also lowers the esteem that families have for education and discourages school attendance, thus raising the risk of trafficking.
- According to an *ILO-IPEC report* by Panudda Boonpala and June Kane, called “*Trafficking of Children: The problem and responses worldwide*,” there is a strong correlation between the trafficking of women and girls for prostitution and low levels of education or have dropped out of secondary school. Apart from having low educational qualifications, they do not have access to vocational training. They cannot be absorbed by the formal economy due to the economic downturn and their educational limitations. Most of them also do not have access to capital so they are easy prey to traffickers who entice them with the possibility of a better life. For instance, in Nepal, an overwhelming majority of parents of trafficked girls are illiterate, especially the mothers. An IPEC Rapid Assessment has shown that trafficked girls largely come from illiterate families, particularly those that have illiterate mothers and sisters. In some trafficking prone localities in the Sindhupalchowk district, the literacy rate of females six years and above falls far below the average figure of the district and far behind that of boys, thus demonstrating the gender gap in basic educational attainment. This shows that it is easier for the girls to get trafficked due to the pull of better job opportunities, ultimately being trapped into prostitution.

- Sudden economic downturns and natural disasters are also a reason for children becoming the prey for traffickers. These children are from families who are already living in poverty, especially in countries, which offer few opportunities for development or even survival. For instance, the high incidence of natural disasters in Bangladesh, result in frequent movements of people and a high rate of unaccompanied or separated children. Such children are at high risk of persuasion or even abduction, and families affected by disaster and displacement can also be easily persuaded to allow their children to leave in search of better opportunities.
- Lack of a strong political will and weak law enforcement mechanisms and measures to penalize offenders, exploitation by corrupt law enforcers and officials, allows the trafficking trade to flourish.

Gender is an issue in trafficking on both the supply and demand sides of the equation. The problem of child trafficking depends a lot on values that encourage gender discrimination and a disregard for children's rights. Not to mention, girls are vulnerable and some cultural and traditional contexts provide them unequal protection. In many societies, girls are expected to sacrifice their education to help at home or take on responsibilities towards parents and siblings. It is also recognized that one day they will marry and leave. In that case, they bring little or no money to the natal home. In such situations, girls are seen as a relatively "poor investment", and sending them away to work may seem a viable option.

marry and leave. In that case, they bring little or no money to the natal home. In such situations, girls are seen as a relatively “poor investment”, and sending them away to work may seem a viable option.

Social conventions such as child marriages, polygamy, dowry, and social stigma against single, unwed, divorced women and girls, and those sexually abused, are important contributing factors. Poverty and deprivation coupled with the low status of women and girls in society are the key push factors for girl children being trafficked.

## **THE CONSEQUENCES**

Girls and women are trafficked mainly for the purposes of prostitution, that is, commercial sexual exploitation. Even if they are persuaded or abducted from their homes on the pretext of being offered better job opportunities in the cities, they are ultimately duped into the brothels.

Prostitution is a like a trap, once a girl steps into, it is near to impossible for her to get out of it. This trap revolves around the issue of virginity and chastity of the girl. Whereas in the case of a child or a virgin, the question is whether a body previously unmarked by the impress of male desire on it has been sexualized or not. If, on the other hand, a woman is not chaste and is therefore without significance, in the exchange between men then she is may be seen as available for sexual experimentation.<sup>12</sup>

In the worst cases, trafficking can lead to a child's death or permanently destroying her physically as well as mentally. Child trafficking leads to greater drug dependency, breaks families apart and deprives children from their rights to an education and freedom from exploitation.

Trafficked girls are frequently deprived of food and access to health services in addition to suffering from the consequences of inadequate accommodation, rest and education.

Trapped in commercial sexual exploitation, they suffer violence at the hands of many, ranging from the traffickers themselves to police to clients. They suffer from physical as well as emotional damage due to premature sexual activity, and exposure to STDs (Sexually Transmitted Diseases) and HIV/ AIDS. Seldom it happens, but if a child is rescued and returns back to a community after being trafficked, the child may be HIV positive, may be pregnant, or unable to have children because of damage done to her reproductive organs.

The psychological impact on these trafficked children is all the more severe. The impact of isolation and domination on children is grave. This is aggravated if the child is relocated at a place where she cannot speak the language, and then she has no choice other than taking recourse to silence. These girls are abused and exploited so much sexually that due to depression and sense of self-hatred, become dependent on drugs

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<sup>12</sup> Das, Veena: 'Sexual Violence, Discursive Formations and the State', *Economic and Political Weekly*, Special Number September 1996, P. 2416

The psychological impact on these trafficked children is all the more severe. The impact of isolation and domination on children is grave. This is aggravated if the child is relocated at a place where she cannot speak the language, and then she has no choice other than taking recourse to silence. These girls are abused and exploited so much sexually that due to depression and sense of self-hatred, become dependent on drugs without which there is no question of their survival. It has been reported widely that even if girl children are rescued from brothels, one of the reasons of their returning to them is that they have no other way of obtaining the substances on which they have now become completely dependent.

All trafficked children suffer from obvious results of trafficking, that is, psychological trauma due to their illegal status, physical and emotional harm, isolation from family and community, loss of childhood and education and therefore a dark future. Girls are stigmatized due to early sexual activity and are often rejected by their families and communities when they return to them. Their chances of marriage are greatly diminished and therefore they may again fall into the hands of traffickers and return to exploitative situations.

Trafficking in girls and women for the purpose of sexual exploitation is a growing phenomenon around the world. In the recent years, it has increased enormously in magnitude becoming the third largest in the transnational trade after arms and drugs and is currently a six billion dollar illegal industry.<sup>13</sup>

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<sup>13</sup> "Human Trafficking in South Asia": Report by PRAYAS in collaboration with UNIFEM, WOREC & ABC, Nepal (July, 2002)

**CHAPTER 2**

**CASE STUDIES**

This chapter consists of case studies of the various girl children who were trafficked into as well as within India, for the purpose of forced commercial sex. They contain stories of how these girls were persuaded/ abducted/ forced due to most reasons mentioned in previous chapters, and trafficked either through the borders into India or from one part of India to another. The case studies describe what happened to them during and after they were taken far away from their homes; violence and torture as faced by them in the form of physical, mental and sexual abuse; and the responses as were provided by the police, judiciary, and various (I) Non-Governmental Organizations as part of the steps taken towards their rescue and rehabilitation. The case studies are followed by a comparative analysis.

Before looking at the case studies, it is important to mention here that they have been taken from various secondary sources like newspapers, magazines, and reports. Further, no interviews have been conducted for writing these case studies.

*Neela<sup>1</sup>*

In 1989, when Neela was barely fourteen, her stepfather sold her to a friend to work in a carpet factory in Bhaktapur in Nepal. In January 1990, a co-worker of hers took her to Kakarbhitta, a town on the Indian border, where he claimed that the working conditions were better and that they could earn more money. Subsequently the stepfather, the stepfather's friend and the co-worker, after six days of traveling by bus and train, arrived in Mumbai with her.

In Mumbai, Neela was introduced to two women and was told to go home with them, while the men would join them later. She later discovered that she was taken to the home of a brothel manager. She stayed there overnight and in the morning she was taken to another house where she saw sixteen to seventeen girls sleeping on the floor. Neela was taken to a separate "training" room where she was kept for three months, after which she was told that she had been sold for Rs. 15,000 and would have to work until she paid off her debt. Her first customer was a middle-aged man who paid Rs.5000 for her because she was a virgin. However, Neela was never told how long it would take to repay her debt.

It was reported that being the youngest in the brothel, Neela's treatment was better than that given to other girls in the brothel. This is because when once she was caught trying to escape on pretence of going to the toilet, which was outside behind the brothel, she

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<sup>1</sup> Neela was interviewed by Human Rights Watch/ Asia [published in its October 2000, Volume 12, No. 5(A) issue].



was not beaten but only threatened. However she found that on doing the same, the other girls were severely beaten until their mouths bled.

Neela told Human Rights Watch/ Asia, “the brothel was frequently raided by police in search of underage girls and when the police came, the brothel owner would try to hide the newcomers.”

After about a year in the brothel, Neela was picked up in a police raid and taken to an ashram, a shelter for children, because she was underage. Here she tested positive for HIV. When Neela was eighteen, the police asked her if she wanted to go home. As she showed her willingness of going back to her home, the Indian police informed the Nepali police and arranged for her return journey to Kathmandu. She was first brought to Hanuman Dhoka police station in Kathmandu, and then to Bhaktapur police station where she was detained for eight days. During her detention, the police took her to Teku Hospital for an HIV test. She was not told the reason for the test; the police only told her that she was being taken for a check-up as she had returned from a Mumbai brothel. Later, she was told that she had tested positive for HIV.

Neela said that a journalist interviewed her just two days after she arrived in Kathmandu (while she was in police custody) and her photograph and story were published in a local newspaper. Therefore she decided not to try locating her family. As per last reports,

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Neela was later shifted to a shelter home. It is not known how long she lived or whether she continues to live to this day.

### *Sita<sup>2</sup>*

Sita, thirty-one, returned from India in October 1993 after working for ten years in a brothel in Mumbai. She is a high-caste Hindu belonging to a small village in Tanahu District, near Pokhara in Nepal. Sita was married at the age of fourteen and soon became pregnant. Meanwhile, her husband who went away to India in search of work never returned and her in-laws began mistreating her. So she went back to her parent's home where she gave birth to a son. When Sita was seventeen, a neighbour, who was a relative and close friend of hers, suggested that she should remarry, as there was little hope of her husband's return. The neighbour revealed to her that there was a man from India who was interested in marrying her.

One afternoon, the same neighbour informed Sita that the man from India, she had mentioned about, was waiting to elope and get married to her. Sita told her family that she was going to the fields to work and went instead to the bridge where he was waiting for her. She brought her son with her.

They caught a bus to Pokhara, the nearest town, where he offered Sita a cigarette. Sita told him that she had learnt to smoke a cigarette from a friend in the village and so she

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<sup>2</sup> This case study is also based on an interview conducted by Human Rights Watch/Asia. See Human Rights Watch/Asia October 2000, Volume 12, No. 5(A).

took it. After smoking, she remembers very little and thinks that she may have fainted. Sita only remembers boarding another bus and then waking up in a large cement room with a ceiling fan and three beds with curtains around them. The door was closed from outside. She found six or seven other women in the room. She asked them where she was, but they spoke in a language, which she could not comprehend.

The man who had brought her there took away Sita's son saying that he would take him around the town. They never returned. As Sita was extremely disturbed at this and wanted to go out to look for them, she was told by the brothel-owner, who was a woman from eastern Nepal that she had been sold to her brothel and was not allowed to leave. Sita never saw her son again.

In October 1993, Sita managed to escape to Nepal with the help of a Nepalese vegetable-seller she had befriended in the brothel. Everyone in her village thought that she was dead. When Sita returned, she was afraid to go directly to her home as she thought that her family would not accept her. Instead she sent a message to her family from Pokhara informing them about her return. Many relatives and friends from the village came to the place where she was staying and empathized with her plight.

Sita, now, lives in her parent's home, where Human Rights Watch/ Asia interviewed her. She says her family treats her well, because they know that she was taken to India against

her will. However, a lawyer, who is familiar with her case, is of the opinion that her brothers are less welcoming, and Sita may face problems after her elderly parents die.

### *Momina*<sup>3</sup>

Momina was sold by her mother for Rs. 4000 who was lured into a possible sale through marriage. Momina denies any sexual assault on her but admits that her mother and husband came to Delhi in order to fetch a job for her. She says, "I was at the broker's house when the police came".

This girl from Assam is one of the many girls rescued when the Haryana Police raided the house of Hanif, a notorious trafficker in Mewat district. But the story of Momina is different from that of many other rescued girls. This is because this fourteen year old girl clings to the one thing she says is her own --- her unborn child. In her own words, "I will hang myself if anybody forces me to abort my child". This has put the case of Momina into many legal complexities.

Momina does not know why the police took away her "husband", why she was produced before the court, why she is in the *mahila ashram*. She is not even sure about her age. The SHO from Hathin police station who rescued her have informed the intervening NGO from Faridabad, Shakti Vahini, that she was thirteen. But Momina says that she might be fourteen. However, the women's home at Karnal where she is currently lodged

has registered her as a fifteen year old. It is quite disturbing to know that the State has been irresponsible enough not to even have an age-determination test got done despite clear guidelines in the Juvenile Justice Act of 2000. Regardless of the debate on Momina's age, it is quite clear that she is not fit to become a mother. Despite that she insists on the fact that she does not want to abort the child.

