

TRAFFICKING IN WOMEN AND CHILDREN FROM BANGLADESH TO INDIA

*Dissertation submitted to the Jawaharlal Nehru University
in partial fulfillment of the requirements
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MASTER OF PHILOSOPHY

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TO
MY PARENTS



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DECLARATION

This is to certify that the dissertation entitled “**Trafficking in Women and Children from Bangladesh to India**”, submitted by me in partial fulfillment of the requirements for the award of the degree of **Master of Philosophy**, is my own work and has not been previously submitted for any other degree of this or any other university.

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PREFACE

Human dignity is the quintessence of human rights. Treating human beings as a commodity or chattel, which is a necessary incident of trafficking, is the worst indignity heaped at the individual. It is a form of modern day slavery where the victim is subjected to violence, violation of personal integrity and total humiliation, without any hope of succour. People suffer from physical and mental abuse and social stigmatization in trafficking. They become isolated, losing ties with their former lives and families. The victim of such devastating violence may also end up life threatening HIV/AIDS or a life time trauma and personality disintegration. Trafficking is thus a violation of several human rights-among them, the very right to life, liberty and security of person, the right to freedom from torture or cruelty, inhuman treatment, the right to education and proper employment...everything that makes for a life with dignity.

Trafficking in women and children is reported to be on the rise in Asia. Although accurate figures are hard to come by and that any estimates have to be treated with caution, the United States' State Department, for example, estimates that between 1 to 2 million people are trafficked worldwide, including 150,000 from South Asia and 225,000 from Southeast Asia. In the scale of organized crime, human trafficking ranks third behind drugs and arms smuggling.

On a large scale, trafficking subverts development efforts and raises social and health costs. Trafficking in women and children, both as a root cause and a manifestation of poverty and human deprivation, is a major challenge to countries in South Asia which are striving hard to accelerate poverty reduction. In response to the call for achieving the Millennium Development Goals (MDGs), efforts to combat trafficking are coming from governments, nongovernmental Organisations and the aid community in South Asia.

Bangladesh, India, and Nepal are the major trafficking affected countries in the region. India with its need of vast array of services in various industries

becomes a natural destination for the trafficked persons from Bangladesh, Nepal and other countries of the region.

This study aims to understand the dynamics of trafficking from Bangladesh to India and to identify and develop future interventions that would contribute in reducing and preventing trafficking in women and children.

Unfortunately, there is little awareness of the ramifications of trafficking as a transnational organised crime. There is, in addition, a lack of adequate laws which should recognise that the trafficked person is a victim and not a criminal. Laws do not adequately target traffickers, pimps, procurers, brothel keepers and the like; or provide adequate punishments. It is also unfortunate that the infrastructure for rescue and rehabilitation is grossly inadequate. Both the laws as well as administrative policies have not addressed these issues adequately and with imagination. As a result, many rescued victims are re-trafficked.

In this backdrop this study attempts to evaluate the common understanding of trafficking in persons as severe violation of human rights in the South Asian region. It is organized in five chapters.

The first chapter deals with the definitional deficit of the problem of trafficking in women and children. It discusses the nature and meaning of the problem of trafficking in persons and various approaches to tackle it and how it is linked with migration and smuggling in persons.

The second chapter elaborates dimensions of trafficking of women and children from Bangladesh to India .It has further analysed geographical network and causes of the problem of human trafficking between India and Bangladesh.

The third chapter primarily deals with the existing legislative policies of both Government of India and Government of Bangladesh on trafficking of women and children. It has also given brief account of non-governmental activities

channeled to uproot human trafficking in both the countries. It also explains whether human Rights are different from the constitutional rights or the scope of human rights is limited to the fundamental rights enshrined in the constitution.

The fourth chapter discusses the problems involved in rehabilitation, repatriation and re-integration of the survivors of the trafficking situations. Some suggestions have also been laid down.

The final chapter sums up the study with some suggestions.

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ABBREVIATIONS

ACD	Association for Community Development (Bangladesh)
ADB	Asian Development Bank
APAC	AIDS Prevention and Control
ATSEC	Action Against Trafficking and Sexual Exploitation of Children
BNWLA	Bangladesh National Women Lawyers Association
CARE	Cooperation for Assistance and Relief Everywhere
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBO	Community-Based Organization
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEDPA	Centre for Development and Population Activities
CeLLRD	Centre for Legal Research and Resource Development
CIDA	Canadian International Development Agency
CPCCT	Child Development: Coordinated Program to Combat Child Trafficking
CRC	Convention on the Rights of the Child
CSP	Country Strategy and Program
CSW	Commercial Sex Worker
CWCS	Centre for Women and Children Studies
DAM	Dhaka Ahsania Mission
DFID	Department for International Development (United Kingdom)

DWACRA	Department of Women and Child Rural Agency
DWCD	Department of Women and Child Development (India)
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
GAATW	Global Alliance Against Trafficking in Women
GMS	Greater Mekong Subregion
HIV/AIDS	Human Immuno-Deficiency Virus/Acquired Immune Deficiency Syndrome
ICDS	Integrated Child Development Services (India)
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic Social and Cultural Rights
IEC	Information, Education, and Communication
ILO	International Labour Organization
ILO NO.29	International Labour Organization Convention No.29 Concerning Forced Labour
ILO No.105.	International Labour Organization Convention No.105, Concerning Abolition of Forced Labour
IPEC	International Programme for the Elimination of Child Labor
INCIDIN	Research and Service NGO in Bangladesh
IOM	International Organization for Migration
IPSA	Initial Poverty and Social Analysis
IRDP	Integrated Rural Development Program (India)
ITPA	Immoral Traffic (Prevention) Act of 1956 (India)
JWP	Joint Women's Programme

MOU	Memorandum of Understanding
MWCA	Ministry of Women and Children Affairs (Bangladesh)
MWCSW	Ministry of Women and Children and Social Welfare (Nepal)
NACO	National AIDS Control Organization (India)
NACSET	Network Against Commercial Sexual Exploitation and Trafficking
NATSAP	Network Against Trafficking and Sexual Exploitation and Trafficking
NCRB	National Crime Records Bureau
NCW	National Commission for Women (India)
NGO	Non -Government Organization
NHRC	National Human Rights Commission
NNAGT	National Network Against Girl Trafficking (Nepal)
NORAD	Norwegian Agency for Development Cooperation
NPA	National Plan of Action
PPA	Poverty Reduction Partnership Agreement
PRI	Panchayati Raj Institution
PSA	Poverty and Social Analysis
SAARC	South Asian Association for Regional Cooperation
SFAHT	South Asia Federation Against Human Trafficking
SASEC	South Asia Subregional Economic Cooperation
SCSP	Subregional Cooperation Strategy and Program
STEP	Support to Training and Employment (India)

STHREE	Society to Help Rural Empowerment and Education
UP	Union Parishad
UN	United Nations
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNSC	United Nations Slavery Convention
UNSCAS	Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institution
USAID	United States Agency for International Development
VDC	Village Development Committee
VHS	Voluntary Health Service
WOREC	Women's Rehabilitation Centre

CHAPTER –I

**CONCEPTUAL FRAMEWORK OF HUMAN
TRAFFICKING**

Trafficking in women and children is a growing phenomenon internationally, nationally and regionally. Trafficking in general means buying, procuring or investing in a commodity through illegal means. Trafficking in women and children primarily means taking the victim with or without consent across borders or within borders for purpose of prostitution, forced labour, marriage and bonded labour. However, trafficking of human beings is much more than trafficking in goods (arms and drugs) because the commodity here is a living being, who can feel, think, and suffer and whose willingness or unwillingness and where they are taken is of great importance. Treating Human beings as a commodity or chattel is a necessary incident of trafficking and this makes human trafficking a depraved violation of several human rights.¹ Human trafficking is a detrimental act of robbing individuals of their dignity and putting them into slavery like conditions of living. It is an abhorrent phenomenon and actually constitutes a form of modern day slavery. It causes absolute rejection of human rights of individual where the victim is often subjected to violence, violation of personal integrity and total humiliation without any hope of succour. It affects all men, women, boys and girls. The business of trafficking is the third largest and the most profitable organized crime.² The former United Nations Secretary Kofi Annan has rightly called human trafficking an outrage and a world wide plague.³ The United Nations estimates that trafficking is a US \$ 7 billion operation annually, with 4 million persons moved from one country to another and within countries.⁴

Amongst human beings, the women and children are the most vulnerable, needing greater care and protection. Vulnerability applies to populations that are severely deprived socio-economically. It is understood as 'any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved'.⁵ Nearly half of the world population comprises of women and one third is

¹ Justice J.S. Verma (2006), "Violations of Human Rights" *The Times of India*, New Delhi, 23 July 2006.