According to Shefalee Vasudev, "Momina may be among thousands of minor girls trafficked in India but hers is a peculiar dilemma. She is a pregnant minor. She claims she is married, but even under Muslim Personal Law (Shariat) Application of 1937, which applies to her, she can't enter into any legal contract despite her consent. Moreover, she does not want her pregnancy terminated, asserting that it is her human right to give birth. That makes this a jumbled case of human rights versus the welfare of a minor and the future of an unborn child. The case is also juxtaposed against a confused Haryana state administration and police which haven't accorded it the urgency it deserves."

It can be deciphered from this background that there are lots of legal complexities in Momina's case. It can be questioned why she was produced before a judicial magistrate and kept in a women's home when the Juvenile Justice Act states that it is mandatory that any child in conflict with the law should be produced before a juvenile welfare board and sent to a special rehabilitation home. Vasudev reports, despite the fact that Haryana has sixteen juvenile boards in its sixteen districts, Momina was made to move to and fro from

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<sup>3</sup> This case study is about Momina, a fourteen-year-old girl trafficked from Assam to Karnal. She is an under aged pregnant girl rescued in a raid on traffickers in Haryana who insists on giving birth to her baby, raising serious moral and legal questions. Vasudev, Shefalee, 'Child Vs Child', India Today, July 28, 2003.

the Hathin police station to Karnal home. At first she was sent back by the women's home superintendent Mr. V.K.Bhola, who later refused to talk to 'India Today'. Vasudev says, "It was only after a show cause notice dated 27<sup>th</sup> June, five days after Momina's rescue, signed by Jagjit Singh, the sub-divisional judicial magistrate of Palwal court, was issued to the superintendent that Momina was given shelter."

Another issue of concern for the NGO world is that Momina has not been given any psychological counselling; leave alone the mandatory age-determination test. Sreerupa Mitra Choudhary, president of CORE (Coalition for Rural Empowerment) says, "I personally called the state Home Ministry and the Department for Social Justice for help and support for Momina. But there is a gross lack of coordination in the state administration."

As far as Momina's pregnancy is concerned, "even if the courts order an urgent abortion as a special case, it will take a few weeks by which time the abortion will be prohibited under the Medical Termination of Pregnancy Act, 1971," says advocate Meenakshi Lekhi. And if the court supports her decision of continuing with her pregnancy despite an illegal marriage, it will contravene both the Child Marriage Restraint Act of 1929 and Muslim Personal Law.

Apart from the aforementioned legal complexities, Momina also faces a dead-end. If the court passes an order to release her, her mother who sold her or her husband who bought

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her and is currently in jail, will be the ones to take her back. If they don't, the need to support the child will compel her into prostitution and therefore the future of the unborn child will be bleak.

Advocate Meenakshi Lekhi, citing Article 39-F of the Directive Principles of State Policy—Children should be given facilities to develop in a healthy manner with dignity and freedom and childhood should be protected against moral and material abandonment—says, “invoking this can help the State take a decision for Momina’s abortion.”

Momina awaits justice in the ill-equipped women’s home where she is not even getting the much-required psychological support. However, an application has been filed by Shakti Vahini in the Supreme Court for Momina’s release.

### ***Pooja, Aruna, Goma<sup>4</sup>***

This is an interesting case study of three girls—Pooja, Aruna and Goma—who are the founding members of “Shakti Samooh”, an organization fighting for justice that has been denied not only to them, but hundreds of other girls like them who have been lured into a trail of deception in their quest for survival.

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<sup>4</sup> Gupta, Monobina, ‘Rejected girls join hands to fight justice’, The Telegraph, December 24, 2000, Page 6.

Pooja, Aruna and Goma were one of the two hundred girls trafficked from Nepal and rescued by Police from Mumbai's red light area in 1996. They said that they were trafficked from Nepal and dumped into the brothel of Mumbai, which was only the beginning of their traumatic story. Their journey to Mumbai and the several months spent in the brothel were torturous according to the three of them. But even more torturous for them was the ostracisation by family and friends once they went back home.

“When we reached Kathmandu airport, we thought our families would be there to receive us. But there were only photographers and media people present,” says seventeen year old Aruna. Pooja says, “We were hiding our faces but the cameramen took photographs that were splashed all over newspapers the next day.” They say that questions were thrown on them and cameras clicked, while they huddled together.

Pooja says, “The assault there was relentless and so was the agony at home.” Their families refused to take them back. Some of the non – governmental organizations started counseling their parents, but that was of no worth.

It is a matter of shock to know that the first hurdle came in the form of the Nepal government's refusal to take them back. That was because of the fear of AIDS. In Pooja's words, the government's response was, “Why bring them back here? Let them die there.”

After a lot of persuasion by the Indian government, the Nepal government agreed to take them back to Nepal. The girls were flown back to Kathmandu, this time to face the



second hurdle---that of the hostility and refusal from families and friends. “Society regards us as ‘bad women’. We have no respect,” says Pooja.

Pooja was underage when she was trafficked to India. When she returned, she needed a citizenship certificate but her father refused to endorse it. According to Pooja, she had to pay her father to make him sign the necessary documents. It is surprising to know that Pooja’s father charged her Rs. 100 daily for five days before she could get her citizenship certificate.

These three girls, along with twelve others founded the Shakti Samooh. It gave them shelter and emotional support that was denied to them at home. Aruna says, “I do not know how to deal with the images of violence that I have seen in the brothels.”

Ultimately, these girls found support for themselves, by themselves. The violence that they had experienced, their days spent in the suffocated rooms of the brothels, and then their return to a civil society that turned its back not on trafficking but its victims, led them towards their journey towards creating a light of hope, not only in their own lives, but also in the lives of many girls who have experienced the same.

But a very pertinent question to be asked here is that how many victims of trafficking like Aruna, Pooja and Goma, are there who are able to gather all their courage towards a positive direction? And another pertinent question to be asked here is till when the Civil Society will run away from this problem? It is a fact that it’s too late for most of the girls

to hope for a normal life. Some can never ever enter the family fold again. This is because society is unforgiving when it concerns a girl.

### *Usha<sup>5</sup>*

Usha belongs to a Nepalese family settled in Darjeeling. After her father died fighting in the Indian Army, her stepmother ill-treated her, which forced her to run away to Hetonda in Nepal. She married a farmer and had a son who died at the age of three. She was duped by her husband's friend who fed her something laced with a sedative. She woke up to find herself in Delhi where she was sold to a brothel.

Remembering the torture she had to undergo Usha says, "It was only when I saw the brothel with the heavily made-up women inside that I realized that I had been sold into prostitution. I despaired and resisted initially. But my skin was burnt with a heated spoon. Then they brought chilly powder to apply on my private parts. That broke me. I fell at their feet crying and begged to be spared. I agreed to prostitute rather than undergo torture."

Then a day came. Her breath came in fearful gasps as she tied saris together to make a 'rope' and secured it to the railing of the third floor room. Her friend kept an anxious watch holding her son close to her. There was no time for farewell. Their eyes met and then Usha was over the railing and slithering down the water pipes clinging to the saree.

The 'rope' fell short. She jumped and fell into the drain. She dragged herself out of the drain and ran blindly.

For Usha, it was now or never. It was her one chance to escape from a life of extreme exploitation in brothel number 71, GB Road, Delhi. Running along the lane behind the brothel, she was helped by an elderly gentleman to escape.

Pressing a fifty-rupee note into her hand, he told her to make off to Mangolpuri where there was a large Nepali population. Usha told him, "I cannot escape leaving my friend behind. I have to get her out."

Having seen policemen of a nearby chowky collecting hafta for each new girl in the brothel, Usha knew which chowky to avoid. "The policemen had collected Rs.12,000 when I was brought to the brothel. The madam had paid Rs.75,000 to buy me," Usha recalls.

Usha went to Kamla Market chowky and outlined her plan to the police. She said that she would go back to the brothel and say she had committed a mistake by escaping and that she wanted to return. The police should raid within a few minutes after she entered the brothel. This way the brothel keepers would not be alerted and they would not have time to hide the girls.

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<sup>5</sup> This is a case study of Usha, a brave woman, who helped not only herself, but many other women and girls out of the trap of trafficking and prostitution. 'Escape from Kotha No. 71', Hindustan Times, January 27, 2002, Page 8.

With the uncertainty that the policemen would actually follow her, Usha went back to the brothel. As the madam, Asha, interrogated her about where she had gone, the policemen walked in.

By the end of the operation, Usha had not only rescued her friend, who had been incarcerated in the brothel for three years, and her son, but also five other girls. The madam too was arrested.

The rescued women were taken to Nirmal Chhaya, the government-run custodial home. She was in the home for over a year during which time she had to appear in court several times.

Asha is still behind bars after Usha testified against her. According to Usha, “Testifying in court was not easy. Reaching the court from Nirmal Chhaya, we would be kept in a lock-up along with the accused in the case, the madams and their managers. She and her relatives who came to meet her, threatened me every time. They said they would throw acid on my face and track me down across the border even if I went back to Nepal. They urged me not to give any statement against her. But I was determined that she should pay for the horrible crimes.”

*The Hindustan Times* report says that after spending nearly a month in a brothel and then a year in the custodial home, Usha is now back in Nepal. All the women who went back with her have gone home including her friend and her son.

But no one has yet come to take her home. Usha says, “It hurts to think that I have no home to go back to and no one who wants me. But my mission in life is clear --- I want to save as many girls as possible from those inhuman brothels.” Today, Usha works with Maiti, an organization fighting trafficking of women.

It is good to know from *The Hindustan Times* that Usha will soon be deputed to help the border patrol spot traffickers and their victims and thus save the girls from a condemned life in brothels.

### ***Manjeet Kaur***<sup>6</sup>

Petite, dark and clad in a printed salwar kameez, Manjeet Kaur of Manghania, a small village in Punjab, speaks a mix of Hindi and Punjabi with a Bengali accent.

When Shefalee Vasudev told her that she wanted to buy girls who could be trained as masseurs for her beauty parlour in Chandigarh, Kaur quickly unfolded a cot and served water in steel glass. Kaur asked, “What kind of girls?” She also asked, “Will local girls

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<sup>6</sup> This is the story of Manjeet Kaur, a woman who is allegedly running a notorious girl bazaar in the Mansa district, with whom Vasudev spoke pretending to be the owner of a Chandigarh beauty parlour saying that she wanted to buy girls who can be trained as masseurs. Vasudev, Shefalee, *India Today*, October 13, 2003.

do or do you want Bengali girls only?" She added, "The recent raid was a bid by my enemies to spoil my name and seize my small farm."

Vasudev said that Kaur did not look like a typical Punjabi woman because she wasn't one. She actually comes from a small village in Bengal and was herself "sold" some 18 years back to a Punjabi farmer, who changed her name.

Manjeet Kaur ultimately threw away her conscience to make a business out of selling girls from poor families in West Bengal to farmers in Punjab, who either could not afford traditional marriages or did not want legal marriages for a variety of reasons. Kaur's business has now turned into a 'mandi' (market) in the past one year. Vasudev says, "Following her husband's death, she made repeated trips to West Bengal and came back with young girls sold as "wives."

On the designated day, when there are enough buyers, she rounds up eight to ten girls who are then made to walk before the prospective buyers and answer certain basic questions. The price is fixed depending upon the girls' looks. If the first buyer doesn't like a girl, he resells her.

An interesting point to mention here is that she does not accept that she "buys or sells" girls. Even more interesting point to mention here is that she insists that she is doing a "social service" because she gets them married. While it is another story that none of these girls are legally married.

It was found by Vasudev that in April 2003, Kaur's *mandi* had an unusual buyer in the form of Baldev Sharma, a reporter in the local 'Jagran' daily. He, along with another decoy customer, bought a girl for Rs. 22, 000 for marriage and then went straight to the police.

The next day, after the report was published, the Mansa police raided Kaur's house. It was found that Kaur was an accomplice of Raju, a pimp from West Bengal. Raju is currently underground after an arrest warrant was issued against him.

Vasudev observed that Mansa authorities were non-committal. "No such marriages have taken place," says Deputy Commissioner Raj Kamal Choudhary. When *India Today* told him that they have photographed and recorded the versions of numerous girls who have been "sold" into marriages, he was taken aback. However, DSP Sukhpal Singh Brar of Budhlada district admits that Kaur's house was raided and that they were looking for Raju Dalal. Nobody is able to explain why Kaur has not been arrested till now.

Meanwhile, Vasudev tells that Kaur continues to smile with gleaming eyes in the excitement of a new deal (proposed by Vasudev in disguise of a buyer of girls, as mentioned before). Finally, she assures Vasudev that she would call her as soon as she gets the girls for sale.