² Mallick, Annupriyo (September 2004), "Trafficking in Persons: Facts and Facets", *Social Change*. 34 (3): 125-134

³ Annan K, Former Secretary General United Nations, cited in United Nations Economic and Social Commission for Asia and the Pacific (2002). *Draft Resource Guide on Using Legal Instruments to Combat Trafficking in Women and Children*. Bangkok: ESCAP.

⁴ Arlacchi, Pino (December 2000), "Against all the Godfathers: The Revolt of the Decent People" *The World Against Crime, Special Issue of Giornale di Sicilia*, 7.

⁵ Jordan, Ann (2002), *The Annotated Guide to the Complete UN Trafficking Protocol*, Washington: International Human Rights Law Group.

children.⁶ Majority is, therefore, of women and children. The greater deprivation of women and children due to malnutrition, lack of health care, illiteracy, and poverty makes them more disadvantaged.

It is an awesome fact that the proportion of women among the poorer strata is always on rise in most developing countries. This phenomenon is called 'Feminisation of Poverty'.⁷ The men move up faster during any type of development grabbing greater opportunities that women are unable to access, because of gender discrimination. The Gender issues become more serious in South Asia due to the various practices of violence against women.⁸ Women in South Asia are divided in terms of caste, class, rural, urban, educational, occupational and linguistic groups; but marginalization is the common thread of uniformity among them. Women and children especially the girl child in South Asia forms a particularly vulnerable class. Their vulnerability is a product of inequality, low status and discrimination and the patriarchal authority unleashed on them. This is further compounded by the apathetic attitude of society, fuelled by a mindset which views women as mere chattels. The virtual absence of freedom of choice and options to lead a life with dignity make women and children hapless and victim of trafficking forced to live a life of indignity, social stigma, debt bondage and a host of ailments including HIV/AIDS.

While trafficking is a global problem and an integral part of the process of international migration, it does assume specific regional and national dimensions. The increasing foregrounding of women and minors in the process of contemporary migration especially over the past decade is a consequence of two related phenomena, namely, the feminisation of poverty and the feminisation of migration. Recent trends in globalisation have atomized the structure of the family and the traditional rural household, and released each member as a separate and independent unit of labour to be plugged into the modern labour market. On account of the traditional sexual division of labour on the one hand and the demand for as well a subsequent growth of reproductive services in the globalised market on the other, women and girls are

⁶ Stalker, Peter(2000). *"Workers Without Frontiers - The Impact of Globalization on International Migration"*, ILO, Geneva,

⁷ Kumar, Hajira and Jaimon Varghese (2005), *Women's Empowerment: Issues, Challenges & Strategies-A Source Book*, New Delhi: Regency Publications

⁸ The practice of violence against women is prevalent in the form of rampant female foeticide, dowry deaths, honour killing, acid throwing and witch craft etc. It has resulted in decline of sex ratio in these countries.

increasingly being pulled as service providers to fulfill the demand for a vast array of personalized, reproductive services in the entertainment and sex industry, domestic work, and the marriage market. In addition, the structural vulnerability of women on account of their exclusion from the public world, gender discrimination and undervaluation in the economic sphere renders them as the ideal workforce alongside children to be exploited in low-paying work ghettos for maximum profit by the owners.