### **Case Studies: A Comparative Sociological Analysis**

Neela, Sita, Usha, Pooja-Aruna-Goma, Momina and Manjeet—not just six cases, but ones of systemic violence and social insensivities that have forced them into destitution and have virtually marred all their potential opportunities either to work for themselves with dignity or to act as respectable members within social organization. No single reason or agent can be pinpointed or held accountable for years of social injustice meted out to them. A gamut of forces, in close coordination with each other, have decimated their faith in various institutions of society—viz. family, kinship ties, marriage, law, police, judiciary and many others. It also questions, at once, the process of civilizational and cultural growth of thousands of years and with it the questions of morality and ethics in human relationships that are said to influence the nature and type of societal organization, its beliefs and values. Lastly, these case studies force upon all the elements within civil society to implore, question and rethink the very need and role of social institutions as basic as that of family itself.

However, it is not enough to only implore, question and rethink the very need and role of social institutions; what the case studies reveal is that there is a need to go beyond them too. The case studies of Pooja-Aruna-Goma and Usha symbolize that need of going beyond mere implorations over the malpractices within these social institutions and the spaces as provided to them by the society at large. Theirs is a story of rejection not only by justice, law-enforcing bodies, and protectors of law, but also by their families and friends. They were rejected by society at large because of the stigma attached with the profession of prostitution. Social perceptions of women, often viewed by patriarchal lens,



render only binary status to them—motherhood or prostitution. Motherhood, the socially accepted version of women, is directly related to the institution of marriage and virginity. Prostitution on the other hand, is considered as a polluted profession, a role or a status from which return to mainstream society is virtually impossible, because with the loss of virginity, also follows the loss of her chances to get married. Here it would be pertinent to quote Veena Das who says, “ ...There is a binary distinction between a girl who is a virgin and a woman who is sexually experienced. Desirable women are those who can be integrated into the system of alliance—virgin girls by being gifted in marriage to ‘respectable and acceptable families’ ...”<sup>7</sup>

This rejection has, in turn, instilled courage in them to fight for justice not only for themselves, but also for many who have been duped in a situation like theirs’. It is a description of aftermath of trafficking. They represent the need of individual agents to regroup for social change and reform. Infact, if one looks at the origins and roots of all social movements, one would usually find them in individual efforts. It is not being suggested here that these three women have effected any major social change or reform as such; what is being emphasized is that they represent the same spirit of questioning and rethinking to change and reform, something which was embodied in virtually all other miniscule and larger-than-life agents of social change.

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<sup>7</sup> Das, Veena: ‘Sexual Violence, Discursive Formations and the State’, *Economic and Political Weekly*, Special Number September 1996, p. 2418

If the case studies of Pooja-Aruna-Goma and Usha represent a zeal to fight for others after deciding to combat and eliminate the problem of girl child trafficking within their areas and scope of work, Momina's case exhibits a fight for justice for oneself from juxtaposed legal system and insensitive administrative apparatus. Absence of a uniform civil code, contradictory nature of personal and secular laws that emanate from religious traditions or western societies, inefficiency of local bureaucracy, *et al* come under a critical scanner while dealing with questions of fundamental rights, human rights, gender justice and natural justice. The leading news agency and the journalist, which brought Momina's case (and also that of Manjeet Kaur) to light definitely needs appreciation for highlighting such social issues by means of putting them as a cover story and for portraying the matter quite responsibly. However, the attempt at mainstreaming the issues pertaining to social development, as that of girl child trafficking, not only reflects the mood of the media to initiate a discussion on such social issues replacing conventional forms of news reporting that hovered around politics or business, but also the social desire among the middle class and the elite for such a change.

There is very little scope of a holistic sociological analysis with regard to the case studies of Neela and Sita. Both these cases are of a very usual nature, which is also true with most of the trafficked girls, and do not involve issues as with the other three case studies examined above. Personal insecurities in both the cases pushed them out from their places of origin and drove them into the red light areas of Mumbai. One went out searching for more lucrative pastures, the other into a more secure relationship. Female socialization that teaches dependence on men from cradle to grave, in both cases, and

their blind faith on them ruined their personal and social lives forever. Also involved was the question of establishing their own identities for socio-economic status. While ignorant Neela, with little choice, accompanied the conspiring men believing them that moving out from her present disposition would end her days of poverty and servitude; Sita was looking for filling up the void of by even eloping with a stranger to get married. Unlike the previous cases where the victimized girls were seen as those symbolizing individual protest and revolt against an unjust system, Neela and Sita decided to succumb to their social realities and accepted their own fate.

The complexities as in the case of Manjeet Kaur make it slightly difficult to situate her. She evokes both sympathy and condemnation at the same time. Sympathy because once she was trafficked to be married to someone out of ignorance; condemnation since, unlike previous five case studies, turned into an agent of buying and supplying trafficked girls. It is tempting to use the lens of female criminality, and that would not be improper. Unlike other girls who put up resistance and tried asserting their self, Manjeet Kaur socialized with the strangers and became active agent within the trafficking network of which she herself was a victim once. It appears that socialization with the traffickers developed criminal traits in her and the dynamics of trafficking was more of a learned behavior with her. Loss of her cultural roots, loss of the sense of belongingness as a result of demise of her husband, uncertain future, issue of survival led her, perhaps, to assign herself her present role. Also, unable to meet the critical challenges of her life due to social stigma, she became deceitful, bold, desperate and aggressive. However, it also appears that what she perceives as 'social service' of buying and selling girls essentially for getting them

married is something she relates to be justified, as was her own experience. Interestingly, what she is doing is considered illegal today as none can be sold or bought for purposes of marriage, it however was accepted as appropriate by certain law-givers in ancient India and such marriages were known as 'asura vivah' (marriage by purchase), one of the eight forms of Hindu marriage.

CHAPTER 3

**INSTITUTIONAL RESPONSE TO GIRL CHILD  
TRAFFICKING**

*State and some Stakeholders*

As recognition of the issue of girl child trafficking has grown, so have emerged a few approaches to combat the problem. A large number of factors influence the responses of various institutions, such as the social and political context in which the issue is discussed; the strength and leadership of women's movements; and the capacity for dialogue between the state and civil society.

In this chapter, what follows are selected responses from the law enforcing agencies (Police), judiciary, the (I) NGOs, UN agencies and media, working to combat girl child trafficking in India; and loopholes in the existing law.

Before discussing the response, it is important to look at the various laws in India to tackle with this menace.

**LEGAL FRAMEWORK IN INDIA**

The primary legal framework that deals with the problems of trafficking in the prevention of human trafficking is Immoral Traffic Prevention Act (ITPA), 1986. This act is supplemented by provisions in the Indian Penal Code (IPC), that are based on the 1949

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution and Others<sup>1</sup>.

There are several provisions under the Indian Penal Code such as Section 372, which deals with the offence of selling of minors for prostitution. Section 373 deals with the offence of buying minors for prostitution. The Government of India also enacted Suppression of Immoral Traffic in Women and Girls Act, 1956. The act was amended in 1986.

The Immoral Traffic Prevention Act (ITPA), 1956<sup>2</sup>, supplemented by the Indian Penal Code prohibits trafficking in human beings including children and lays down severe penalties. It prescribes punishment for crimes related to prostitution. Under Section 5 of the ITPA, procuring, inducing or taking a child for prostitution is punishable with rigorous imprisonment for a term of at least 7 years, which may even extend to life. *However, ITPA does not prohibit prostitution per se.* It penalizes commercial sex workers who are caught soliciting customers in public places whether by words or gestures. It is ironic that a sex worker can practice her profession inside a house but cannot solicit

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<sup>1</sup> 'Human Trafficking in South Asia', a report by PRAYAS (a leading NGO in India, working on children's issues) in collaboration with UNIFEM, WOREC & ABC, Nepal. July, 2002, P 49.

<sup>2</sup> "The Immoral Traffic (Prevention), 1956 (ITPA) covers offences of exploitation of both girls and boys. One special feature of the Act as amended is that the presumption of guilt is laid on the accused in cases where children or minors are found in a brothel and are on medical examination, detected to have been sexually abused. The ITPA contains enhanced punishments for offences in respect of a child or a minor": Report of the Committee on Prostitution, Child Prostitutes and Children of Prostitutes, and Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children: Department of Women and Child Development, Ministry of Human Resource Development, Government of India, 1998, p.5.

clients on the streets. The law has several loopholes. Another incongruity is that while minor girls are rounded up during raids and detained in homes, the pimp, brothel keepers, procurers and clients go scot-free. And if arrested, they easily manage to secure bail and continue running their business while blatantly exploiting the minor girls.<sup>3</sup>

Section 13 (4) of the ITPA provides that the Central Government appoint such number of police officers as Trafficking Police Officers and they shall exercise such powers and discharge such functions in relation to the whole of India.

The Juvenile Justice (Care and Protection of Children) Act, 2000, has elaborate provisions for the care and protection, treatment, education, vocational training, development and rehabilitation of children in the age group of 6 to 18, rescued from those procuring, inducing and taking person for the sake of prostitution and detaining persons in premises where prostitution is carried on. Such children are covered under the enlarged definition of ‘children in need of care and protection’. The act provides scope for voluntary institutions to run children’s homes, drop-in-centers, juvenile homes, special homes, etc.<sup>4</sup>

‘The enforcement of the IPC, ITPA and the Juvenile Justice Act is the responsibility of the state governments.’

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<sup>3</sup> Report of the Committee on Prostitution, Child Prostitutes and Children of Prostitutes, and Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children: Ibid.p.49

<sup>4</sup> Ibid.p.49, 50

Apart from the aforementioned, the Right against exploitation is a fundamental right guaranteed by the Constitution of India. *Article 23 of the Indian Constitution bans trafficking in human beings.* The provision of Article 23 was drafted in order to provide a right against exploitation and it specifically prohibits “traffic in human beings”. Article 23 (1) states “traffic in human beings, begging 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 (1) which relates to the Directive Principle of State Policy, states that the State should in particular direct its policy towards securing that the tender age of children is not abused and that they are protected against exploitation.

After having a look at the legal framework with regard to girl child trafficking in India, we will discuss the responses given by the various institutions.

### **THE STATE: Police and Judiciary**

Two sectors of the State that are indispensable in combating trafficking and assisting trafficking victims are the law enforcement agencies, Police and Judiciary.

The Supreme Court of India passed two important judgements on the subject of commercial sexual exploitation of children and women, and the rescue and rehabilitation of children of women victims. On the specific problem of child prostitution, in a public interest litigation, Vishal Jeet vs. Union of India, the Supreme Court of India passed an order on 2.5.1990, after hearing various parties, stating that the Central and State Governments should set up Advisory Committees to make suggestions to eradicate child



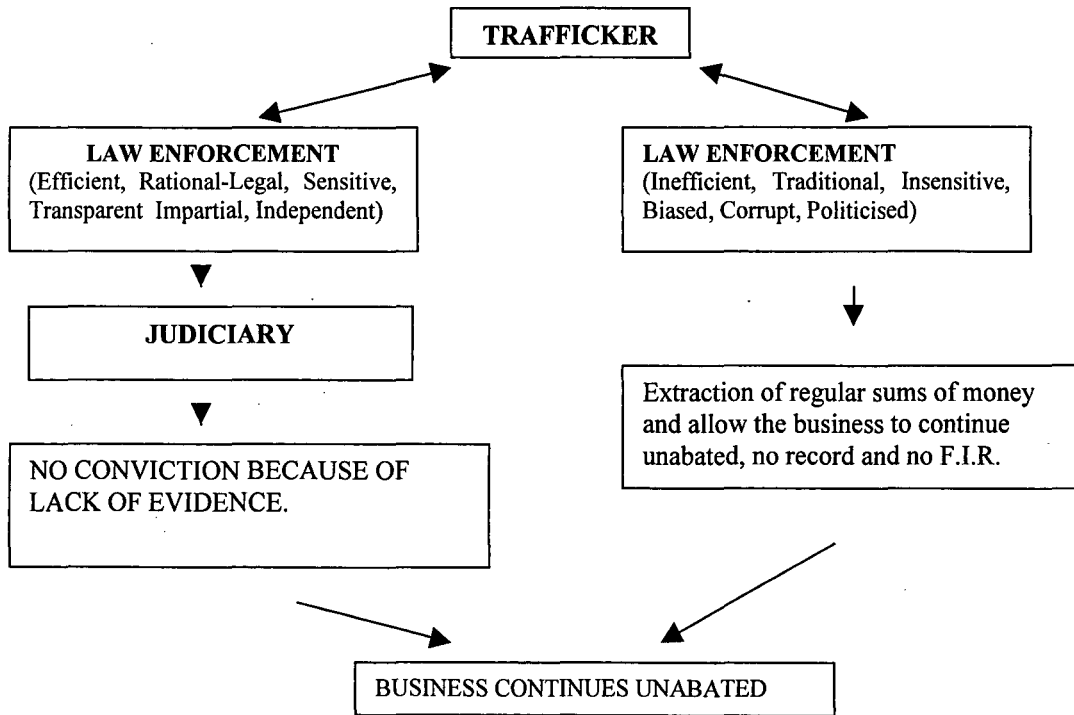
prostitution, to make suggestions of amendments of the existing laws or for enactment of any new law if so warranted for the prevention of sexual exploitation of children. These directions were given to the Union of India and all States and Union Territories in the country.

In pursuance of the court directives, the Government of India constituted a Central Advisory Committee on Child Prostitution. To implement the recommendations, a Desk has been set up in the Department of Women and child Development, Ministry of Human Resource Development, Government of India.

In the second case of Gaurav Jain vs. Union of India, the Supreme Court passed an order dated 9.7.1997, directing to constitute a Committee to make an in depth study of the problems of prostitution, child prostitutes and children of prostitutes and to evolve suitable schemes for their rescue and rehabilitation. The same was constituted in Central as well as State Governments in India.

Apart from this, there are frequent rescue and raid operations carried out by Police in the red lights areas from time to time. (*Refer to Case Studies 1, 3, 4 and 5 in Chapter III of this Dissertation*). The High Court has directed the Women and Child Development to approve funds for the creation of a rescue cell in the Delhi Police. The cell will be given the task to help and free those girls who are not willing to stay at G.B.Road. The funds will also be used to set up a special unit to provide security to rescued girls while they are taken to courts to attend hearings of the cases registered against them. The court has

strictly asked the authorities of Nirmal Chhaya<sup>5</sup> and the Police to not allow the rescued girls to speak to or meet outsiders.



The court passed this order in order to ensure that the girls are not brainwashed to come back to the trade.<sup>6</sup>

These directives from the court must be situated within the country's development experience where the failure of the Indian governments to address the social issues adequately led, on the one hand, to the rise of the 'alternative development' model

<sup>5</sup> Nirmal Chhaya is a shelter home run by Government of NCT, Delhi, for women victims of violence and torture.

<sup>6</sup> 'Create rescue cell for sex workers', The Times of India, 2.6.2002, p.2

pursued by NGO/INGOs, and on the other, the rise of judicial activism. A discussion on this has already been mentioned in Chapter I within the ‘development framework’.

According to a report published in ‘Deccan Herald’, 22.08.02, p.10, police busted a racket involved in illegal trafficking of Bengali girls in Kashmir and arrested several persons and rescued some girls from their clutches. ‘The Telegraph’ reported on 22<sup>nd</sup> April, 2003, that the police rescued a 14-years old girl, Asma, from a gang of suspected child-traffickers near Nehru Children’s Museum on Jawaharlal Nehru Road, New Delhi.

However, a very relevant question to be asked here is--“Is rescue and raid the only response that Police can show towards the issue of girl child trafficking?” The answer is “No”. As admitted by Archana Ramasundaram, DIG, CBI, Delhi, on a two-day Regional Consultation on Trafficking of Women and Children and Law Enforcement, organized by PRAYAS Institute of Juvenile Justice in collaboration with UNIFEM, “There is no dearth of law but there is a lack of priority in the police department in dealing with this sensitive issue. Whenever a case is registered it is the victim who is again victimized”. Interestingly, very few stories in the media cover the trafficker as such. Most of the discussions in advocacy workshops and seminars are also limited to a discussion on the laws, the law enforcement and the victims. As can be seen from Chapter III, which deals with case studies, what happens/happened to the trafficker (whether he/she is brought to book or not), is usually something which is absent. This study is of the view that the trafficker and their accomplices usually get off the hook and scrupulously manage to get away from the clutches of law enforcement agencies, because of clandestine

arrangements and understandings that both the parties reach with each other. One party gets an assurance to continue ones illegal business without threat or interference from the other, while the other earns sizeable amount disproportionate to the known sources of their income.

Despite the fact that there are numerous laws criminalizing trafficking and prescribing severe penalties for abusers, the trade still flourishes. The relationship between the police and traffickers is based mainly on regular pay offs and in return the police provides necessary protection and also guidelines to evade detention. According to Human Rights Watch/ Asia<sup>7</sup>, the police demand bribes as payment for avoiding detentions of traffickers and brothel owners, or are themselves involved in trafficking. The Bharatiya Patita Uddhar Sabha, in its letter to the Home Minister in 1993, charged the police of regularly extorting large sums of money in red-light areas in the name of protection---up to Rs.26,000 per day in Delhi alone. They complained that if a customer pays Rs.55, then Rs.10 goes to the police.

In the case of recently trafficked girls, the organization charged in its complaint that police were involved in the staged process called “registering” the victims. In this process the pimp would notify the police of the arrival of a new victim in her establishment, and pay a bribe for their silence. The madam on a routine-basis would pay Rs.5000 to Rs.25,000 to the police station on scale with her purchase price. In the case of a minor, the

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<sup>7</sup> “Rape for Profit—Trafficking of Nepali Girls and Women to India’s Brothels”: Human Rights Watch/ Asia, Vol. 12, No.5 (A), October 2000.

police would take their bribe, keep the girl for a day in the lock-up, and produce her in court the next day along with a falsified First Information Report (FIR), attesting to her an adult status, thereby protecting the brothel owner from any future charges related to prostitution of a minor. The released minor girl, newly registered with the authorities as 21 years old or above, would be handed back to the pimp. Thus, for a fee, the pimp is assured of police collusion in keeping the trafficking victim captive, while performance of a few legal routines protects the police from complaints of negligence.

During the 57<sup>th</sup> session of the Commission on Human Rights (CHR), India was harshly criticized for failing to curb trafficking of women and girls, after a Special Rapporteur, Ms. Radhika Coomaraswamy, appointed by CHR to investigate the violence against women in Bangladesh, Nepal and India, presented a report stating that “Corruption in the police forces” is one of the great contributing factors for the flourishing of flesh trade. In her own words, “unless the message is received by the average cop who works in the red light areas and other trafficking routes that corruption will not be tolerated, there will be impunity for traffickers and the rights of women and children will be abused”.<sup>8</sup>

She also said that despite the Supreme Court having given clear direction that trafficking is a major violation of human rights, the judges in the lower courts have been insensitive, sometimes even sending the victims to jail, and of long confinement in government homes waiting for a hearing of their cases.<sup>9</sup>

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<sup>8</sup> Ravikanth, D.: ‘India rapped for not curbing trafficking in women’, Deccan Herald, April 11, 2001, p.13

<sup>9</sup> Ibid.p.13

It would be pertinent here to highlight a finding by a recent study on institutional response to women victims of violence. The study who's focus was on women in distress in Delhi revealed that women victims had more faith on the voluntary/NGO sector when it came to seeking justice and sensitive handling of the matter rather than the state and government officials.

“If a saying like 'vox populi vox dei' (voice of the people is voice of the God) has any bearing on the state apparatus and the government in a democratic set up, then the statistics, as unearthed from the field survey, must be taken as an eye opener for the judiciary, police and the state in Delhi, the National Capital Region of India. To a query, during the questionnaire survey, about the 'steps taken in a violent relationship', 55% victims had replied that they took help from the counseling centres run by the voluntary organizations and 30.8% said that it were the NGOs. This is in sharp contrast to their seeking assistance from legal aid (20.8%), police (15.8%), Crime Against Women Cell (15.8%) and short stay homes (0.8%).”<sup>10</sup>

It means, in unambiguous terms, that victims have more faith on the voluntary sector from whom they expect crystal clear justice and no secondary victimization as against the institutions of the state [in this case legal aid, police, Crime Against Women's Cell (run by the Delhi Police) and short stay homes] whom they avoid. But then why do the

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<sup>10</sup> An unpublished research study conducted in Delhi under the guidance Prof. Mashima Shinozaki (from Kyoto, Japan) in 2002. I had opportunity to be part of this research as a Field Investigator for about a month.

victims avoid the institutions that are earmarked for them by the state? Several reasons might be possible for this: bringing criminal charges involve lengthy and complicated procedures, and such charges are difficult to prove. Furthermore, this permits secondary victimization by the police or the courts and therefore fails to protect the victims. As mentioned above, due to rampant corruption in police, the victims are pushed back to the flesh trade.

A primary obligation of any judicial or law enforcement system is to respond to citizen's need for social justice. No public system should perpetuate societal imbalances. When other public institutions and non-governmental organizations promote reform, judicial systems and law enforcement agencies cannot remain as obstacles to change. Instead, they are obliged to provide equal treatment to those seeking protection of their rights. Recognizing the human rights of women and girls is a step in this direction.

But the question is that as to how do judiciary and law enforcement agencies do it when they feel that their primary duty is to maintain the rule of law, as in the first case, and law and order, as in the second, because the law enjoins them to do so.

Apart from inefficiency and rampant corruption at the lower levels in police and constant intimidation by the perpetrators, limitations with certain provisions of various laws related to trafficking and prostitution, and the compulsion of the judiciary to abide by the letter of the book, ensure that the victims of trafficking and prostitution always remain on the receiving end.

As far as the judgements are concerned, Mr. Promod Jalan, a private advocate with the High Court in Delhi, noted the compulsion of the judges and said, "criminal law is based on the theory that offence should be proved beyond doubt. Unfortunately, such clinching evidences are rarely forwarded by the victims of trafficking and prostitution due to their lack of knowledge of the law, the evidence, and also due to their lack of resources to do so". In congruence with this statement, it can be said that though the main targets of the Immoral Traffic Prevention Act, 1956 are pimps, agents, brothel owners or those who promote or aid prostitution as business; however in most cases it is extremely difficult to prove ownership or tenancy of a brothel. Often there is a chain of transaction between buyers and sellers of a brothel at the end of which it is difficult to know who owns a particular brothel.

Another legal lacunae is that if police bar people from entering a brothel, the brothel owners move the court saying that they are simply carrying on the profession of singing and dancing. *Right to any profession is the basic Fundamental Right of a citizen.* Therefore the brothel owners take the advantage of this Right. An important requirement is that a public witness should be present when police conduct raids in the brothels. In most cases it is difficult to find a respectable person from public to accompany police because of social stigma.

It is important to mention here that even if the country's legal code may be technically adequate for dealing with the problems of trafficking, violence against women and



prostitution, but there is no law that may impose on the clients and organizers of the sex trade the same penalties slapped on the sex workers found soliciting or practicing their trade in or near public places.

Now when one looks at the problem from the point of view of the law enforcement bodies, sources would say that the Police plead helplessness in busting the gangs, which are involved in trafficking of girls and women. This is because, according to the police, they need at least an FIR with details to launch an investigation, and nobody comes forward with a specific complaint or an FIR. This can be contested with the statement given by Mr. B.R. Tiwari, a private advocate with Tees Hazari (a District Court in Delhi) that, "Police starts behaving as an arbitrary agency. They want that the FIR (First Information Report) should not be lodged and that the traffickers and brothel-owners should monetarily oblige them for preventing them from detentions. It is all off-record, so that the crime graph does not shoot up." This can be understood as in a democratic set-up, no elected government would like a higher rate of crime in any fields for the fear of gaining unpopularity and getting out of power. At this level trafficking of women and girls cannot be tackled.

What can be derived from this is that the state is in a perpetual state of dilemma—on the one hand it knows that it is beyond its means to address ever new methods of crime; on the other, it thrives by tactfully managing the anomalous elements and keeping, artificially, the crime graph as 'normal'. Viewing from a larger social perspective, it can be said that a variety of anomalies and dysfunctionalities continue to exist and evolve in

India, and many other developing societies. In these societies, process of social transition from a traditional, feudalistic, patriarchal to a rational, modern and gender sensitive society is not only slow, but also painful.

Various sources support the fact that women are frequently ignored or their complaints are not acted upon. This is so because the victims usually contact the police before reaching the judicial system where the response of the police is crucial in enabling women to continue their cases and halt the violence. As has been pointed out by Radha Kumar<sup>11</sup> in her study, over the last couple of centuries, legislation has been a dominant demand of women's movements. The nature of legislation and the failure of the state to implement them have been the prominent undercurrent to movements for women's rights. Non-implementation of laws gave way to outraged protests from reformers as well as contemporary feminists. These protests were directed towards the campaign for reform in existing bodies for implementation—more women in the police force, separate cells for crimes against women, women not to be summoned in the police station, women to be interrogated in front of female personnel, etc. One of the demands was also that the feminist groups be given some sort of locus to work with the police to monitor and even replace them when they refuse to act.