As such then, the demand for female labour to meet the rising demand for reproductive services in the newly configuring market economy as well as the rapid growth of many unregulated work ghettos in the informal sector of the economy which prey upon the vulnerable and exploitable labour of women and children to maximize profit in order to compete in the international market economy has foregrounded women and youth as key players in the process of in-country and cross border migration. These factors of demand coupled with a host of factors on the side of supply such as, disintegration of the traditional rural economy, skewed land reforms, shrinking employment opportunities, and intensified marginalisation of certain social and cultural groups has resulted in women and youth assuming key roles as income earners. Against this pressing need to migrate to sites of gainful employment since jobs have practically dried up in their home base, women and children fall prey to the designs of unscrupulous agents. And with legal channels of migration becoming more restrictive as well as costly for the marginalised poor, especially women, the services of agents and brokers who promise assistance with travel particularly across borders, as well as 'good jobs' become necessary. It is against this background that needy women and children become victims of trafficking and profit mongering.

Within the South Asian region this trend has resulted in certain countries being designated as 'sending' countries or sites of origin, while others assume the role of 'receiving' countries or sites of destination. The countries such as India and Pakistan are not only a site of destination within the region, but a transit country as well where from women and children are siphoned off to sites within the region as well as to other parts of the world. In this specialized regional division within the context of human trade and trafficking, Bangladesh and Nepal may be characterized as 'sending'

countries or countries of origin. It has been observed over the recent years that trafficking of South Asian women and children is occurring not only within and across countries of the region but to other regions and continents as well. Due to the underground and clandestine nature of this trade it is difficult to procure reliable statistics on the number of women and children affected by trafficking, this study is to bring into notice that the magnitude of trafficking within and from the region is expanding. Quantitative data on trafficking is unreliable. According to the police estimates, in Bangladesh the number of children and women trafficked is estimated to range from 10,000 to 20,000 per year.⁹ Estimates of the number of people trafficked each year vary from tens of thousands to lakhs because exact quantification is difficult due to the clandestine nature of trafficking. Regardless, although some estimates suggest that every year one to two million women, men and children are trafficked worldwide, around 225,000 of them are from South Asia (India, Nepal, Pakistan, Bangladesh, Sri Lanka, Afghanistan, Maldives and Bhutan). Other estimates show that over the last 30 years, trafficking for sexual exploitation alone has victimized some 30 million Asian women and children.¹⁰ Trafficking occurs both in Bangladesh and across its borders to India, Pakistan and middle eastern countries-mainly Dubai and Kuwait. Bangladesh is considered a zone where many children and women are trafficked and there is little government control due to their cultural taboos which are also creating victims of exploitation.

1.1 Defining Trafficking in Persons

The trafficking debate can be traced back to the end of the nineteenth century when feminists like Josephine Butler brought involuntary prostitution into the international debate through the term “White Slave Trade”. Initially, the term referred to trafficking of European and American women for prostitution in western European countries and the USA, and from these countries to the colonies. The “Abolitionists”, who fought prostitution in Europe and the USA, campaigned against international trafficking; in 1904, thirteen states attended a meeting in Paris, and this resulted in an international agreement against white slavery. In 1949, this agreement was superseded by the United Nations Convention for the Suppression of the Traffic in Persons and of

⁹ Asian Development Bank (2002), “Combating Trafficking in Women in Children in South Asia”, *Country Paper: Bangladesh*, (Dhaka)

¹⁰ Association of Women’s Rights in Development, *Friday File*, Bombay, 21 June 2002

the Exploitation of the Prostitution of Others. The issue remained dormant until the 1980s, when renewed interest was shown. This was due, in no small measure, to the developing feminist movement, the spread of AIDS, the increase in child prostitution and sex tourism, and the noticeable flows of migration. Gradually the debate has grown to include the consideration of other forms of exploitation – domestic work, marriage, adoption, bonded labour in sweatshops, among others.

Traditionally, the word trafficking was used to describe kidnapping and enslavement of workers- usually women and girls in the commercial sex industry.¹¹ Till recently, there was no international agreed definition of trafficking in persons. The efforts of the international community to develop a consensual definition revealed major differences of opinion concerning the ultimate end result of trafficking, its constitutive acts and their relative significance.¹² Definitions of trafficking have tended to reflect the priorities and perspectives of promoters. For example, an organization concerned with orderly migration has naturally emphasized the migration aspects of trafficking. One concerned with the human rights of women has tended to place women at the center of the definition and identify human rights violations as the critical defining factor. Those seeking to advance the cause of women working in prostitution have preferred a different definition of trafficking to those who consider all forms of prostitution intolerable.