Delhi Police began to promote Crime Against Women Cell (CAW) during the early half of 1980s (perhaps also inspired by the experiments going on in the North, Central and

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<sup>11</sup> Kumar, Radha: *The History of Doing (An illustrated account of movements for Women's Rights and Feminism in India)*, Kali for Women, 1993.

Latin Americas<sup>12</sup>) to be established and staffed with female officers also who, it hoped, would be more understanding of the victims and sensitive too. There are nine such CAW Cells operating from the nine district police headquarters in Delhi. These units work mainly with violence against women, advising them on different aspects of criminal and civil law. To carry out their various functions, these Cells have sections for investigation, counseling, protection, and response for rape (which is undertaken by Crisis Intervention Centre).

The Units frequently work in conjunction with NGOs that have experience with violence against women cases, have credibility among women, and can provide legal advice, as well as social and psychological services.

But it is not just important to create these institutions for the enforcement of law when on the one hand they are ill-equipped to do so while, on the other, the general mood in these institutions is that of either indifference or of high-handed arbitrariness which often entails economic, physical and moral harassment to the victim.

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<sup>12</sup> In Latin America, the first and most significant effort along these lines was in Brazil, which set up the National Women's Rights Council in 1985. The Council advocated support for a national program to combat violence against women and for the establishment of integrated assistance centres for women at risk of domestic and sexual abuse. The first special women's unit was established in São Paulo in 1985. Similar units quickly spread to other parts of the country. (Source: Morrison, Andrew R. and Biehl, Maria Loreto (ed.), 'TOO CLOSE TO HOME: Domestic Violence in the Americas', IDP Pub, Washington, 1999, p.107)

## (I) NGOs and United Nations agencies

*Non-Governmental/ Voluntary Organizations* (both national and international) have been making widespread efforts in order to combat the menace of girl child trafficking for the purpose of prostitution. Significant progress in designing working methodologies has been made in the last twenty years or so. Their work in this area includes extensive research; designing models of attention and articulated demands that governments should establish specific policies for the prevention and suitable treatment; rescue and raid along with proper rehabilitation programmes; running shelter homes with adequate facilities including counseling, etc.

It can be said, the work of voluntary organizations begins where the work of law enforcing bodies ends. On a two-day Regional Consultation on Trafficking of Women and Children and Law Enforcement, organized by Prayas Institute of Juvenile Justice in collaboration with UNIFEM, high court judge Usha Mehra herself admits --- “Rescuing victims may not bring much relief as rehabilitation programmes are poorly implemented. The status of state run shelter homes for women and girls is bad. They are like brothels. Shelter run by NGOs are the only hope for creating suitable and independent mechanism”. According to Ravi Kanth, Executive Director of Shakti Vahini<sup>13</sup>, “Why is the police congratulating itself after raiding brothels when there is no plan of action in place to rehabilitate the girls?”

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<sup>13</sup> A leading NGO based in Faridabad district of Haryana and is extensively involved in rescuing and rehabilitation of numerous trafficked girls/women in the state.

The gendered approach to the issue of girl child trafficking for the purpose of prostitution taken by NGOs implies that interventions should provide assistance for specific episodes of violence, within a context of supporting changes in the lives of the victims. Work with girl child/ women should consist mainly of an empowerment process to help them take responsibility for their own lives and personal security.

From this standpoint, treatment for abused/ trapped girls and women is not limited to halting violence and taking them out of the brothels, but also seek to help the girls and women identify their problem as part of their subordinate condition in the society. Thus, special emphasis is placed on participation in discussion groups that help women change different aspects of their lives, particularly the relationships that have led to violence. Most programmes educate victims that include legal, psychological, and social support provided in a coordinated and comprehensive manner.<sup>14</sup>

Some of the efforts made by NGOs, INGOs and UN Bodies with regard to girl child trafficking are *ab infra*: -

- The International Labour Organization (ILO) signed a \$ 112,970 agreement with the Government of Nepal to establish a joint programme for controlling the trafficking of girls from Nepal to India. The programme included construction of rehabilitation centres, consolidated information exchange, building of education units, etc. It also

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<sup>14</sup> However, the positive role of NGOs in addressing the issue of girl child trafficking cannot be overstretched beyond their commitment as they have limited resources that cannot combat the issue at the national or the international level.

undertook formation of village level groups to maintain vigilance at the borders.

(Source: “Red alert in Nepal”, *Telegraph*, 27<sup>th</sup> May, 2001, p.3)

- Of the thousands of Nepalese girls kidnapped to work in brothels across Asia, a few returned, now standing as guards to seize the traffickers and rescue other girls about to be trafficked out of Nepal. With the help of a grant from ILO, this experiment to catch the traffickers was started, three years back, by Anuradha Koirala who runs a home in the Capital, Kathmandu, called Maiti Nepal (Maiti means Mother’s House), for women brought back from brothels. (Source: “On guard against flesh trade”, *Deccan Herald*, 13<sup>th</sup> July 2000, p.4)
- Commemorating the concluding year of the SAARC decade of the Girl Child (1991 – 2000), PRAYAS organized a two-day workshop on 21<sup>st</sup> September 2000 to review the progress made in tackling this crime. At this workshop, participants from NGOs and other concerned agencies met to review the implementation of the 1998 plan of action of the Department of Women and Child Development to combat trafficking and commercial sexual exploitation. (Source: “Agencies should enforce law to end flesh trade: Workshop”, *Times of India*, 22<sup>nd</sup> September, 2000, p. 2)
- Sanlaap, a Calcutta-based non-governmental organization (NGO) that works to prevent child prostitution and trafficking, reported having received more than 140 girls over the past three years in its two shelter homes. Twenty were repatriated to Bangladesh with the help of NGOs there and seven to Nepal. Sanlaap took 18 cases of HIV-infected young girls from Mumbai brothels. Nine of them were taken back by their families while one died. (Source: Shoma Chatterji: “All god’s children need traveling shoes”, *The Times Of India*, 3<sup>rd</sup> December, 2002, p. 3)

- A national consultation on Trafficking was organized by the Joint Women's Programme on 5<sup>th</sup> August 2001, in which 22 organizations participated. JWP Director, Jyotsna Chatterjee stressed on the need to shift focus from the victim and address the demand, which was creating the market for trafficking. The setting up of a nodal agency on the lines of the Narcotics Control Bureau for monitoring child trafficking was one of the suggestions given to the Government in this consultation. (Source: "Meet on immoral trafficking stresses need for nodal agency", *Indian Express*, 5<sup>th</sup> August, 2001, p. 3)
- Action Against Trafficking and Sexual Exploitation of Children (ATSEC), a USAID funded international organization and its networking NGOs rescued and brought home 462 women and children. This INGO works in combating trafficking and sexual exploitation in children and women through advocacy, campaign and social mobilization, research, networking and support to national and regional level prevention programmes. (Source: Haroon Habib: "Trafficking in Bangladeshi women cause for concern", *The Hindu*, 3<sup>rd</sup> June, 2003, p. 11)

The aforementioned are only few of the numerous steps taken by Voluntary organizations. There are many more organizations in India as well as around the world which are working hard, either by taking steps on their own or by means of pressurizing the State to take necessary actions against trafficking in girls and women. Various agencies of the *United Nations* (UNIFEM, UNICEF, ILO etc.) are taking adequate actions at the international level. They not only fund the INGOs and smaller NGOs to carry on their activities against this menace, but also pass necessary conventions,

declarations and international laws (Refer to Annexure....) giving guidelines to the worst affected countries to help them take necessary action to curb this menace.

However, problem starts at the point where these voluntary organizations have to deal with the law enforcement agencies and with the judiciary. This is inspite of the overall feeling that the victims can be helped best by the NGOs. Advocate Pramod Jalan is of the view, "NGOs can help a lot by means of educating through gender-sensitization programmes. In fact, NGOs need to be supported whole-heartedly and they, in turn, need to expand their horizons". Whereas various sources tell that it is not only police but also the court where the victim needs support but "the court does not allow any role for the NGOs". Thus, victims become lonely and defensive in the court whereas the perpetrator (trafficker, brothel owner, pimp, etc.) is usually a strong party which pays hefty sums to the concerned authorities besides constantly keeps on intimidating the victim of dire consequences if she does not withdraw or keeps shut". Another social worker with SNEHI, a reputed NGO working for women's cause in Delhi, said, "If there is patriarchy, it is there in the law too. I think the law is biased. As far as the police are concerned, there is rampant corruption in the police, even in the Crime Against Women Cell."

## **Media**

Another group that has been influential in raising awareness about trafficking and commercial sexual exploitation is **media**, especially the news media and cinema. Media has played a major role in this issue in their own way. They have a considerable contribution in helping the issue of girl child trafficking getting recognition at both



national and international levels. This view can be also supported by this researcher's own experience of collecting information for writing this dissertation. One of the main secondary sources for this dissertation has been the innumerable articles in national newspapers and magazines like the Times of India, Hindustan Times, Hindu, Statesman, Pioneer, Telegraph, Deccan Herald, India Today, Outlook and many many more. It has been observed that these newspapers and magazines, which are a part of the news media, have been covering this issue extensively. News items regarding trafficking, prostitution and violence against women, which used to be published on the third or fourth page of the newspapers have now started finding space on the first page. Various magazines feature them as 'cover stories'. Hindi cinema, too, has dealt in detail this issue by means of several films from time to time. Some prominent films in this regard were *Umrao Jaan*, *Bazaar*, *Mandi*, *Sadak*, *Chandni Baar*, *Salaam Bombay*, *Ram Teri Ganga Maili*, *et al*. Therefore, it was not possible to ignore media as one of the responsive institutions by this researcher.

According a report by International Labour Office<sup>15</sup>, The International Federation of Journalists (IFJ) has done some high-impact work in promoting children's issues. This professional association, which represents media professionals through its branches worldwide, has included the role and responsibilities of the media in relation to the exploitation of children in its ongoing programmatic work. In 1997, for example, the IFJ undertook a survey of codes of conduct and ethics governing journalists' work

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<sup>15</sup> Boonpala Panudda and June Kane: "Trafficking of Children: The problem and responses worldwide", IPEC-ILO, Dember 17-19, 2001, p.45.

worldwide, and began working with members to draft a code of ethics that takes account of child protection concerns.<sup>16</sup>

However, the irresponsibility on the part of media with regard to sex stereotyping cannot be ignored. Films are the largest disseminators of stereotype images of women. If, on the one hand, some films (as mentioned before) have been produced to deal with the sensitive issue of girl child/women trafficking and prostitution; on the other hand, in most of the films the women are portrayed as traditional, devoted, son producing wives, respectful daughter-in-laws, sacrificing mothers and sisters, ready to suppress all their desires and hope for their families. Whereas, there are miniscule number of films made in India which are women oriented or which portray women as self-dependent individuals. As pointed by a woman activist, according to Gandhi and Shah, it is indeed ironical that whenever women are shown to rebel against an unequal partnership, it is seen as a bid to break up the marriage.

As mentioned before, the news media have been responsible for making the suffering of girls and women, their anger and struggle, reach hundreds of readers. The media supported women's issues by giving them space in women's column such as, 'the other half' in Indian Express; 'women's voices' in Eve's Weekly; 'women's own' in Afternoon etc. Academic journals such as the Economic and Political Weekly have been also reporting women's issues and articles on the same.

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<sup>16</sup> This can be accessed via the Press Information pages of the website of the 2<sup>nd</sup> World Congress against

However, various women's organizations started finding it difficult to publish their articles in leading newspapers, due to various reasons. Therefore, women's movement gave rise to an alternate media, which comprise of women's magazines such as *Baija* (Marathi), *Manushi* (English and Hindi), Socialist Feminist Network (Bombay), *Nari Mukti* (Gujarati) etc. However, it has to be understood that alternate media cannot replace the mainstream media, which has tremendous outreach for information dissemination. But due to commercial nature of newspapers and magazines these days, women's core issues are usually left unaddressed and therefore analytical articles on girl child/women rarely find space.

Nevertheless, journalists have made attempts to find ways to harness the enormous power of the media to influence public opinion and alert the public, including potential victims, to risks, issues and sanctions. It is commendable that in the recent years, Media has emerged as an important partner in efforts to protect children and combat trafficking.

### **Situating Institutional Responses**

After a lot of efforts to tackle the scourge of girl child trafficking for the purpose of prostitution, the results as far as institutional response is concerned, are contradictory. On the one hand, serious effort, dedication, and commitment have brought the problem to light and generated responses from all quarters. However, the issue continues to be marginal, resources are insufficient, there is lack of laws and whatever laws exist are often not enforced.

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Commercial Sexual Exploitation of Children ([www.focalpointngo.org/yokohama](http://www.focalpointngo.org/yokohama)).

Thus the question is, how can we continue to make progress? How can we ensure that actions lead to a real reduction in such kind of abuse and violence against girls/ women? How can we transform the issue from a marginal one into one of the priorities of public policy?

It is necessary to recognize that broad exercise of citizenship is severely restricted today to compliance with a series of social duties, and in order to exercise democracy in daily life it is necessary to consolidate a firm government policy to recognize the rights of all members of the society. The sociopolitical context of domination and inequality in which girl child trafficking takes place must not be disregarded.

Finally, nonviolence policies should comprise an important element of cultural policy. Unfortunately, few steps have been taken to promote cultural change that questions hierarchical and authoritarian family structures or discriminatory institutions. Girl child trafficking, however, cannot be overcome unless there are deep changes in social and family structure.

The actions of civil society will be crucial in combating trafficking, especially in light of the vicissitudes of public policy that result from political changes. Given the prevalence of the phenomenon in many countries, however, it can no longer remain the exclusive responsibility of the NGOs. As governments begin to address the issue of girl child trafficking, they must be careful not to overload the already strained services of NGOs by referring victims to these organizations without a concomitant channeling of financial

resources. While there are currently no government strategies to boost the funding of NGOs, such actions are potentially very effective, especially in an era of reductions in international aid.

As the 'institution' of prostitution stands 'degraded', so does its most well known operational base—the brothel. In the ancient past, the institution was acknowledged, at least, and there were intricate laws to regulate it by the state. For instance, during the time of Buddha and many centuries after, prostitutes (*ganika*) were very much part of the social system and some of them were universally regarded too (*Ambapali*, in whose residence it is said that Gautam Buddha himself stayed as a guest on her request<sup>17</sup>). Kautilya mentions not only the laws that governed the system of prostitution in his *Arthashastra*, but also that one among his eighteen famous supervisors who supervised a city was '*ganikadhyaksha*' (Superintendent of prostitutes).<sup>18</sup> Centuries later during the reign of Guptas, prostitutes thronging the streets of the capital on festive occasions also restore our belief that prostitutes and their profession was not treated as ostracized.<sup>19</sup>

The point being made here is not whether the institution of prostitution has any social functions or whether it should be respected and regulated or not. What is being argued here is that prostitution has been in existence as long as written history itself, which continues till the present day. It is a matter of debate whether it has any functional role to

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<sup>17</sup> 'Baudhayana and Apastamba forbid brahmanas to accept food from prostitutes (*ganika*) or unchaste women. In contrast to this is the fact that Buddha once lived as a guest of *Ambapali*.' Jha, D.N., 'Ancient India: In Historical Outline', Manohar Publishers, New Delhi, 1991, P 75.

<sup>18</sup> Source to be mentioned.

play in any society or not and it is generally regarded as a social problem, but it is viewed by this researcher that banning a social problem brings in more problems than answers. The dichotomy in the modern day laws of India is that it acknowledges prostitution as a social and moral problem; however, it terms the profession as merely illegal to rectify it. Experience over the past decades has brought to light that banning an issue by terming it as illegal only pushes it underground and instead of helping eradicate a menace, allows it to flourish through illegitimate methods. It is further viewed that inhuman experiences, coercive methods, gross violation of human and fundamental rights, and limitless torture and agony that subsume the life of trafficked girl child can at least be considerably reduced if certain mechanisms can be put into place in its regulation and management. It is difficult to say how this can be done, as there will be moral, legal and gender issues involved if any legal steps are taken in this direction. But it is reiterated, and certainly, de-recognizing it simply through law will little serve the purpose of ameliorating the life of thousands of girl children and women who are incessantly trafficked year after year into this business. Ideally, concerted action between the civil society and the law enforcement agencies can be the key to eradicate the issue as was done with child marriages, sati, untouchability, etc. which till date have not been completely eradicated but their proportion and incidences have drastically been reduced.

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<sup>19</sup> According to the *Mudrarakshasa* of Vishakhadatta prostitutes crowded the streets of the capital on festive occasions'. Jha, D.N., *Ibid*, P 158.

## CONCLUSION

The *raison de etre*, as mentioned at the beginning, for sociologically exploring the issue of girl child trafficking and for studying the institutional responses in India was stated to be a stark absence of any serious discourse at the theoretical or academic level. The study, it is asserted, has attached significant importance to approximating the issue by taking recourse to six frameworks (at times even extrapolated), while not accepting any specific one among the six for having more credence.

The study is of the firm opinion that the various lenses provided by each of these frameworks renders the gaze myopic and even misleading if only one such lens is put to use. The social complexities that underline the undercurrents, and currents on the surface, of girl child trafficking in India have forced this researcher to go beyond each of these frameworks and develop a kaleidoscopic framework. In fact, it would be very much within the limits of the present endeavour to suggest that this study has taken recourse to a kaleidoscopic framework, after developing the same.

A constant flow throughout this study has been made possible by virtue of evolving arguments and subsequent discourses firmly grounded on the said framework. Thus, anomie and deviance (Functionalist), alienation and bourgeois mindset (Marxist), patriarchy and gender stereotypes (Feminist), antiquated laws or lack of their enforcement (Legal), acute poverty, underdevelopment and misgovernance

(Development theorists and NGOs)—these factors in tandem enable a fertile ground for girl child trafficking.

The discourse, as in the first chapter, does not in any way suggest the enmeshing of these frameworks, though it puts forth arguments portraying their overlapping nature. Enmeshing them would have been a grave mistake as all of them are worldviews representing various standpoints and are a complete package in themselves in terms of philosophies, ideologies and historical moorings. In fact, they can overlap at places but cannot be merged. Thus, the framework was finally developed by carefully extracting relevant ideas and concepts from other frameworks without allowing the philosophies of these to subsume or dominate others. This was realized to be the most appropriate way in which the issue, if at all, be approached in a holistic manner.

In the absence of any sociological or academic work on the issue, it was the ideas drawn from various realms, and discussed in the first chapter that provided with the crucial leads. However, working upon these leads was extremely difficult as, at times, a concept meant differently under different frameworks. For example, while dealing with female criminality with regard to those women who had accepted the trade of girl child trafficking as lucrative and were not under any compulsion to undertake it, some degree of carefulness had to be employed. Female criminality under different lenses could have meant deviance (Functional), criminal activity (Legal), entrapment within the patriarchal set up (Feminist), a collaborator (Marxist), and so on. There is also a fear while using



concepts by extracting them out of their related frameworks. The fear being the fact that the concept itself might lose its conceptual value as well as that of a signifier. However, there was little difficulty experienced as far as the present exercise was concerned in using concepts from the six mentioned frameworks because of the fact that they were used to analyze similar settings like the ones for which they had been originally used.

It was found during the historical analysis that the status of girl child in India today has had a strong historical background and that, despite the operation of social processes of continuity and change over centuries and those pertaining to politico-legal or regime changes, the perceptions changed little. Perceptions of burden, liability, *paraya dhan*, virginity, commodity, etc. were seen as notions with a continuum. These notions and perceptions were found to have more to do with entrenched patriarchal set-up that put women into the custody of appropriate male counterparts—father, husband, son... As such, the girl child could be disposed off in times of adversity for a paltry sum; fall prey to vicious mechanizations of local agents and traffickers due to relative alienation in lieu of a better world promised through marriage or job.

Social conventions such as child marriages, polygamy, dowry, and social stigma against single, unwed, divorced women and girls, and those sexually abused, are important contributing factors. With these perceptions strongly determining the role, status and identity of the girl child, as is true with millions of such girls in India and its

neighbourhood, it becomes easier to procure many of them for purposes of trafficking from the huge size of such marginalised and alienated individuals.

On the other hand, relative anomie, rural proletarianization and pauperization, breakdown of familial ties among the marginalised, rural push factors etc. when synchronized with patriarchal mindsets that often view girls as a liability, work as perfect situations for traffickers to operate their trade. The study has found that most of this process is guided by market forces of demand and supply. The contradiction that supports trafficking in girls is that though girl child prostitution is both illegal and disrespected, however, law enforcement as well as society allows the profession to continue. The study discovered another contradiction with regard to prostitution. The point of divergence in social perceptions being those women/girls who admitted to have indulged in 'occasional' prostitution for personal or professional reasons continued to live their life with dignity within the mainstream social realm, while those girls who are forced into prostitution stand condemned and stigmatized.

It is difficult to comment whether trafficking in girl children is on the rise or not because of lack of any database as such, but what can be said with conviction (on the basis of reports mentioned in Chapter I and II) that the size of the trade is enormous. This is because of two primary reasons: first, potential size within the number of girls who feel alienated or are marginalised is considerable and who can be thus procured or channelized into the trade; second, the demand for girl children for purposes of

prostitution is premised on common notions of virginity (one of the beliefs being that indulging in a sexual relationship with a virgin girl cures certain diseases), for the fear of sexually transmitted diseases (STDs) and the growing sex industry.

Related with the murky world of girl child trafficking are the painful and gory end results for the trafficked girls. It is a journey from marginalization to stigmatization and ostracism via exploitation and torture. The study does not aim at generalizing the aforesaid, yet by taking recourse to six case studies from diverse backgrounds, it does aim at reflecting the stories of hundreds of thousands of such girls. What is more worrisome is their decimation of faith in virtually all social institutions—family, kinship ties, marriage, law, police, judiciary, civil society, etc. Stretching the argument still further, the issue with all its disturbing nuances, questions at once, morality and societal ethics in human relationships and with it the entire social organization.

Also extremely disturbing was to find that either the manipulative traffickers/mafia groups enter into mutually benefiting arrangements with the law enforcement at various levels and thus making a mockery of the existing laws, or bend the laws through professional legal aid by playing with the Evidence Act. Thus it can be said that the legal rules in India are more binding on those sections of society that have been marginalized rather than those who wield power and status.

The conclusions drawn during this research with regard to institutional responses to trafficking in girl children have been either found to be of mixed nature or have been found to be wanting. The efforts bear discontinuity and discreteness and lack a concerted action. The law recognizes trafficking as a serious crime, but simply bans it; the overburdened judiciary is still to pass a landmark judgment or a directive to the law enforcement and appears to be grappling with different legal frameworks that operate side by side; rampant corruption and a usual bias among the law enforcement towards the hundreds of manipulative traffickers mar their capacity to implement the law that bans this illegitimate trade; for media the issue is restricted to mere reporting as sideline stories; while the capacities of NGOs, INGOs and UN bodies is severely restricted to advocacy and limited operations given the fact that their actions are supported by meager resources. In short, the issue that is approaching gargantuan proportions is being allowed to grow, unmatched with responses required to address it by either the civil society as such or the social institutions that regulate social order.

One startling revelation that emerged from this two-year study is that girl child trafficking as such does not figure as one of the chief issues among either the past or the contemporary discourses within the women's movement. Startling, because despite the fact that hundreds and thousands of innocent girls continue to be trafficked each year and many more continue to reel under exploitation and torture in the innumerable brothels that exist virtually in every metropolitan city as well as middle-class towns, only sporadic action or advocacy can be noticed through miniscule number of NGOs and academia, and

knee-jerk state reactions. Whether it is a conscious part of the strategy or the lack of it, it has been difficult to understand the narrowing down of contemporary women's movement to reservation of seats in the Indian Parliament or lobbying to pass pending Bills like that of Prevention of Domestic Violence Bill.

The study finds that the present arrangements and institutions are insufficient in addressing the chief issue under concern—trafficking in girl children and prostitution. It is of the opinion that terming the issue as illegal, instead of curbing the pain and exploitation that innumerable girl children undergo year after year, it promotes the very issue by forcing it underground. However, it cautions against the complexities involved with the issue while embarking upon any fresh approach. It believes that while on the one hand, a workable solution and a long-term strategy needs to be formulated from a fresh perspective involving the relevant social dynamics and agents of change; it also believes that the issue is a social one and needs to be addressed by handling age-old basic questions as those of patriarchy, gender stereotypes, economic as well as social empowerment of women, commodification of women, status of girl child, alienation within the family, incest, poverty, dowry, unemployment, underdevelopment, etc. Unless these issues, and many related ones, are addressed as a matter of urgency, there would be more of 'missing women'. Lack of, or the absence of, concerted action by the various institutions and stake holders can be pinpointed to be the chief reason not only behind the failure to understand and combat girl child trafficking, but also, behind the increasing anomie and alienation among large sections of Indian society.

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1. In India prostitution is tolerated and regulated.
2. Prostitution is per se not a crime. Prostitution is not abolished/prohibited/banned.
3. The Act intends to criminalize and penalize the Institutions/ Industry (brothel, brothel keepers, procurers, pimps, touts, middleman, landlords etc.) But actually ends up criminalising and penalizing women.
4. Trafficking of persons - male/female is prohibited. (Sec. 3-6).
5. Prevention of sexual exploitation of persons for commercial purposes.
6. Soliciting and/or seduction in public places is a crime (Sec. 7 & 8).
7. Offences involving children/minor-stringent punishment.
8. Does not address the health concerns of the persons trafficked.
9. Provides for Rescue and Rehabilitation of the prostituted women (Sec. 10-A, 16 & 17, 21).
10. Voluntary rehabilitation (Sec. 19).
11. Removal of prostitutes from any place – on complaint (Sec. 20).
12. Special enforcement mechanism. (Sec. 13-15).
13. This does not focus on persons who are voluntarily in this field.
14. Provides for mandatory testing for STD (Sec. 15 (5-A)).

*Source : Resource Directory - Karnataka UNIFEM / NIAS.*

## Offences (ITPA)

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- Keeping brothel or allowing the premises to be kept as a brothel.
- Leasing/using a premises for brothel (landlord/tenant, lessor/lessee).
- Living on the earnings of prostitution (Sec. 4).
- Procuring, inducing, taking a person for the sake of prostitution.
- Detaining persons in the brothel/premises where prostitution is carried on, with an intention to have sexual intercourse with a person who is not a spouse.
- Enhanced punishment for subsequent offence.
- Stringent punishment for the above said offence where the person involved is a child/minor.
- Special Courts are to be set up for trial of cases under this Act.
- An offence under this Act is cognizable i.e., a police officer can arrest without a warrant.
- Special police officer (SPO), not below the rank of Inspector to be specified by the State Govt. to deal with matters under this Act. Trafficking police officers to be appointed by Central Govt. to deal with interstate trafficking.
- Non official advisory body consisting of not less than 5 leading social welfare workers of that area, including women social welfare workers to advise on questions of general importance regarding working of the Act.

## **“The Juvenile Justice (Care and Protection of Children) Act, 2000.**

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This is an Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care, protection and treatment by catering to their development needs. Some relevant sections under this Act are:

**Section 2 (k) :** “juvenile” or “child” means a person who has completed eighteen year of age.

**Section 2 (d) :** “child in need of care and protection” means a child -

(iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child

(vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse and illegal acts

(vii) who is found vulnerable and is likely to be induced into drug abuse or trafficking

(viii) who is likely to be abused for unconscionable gains

Under the Act, the State Governments have been empowered to constitute for every district or group of districts one or more **Child Welfare Committees** (section 29) for exercising the powers and discharge of duties in relation to child in need of care and protection under the Act. The Committee shall have final authority to dispose of cases for the care, protection, treatment, development, and rehabilitation of the children and as well as to provide for their basic needs and protection of human rights.

- Juvenile Justice Act.

# Women's rights vis-à-vis the police

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## **RIGHTS during interrogation**

You have the right

- To refuse to be taken to the police station or any where else for interrogation.
- To be questioned only at your residence and in the presence of your family members.

## **RIGHTS at the time of arrest**

You have the right

- Not to be handcuffed at the time of your arrest
- To demand that you be produced before magistrate within 24 hours of your arrest
- To take along your relative or friend to the police station.

## **RIGHTS in the police station**

You have the right

- To demand that you should be placed in a female lockup
- To ask a magistrate for your medical examination if you are beaten, abused or tortured by the police.

## **RIGHTS at the time of search**

You have the right

- To demand that your bodily search be carried out only by another female in a decent manner.
- To search any police woman before she searches you.

## **RIGHTS at the time of filing First Information Report (FIR)**

You have the right

- To demand that your FIR be registered.
- To take along any friend or relative at the time of filing the FIR.
- To read the FIR or have someone else read it to you before you sign it.
- To receive a free copy of the FIR.
- To approach senior police officers or your area magistrate if the police refuse to register your FIR.

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# SAARC CONVENTION ON REGIONAL ARRANGEMENTS FOR THE PROMOTION OF CHILD WELFARE IN SOUTH ASIA

### PREAMBLE

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

*Noting* that a quarter of the world's children live in South Asia and many of them require assistance and protection to secure and fully enjoy their rights, and to develop to their full potential and lead a responsible life in family and society,-

*Bearing in Mind* that parents or legal guardians, as the case may be, have the primary responsibility for the upbringing and development of the child;

*Recognising*, therefore, that the family, as the fundamental unit of society and also as the ideal nurturing environment for the growth and well-being of children, should be afforded the necessary protection and assistance so that it can fully assume and fulfill responsibility for its children and community;

*Recalling* the common proclamation of their nations in the Universal Declaration of Human Rights that childhood is entitled to special care and assistance;

*Reaffirming* their adherence to the Declaration of the World Summit for Children and their commitment to the UN Convention on the Rights of the Child,-

*Recognising* the efforts of SAARC towards building a regional consensus on priorities, strategies and approaches to meet the changing needs of children, as embodied in Rawalpindi Resolution on Children of South Asia 1996, and noting the significant progress already made by the Member States in the field of child survival and welfare;

*Taking into Account*, the declaration of the years 2001-2010 as the "SAARC Decade of the Rights of the Child";

*Bearing in Mind* that the development of the full potential of the South Asian child is a critical concomitant to the region's collective march towards solidarity, justice, peace and human progress;

*Acknowledging* that regional solidarity and cooperation through sharing of experience, expertise, information and resources are eminently

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useful in galvanizing the efforts of the South Asian nations to fulfill and protect the rights of children;

*Realizing* further that, together, the Member States of SAARC can move towards a comprehensive South Asian vision for the well-being of their children;

*Hereby Agree* as follows:

### **PART I - DEFINITIONS, PURPOSE AND GUIDING PRINCIPLES**

#### **ARTICLE I DEFINITIONS**

*For the purposes of this Convention;*

'*Rights of the Child*' shall mean the rights of children embodied in the UN Convention on the Rights of the Child.

'*Child*' shall mean a national of any Member State of the South Asian Association for Regional Cooperation (SAARC), below the age of eighteen years unless, under the national law, majority is attained earlier.

#### **ARTICLE II PURPOSES AND OBJECTIVES**

The purposes and objectives of the present Convention shall be to:

1. Unite the States Parties in their determination of redeeming the promises made by them to the South Asian Child at the World Summit for Children and at various other national and international conferences and successive SAARC Summits;
2. Work together with commitment and diligence, to facilitate and help in the development and protection of the full potential of the South Asian child, with understanding of the rights, duties and responsibilities as well as that of others'
3. Set up appropriate regional arrangements to assist the Member States in facilitating, fulfilling and protecting the rights of the Child, taking into account the changing needs of the child.

#### **ARTICLE III GUIDING PRINCIPLES**

For the establishment of regional arrangements, States Parties shall be guided by the following principles:

1. States Parties to this Convention shall consider survival, protection, development and participatory rights of the child as a vital pre-requisite for:



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a policy of development and a National Programme of Action that facilitate the development of the child. The policy shall focus on accelerating the progressive universalization of the child's access to the basic services and conditions.

3. States Parties shall ensure that appropriate legal and administrative mechanisms and social safety nets and defenses are always in place to:

- (a) Ensure that their national laws protect the child from any form of discrimination, abuse, neglect, exploitation, torture or degrading treatment, trafficking and violence.
- (b) Discourage entry of children into hazardous and harmful labour and ensure implementation of the Ninth SAARC Summit decision to eliminate the evil of child labour from the SAARC region. In doing so, States Parties shall adopt a multi-pronged strategy including the provision of opportunities at the primary level and supportive social safety nets for families that tend to provide child labourers.
- (c) Administer juvenile justice in a manner consistent with the promotion of the child's sense of dignity and worth, and with the primary objective of promoting the child's reintegration in the family and society. In doing so, States Parties shall provide special care and treatment to children in a country other than the country of domicile and expectant women and mothers who are detained along with infants or very young children, and shall promote, to the best possible extent, alternative measures to institutional correction, keeping in mind the best interest of the child.
- (d) States Parties shall make civil registration of births, marriages and deaths, in an official registry, compulsory in order to facilitate the effective enforcement of national laws, including the minimum age for employment and marriage.

4. Recognising the evolving capacities of the child, States Parties shall encourage and support administrative and judicial institutions to arrange for suitable mechanisms at appropriate levels and in accordance with local customs and traditions, to provide opportunities and access for the child to:

- (a) Seek and receive information
- (b) Express views, directly or through a representative, and receive due weight and consideration for them, in accordance with age and maturity, in all matters affecting them.

- a) Accelerating the process of their peoples' realisation of human rights and fundamental freedoms, and
  - b) Achieving economic and social development in South Asia.
2. States Parties shall reaffirm the right of the child to enjoy all rights and freedoms guaranteed by the national laws and regionally and internationally binding instruments.
  3. States Parties consider the UN Convention on the Rights of the Child as a comprehensive international instrument concerning the rights and well being of the child and shall, therefore, reiterate their commitment to implement it.
  4. States Parties shall uphold 'the best interests of the child' as a principle of paramount importance and shall adhere to the said principle in all actions concerning children.
  5. States Parties, while recognising that the primary responsibility of looking after the well-being of the child rests with the parents and family, shall uphold the principle that the State has the right and authority to ensure the protection of the best interests of the child.
  6. States Parties shall consider this Convention as a guiding force for all national laws and bilateral or multilateral agreements that are entered into in the field of child welfare.
  7. States Parties shall always consider gender justice and equality as key aspirations for children, the realization of which, collectively by the governments, would enhance the progress of South Asia.

## **PART II - REGIONAL PRIORITIES AND ARRANGEMENTS**

### **ARTICLE IV REGIONAL PRIORITIES**

1. Without prejudice to the indivisibility of the rights enshrined in the UN Convention on the Rights of the Child and other international and national instruments and law, States Parties shall place special emphasis on the important areas for child development and well being as regional priorities that can benefit immensely from bilateral and regional cooperation.

2. Recognising basic services such as education, health care, with special attention to the prevention of diseases and malnutrition, as the cornerstone of child survival and development, States Parties shall pursue

- (c) Participate fully and without hindrance or discrimination in the school, family and community life.

5. States Parties shall encourage the mass media to disseminate information and material of social and cultural benefit to the child. They shall also endeavour to give wide publicity to the Convention as well as other regional and international instruments having a bearing on the child.

#### ARTICLE V REGIONAL ARRANGEMENTS

To ensure consistent focus on and pursuance of the regional priorities delineated above, States Parties shall promote solidarity, co-operation and collective action between and among SAARC Member States in the arena of child rights and development. States Parties view such cooperation as mutually reinforcing and capable of enhancing the quality and impact of their national efforts to create the enabling conditions and environment for full realisation of child rights and attainment of the highest possible standard of child well being. In pursuance hereof, States Parties shall:

- (a) provide opportunities for appropriate bilateral and multilateral sharing of information, experience and expertise.
- (b) facilitate human resource development through planned annual schedule of SAARC Advanced Training Programmes on Child Rights and Development.
- (c) make special arrangements for speedy completion and disposal, on priority basis, of any judicial or administrative inquiry or proceeding involving a child who is a national of another SAARC Member State, and for the transfer of children who are nationals of SAARC countries, accused of infringing the penal code, back to their country of legal residence for trial and treatment, provided that the alleged offence has not imperiled the national security of the country where it has been allegedly committed.
- (d) strengthen the relevant SAARC Bodies dealing with issues of child welfare to formulate and implement regional strategies and measures for prevention of inter-country abuse and exploitation of the child, including the trafficking of children for sexual, economic and other purposes.
- (e) set up a South Asian nutrition initiative aimed at enhancing knowledge and promoting greater awareness, practice and attainment of higher levels of nutrition, particularly for children and women, through mass education, adequate training and ensuring food security and equitable distribution of food at the family level.

### **PART III - RELATIONSHIPS AND CO-OPERATION**

#### **ARTICLE VI BILATERAL AND MULTILATERAL COOPERATION**

States Parties shall encourage and support bilateral and multilateral agreements and co-operation that would have positive impact on regional and national efforts in facilitating, fulfilling and protecting the rights and well being of the child.

#### **ARTICLE VII RELATIONS WITH NATIONAL LAW AND INTERNATIONAL INSTRUMENTS**

1 The States 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.

2. Nothing in this Convention shall affect any provisions which are more conducive to the realisation of the rights of the South Asian child and which may be contained in national laws or international agreements that are in force.

#### **ARTICLE VIII RELATIONS WITH NON-GOVERNMENTAL BODIES**

State Parties, while implementing the provisions of the Convention, may encourage and support the participation of non-Governmental bodies including community-based organisations.

#### **ARTICLE IX CO-OPERATION WITH UN AGENCIES AND OTHER INTERNATIONAL AGENCIES**

Recognising their nature and scope, States Parties may encourage co-operation with UN and other international agencies.

#### **ARTICLE X POLITICAL COMMITMENT**

States Parties shall provide the necessary political support to ensure that appropriate measures are taken, to help fulfill the provisions of this Convention. The measures, inter-alia, could include legislative reform and promulgation of appropriate new policies and legislation, trained manpower, adequately equipped institutions and adequate allocation of human and financial resources.

### **PART IV**

#### **ARTICLE XI SIGNATURE AND RATIFICATION**

The Convention shall be open for signature by the Member States of

SAARC at the Eleventh SAARC Summit in Kathmandu, and thereafter, at the SAARC Secretariat in Kathmandu. It shall be subject to ratification. The Instruments of Ratification shall be deposited with the SAARC Secretary General.

#### **ARTICLE XII ENTRY INTO FORCE**

The Convention shall enter into force on the fifteenth day following the date of deposit of the Seventh Instrument of Ratification with the Secretary General of the South Asian Association for Regional Cooperation (SAARC).

#### **ARTICLE XIII 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 XII.

WORLD  
 ECONOMIC SURVEY

**Asia region:** Several hundred thousands or more women and children have been trafficked within and across borders.

**PAKISTAN**  
 Data on the numbers of women and children trafficked in and from Pakistan is scant.  
 About 15,000 to 20,000 child sex workers are reported to operate near the Lahore railway station. The sexual exploitation of male children is common. [Country Report Pakistan, 1998].

**INDIA**  
 At least 25,000 children are engaged in prostitution in the major metropolitan cities: Bangalore, Calcutta, Delhi, Hyderabad, Madras, Mumbai [Government of India, 1991]. Other sources quote that 500,000 girl children below 18 years are victims of trafficking in India [India Today magazine, 1990].  
 In Bombay alone, "40,000 girls between the ages of 10-16 years are selling their bodies from their doorsteps" [National Commission of Women, 1997].  
 Estimates suggest the participation of more than 2 million women in commercial sex work of which 25 per cent are below 18 years. More than 90 per cent of them are of Indian origin, and about 5 per cent from Bangladesh and Nepal.  
 61 per cent of commercial sex workers in India belong to Scheduled castes, other backward classes and Scheduled Tribes. [Source: Situation Report India, 1998].

**SRI LANKA**  
 Estimates of children in commercial sex work range from a low of 2,000 to government and international sources quoting a figure of 30,000. The sexual exploitation of young boys is a serious problem.  
 Trafficking of children for commercial sex work is increasing and closely associated to the expansion of tourism, particularly in coastal areas. The extent of cross-border trafficking of Sri Lankan children is considered to be less than in other South Asian countries. [Source: Country Report Sri Lanka, 1998].

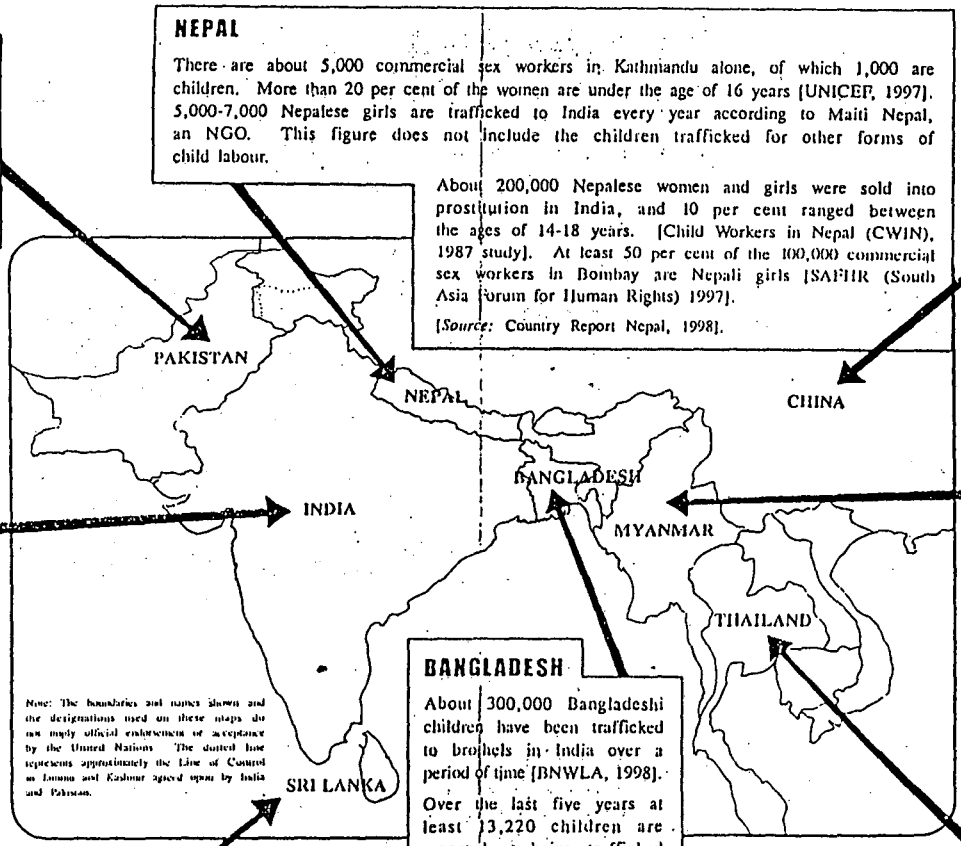
**NEPAL**  
 There are about 5,000 commercial sex workers in Kathmandu alone, of which 1,000 are children. More than 20 per cent of the women are under the age of 16 years [UNICEF, 1997]. 5,000-7,000 Nepalese girls are trafficked to India every year according to Maiti Nepal, an NGO. This figure does not include the children trafficked for other forms of child labour.  
 About 200,000 Nepalese women and girls were sold into prostitution in India, and 10 per cent ranged between the ages of 14-18 years. [Child Workers in Nepal (CWIN), 1987 study]. At least 50 per cent of the 100,000 commercial sex workers in Bombay are Nepali girls [SAFHR (South Asia Forum for Human Rights) 1997].  
 [Source: Country Report Nepal, 1998].

**CHINA**  
 Hundreds of thousands of women and girls are being trafficked. 2,500 alone, largely from minority populations were trafficked from the southern province of Yunnan in 1995 [Government estimates]. A Government report indicated that authorities in 1996 pursued 417,000 offenders involved in 209,600 cases of prostitution [The Nation, November 27, 1997].

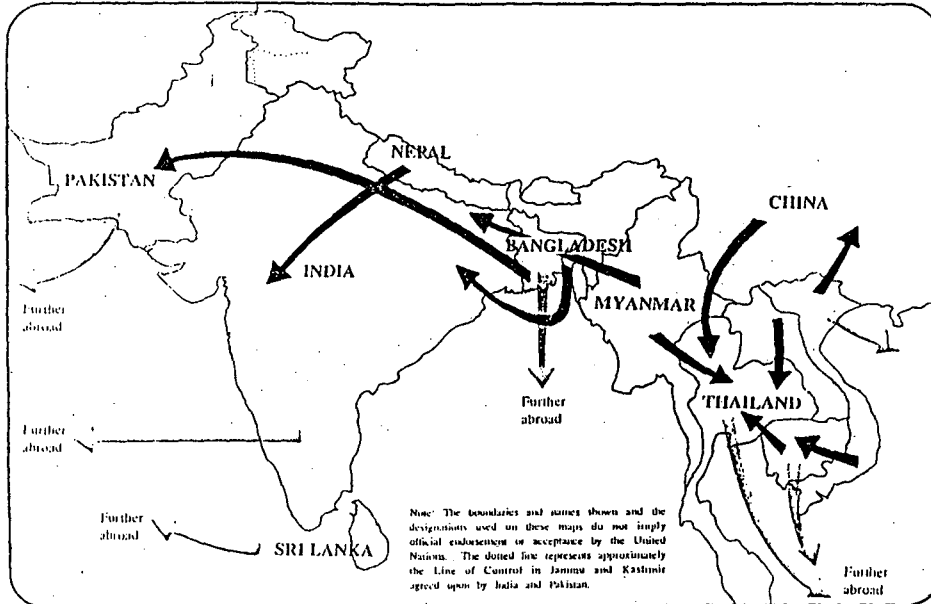
**MYANMAR**  
 20,000 to 30,000 women and girls from Myanmar are reported as being trafficked primarily into brothels in Thailand. 10,000 new recruits are added each year. [Asia Watch, 1994].  
 The total numbers are assumed to be considerably higher, since the majority of the 397,689 illegal immigrants into Thailand are from Myanmar [Royal Thai Government estimates, 1996]. Many Rohingya Muslims from Myanmar enter Bangladesh as refugees. From here the women and children are trafficked to India and Pakistan [Country Report Bangladesh, 1998].

**BANGLADESH**  
 About 300,000 Bangladeshi children have been trafficked to brothels in India over a period of time [BNWLA, 1998].  
 Over the last five years at least 13,220 children are reported as being trafficked out of the country, and it was possible to rescue only 4,700 of them [Country Report Bangladesh, 1998].  
 About 4,500 women and children from Bangladesh are trafficked to Pakistan yearly [SAARC and UNICEF, 1996].  
 Boys in the ages between 4-12 years are trafficked for camel racing in the Gulf; sexual exploitation of these boys by the employers is not uncommon [Situation Report India, 1998].

**THAILAND**  
 A conservative estimate suggests 200,000 sex-workers in the country [National Commission of Women's Affairs (NCWA) 1994].  
 20,000 to 40,000 girls under the age of 18 years were engaged in commercial sex work, according to official 1996 estimates by the NCWA [UNICEF, 1997].  
 It is estimated that 1 million women of various nationalities have been trafficked into Thailand. [The Coalition Against Trafficking in Women (CATW) Philippines, 1996].  
 In 1996 a total of 194,180 foreign child labourers were estimated to work in Thailand, 70 per cent of them were boys. Most of them are from Myanmar followed by Lao PDR, and Cambodia [ILO IPEC discussion paper July, 1998, Bangkok, Thailand].



Note: The boundaries and names shown and the designations used on these maps do not imply official endorsement or acceptance by the United Nations. The dotted line represents approximately the Line of Control in Jammu and Kashmir agreed upon by India and Pakistan.



**Some trafficking techniques**

**Women and children are generally recruited from rural areas or small towns. In the transshipment process they are handed over and taken over by numerous procurers, brokers, and intermediaries, usually not known to authorities as ones with criminal records.**

**Local contacts:** traffickers enlist the help of local persons and villagers to identify vulnerable families. Traffickers operate in an organized network having their agents make contacts with unsuspecting women and children around bus and train stations

**Direct sales:** women and children are sold to traffickers by parents or other family members. Traffickers sell young girls to brokers across borders in Asian countries for one to two thousand dollars (per child or young woman) or more

**Deceit:** unscrupulous agents deceive parents, lure women and girls with false promises of well-paid work in cities or marriages to rich partners

**Debt bondage:** economic incentives to parents and arrangements which bond children and young women into sex-slavery or other exploitative forms of labour, though details of these debt terms are ill defined

**Kidnap:** criminal gangs or middlemen kidnap women and children, force them to work against their will, and often sell them to brothels

**Falsification of documents:** false documents and passports make it difficult to identify and trace trafficked persons

**Bribes:** commonly paid to various officials or police to procure false documents, or at border crossings

**Transportation:** women and children are transported by foot, buses, pick-up vans, trains and boats

**Asia region**

Countries of origin	Transit countries	Countries of destination
• Bangladesh	• India	• Cambodia
• Cambodia	• Lao PDR	• China (Yunnan province)
• China	• Myanmar	• India
• India	• Thailand	• Pakistan
• Lao PDR		• Thailand
• Myanmar		• to countries in Europe, Middle East, North America, to Australia and Japan
• Nepal		
• Pakistan		
• Sri Lanka		
• Thailand		
• Vietnam		

**Most lucrative child trafficking routes:**

within south Asia → to India  
 from south Asia (Bangladesh, India, Nepal, Pakistan) → to the Middle East and further abroad  
 from southeast Asia to → Japan and Hawaii via Hong Kong, China and further abroad



**Key agents**

Many persons and agents are involved in the trafficking business, from the initial recruitment and procurement of women and children, to their wide-spread movements within countries and across borders.

- agents in the trafficking networks
- parents, relatives and friends,
- school teachers
- villagers and village headmen
- tourists, and travel agencies ("front" businesses)
- employment agents
- foremen and trafficking gangs
- crime syndicates with bases in many countries
- bar madams, local women recruiters
- "Gharwalis", brothel owners
- pimps and procurers
- individual paedophiles and their organizations
- customers, clients of sex workers
- corrupt officials (e.g. police, customs, immigration, border patrollers)

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