In 1994, the General Assembly of the United Nations referred to trafficking as:

“The illicit and clandestine movement of persons across national and international borders... with the end goal forcing women and girl-children into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers, crime syndicates as well as other illegal activities related to trafficking such as forced domestic labor, false marriage, clandestine employment and forced adoption.”¹³

¹¹ Sigma Huda (2006), “Sex Traffic in South Asia”, *International Journal of Gynecology and Obstetrics*, (94): 374-381

¹² .Baruah, Nandita,(1999) *Trafficking in Women and Children In South Asia: A Regional Perspective* , New Delhi: Inter-India Publications.

¹³ *ibid.*

But this definition was narrow and did not distinguish between trafficking and 'migrant smuggling'.¹⁴

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, November 2000,¹⁵ set a new precedent by reflecting the changing nature of trafficking. Trafficking encompasses not only for the purpose of sexual exploitation, but increasingly for the purpose of labour exploitation as well. The definition of trafficking in persons, especially women and children, is contained in Article 3 of the Protocol and is as follows:

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

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose exploitation shall be considered "trafficking in Persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under 18 years of age.

This Protocol is the first UN instrument to address the demand which results in women and children being trafficked, calling upon the countries to strengthen legislative measures to discourage this demand that fosters all forms of exploitation of

¹⁴IOM, *Migrant Trafficking and Human Smuggling in Europe: A Review of the Evidence with case studies from Hungary, Poland and Ukraine*, Geneva, 2000. Smuggling of Migrant has now been defined as: "...the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident."

¹⁵ The Protocol supplements the UN Convention against Transnational Organized Crime, 2000 (popularly known as Palermo Protocol)

women and children. The key actionable element in the trafficking process is the exploitation, rather than the movement across a border as trafficking can take place within the borders of the home country. (Article 3 a).

The protocol provided that the trafficked persons, especially women and children are no longer viewed as criminals but as victims and these victims of trafficking will not bear the burden of proof (Article 3b). The Protocol acknowledges that much trafficking is for the purpose of prostitution and for other forms of sexual exploitation (Article 3a). Thus, the Protocol establishes that the exploitation of prostitution and trafficking can not be separated.¹⁶

The Protocol has several provisions that seek to ensure a certain degree of protection for children. . In the case of children, any recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered as trafficking. The definition therefore includes different kinds of activities which include sale of women, girls and even babies (for adoption) by persons in a position of authority over them or by intermediate traffickers. It would also cover kidnapping of children and abduction of women and girls. This would fall under trafficking by use of force or coercion. The element of force or coercion also covers debt bondage or other forms of bonded labour. It can also be looked upon as abuse of economic vulnerability. A custom of offering women and girls in prostitution, or trafficking by an entire tribe or village or by certain backward communities, it is submitted, would also be covered by the definition since such practices contain elements of group pressure and vulnerability. The category of trafficking by deception or fraud includes activities such as inducing a person to accompany a trafficker on a promise of a lucrative job, performance of “false” marriage, luring children who have run away from their homes (for various reasons such as domestic violence) and tempting them to accompany traffickers to a place of sexual exploitation.. Furthermore, the Protocol protects the trafficked victim because the issue of consent is irrelevant for the prosecution of the offence.

¹⁶ During the framing of the definition some governments, UN agencies and a vocal number of well financed NGOs want to separate trafficking from prostitution because they support legalization/regulation of prostitution as an economic and labour sector. See Raymond, Janice G (2002), “New UN Trafficking Protocol”, *Women Studies International Forum*, 25 (5), Sept-Oct 2002.

The grey area in previous attempts to define trafficking has been difficulties in an agreed definition of the age of a child. The UN Convention on the Rights of the Child (CRC), the ILO Worst Forms of Child Labour Convention (No. 182) and the UN Trafficking Protocol all define children as persons under the age of 18 years. Although the new UN Protocol on Trafficking and the ILO Convention 182 provide more comprehensive and uniform definitions of 'child' and 'trafficking' than previous, a national definition of child and trafficking should be sought, in line with these international conventions.

According to the definition given in UN Protocol, trafficking involves three main elements-movements of persons (recruitment, transportation, transfer, harboring or receipt of a person), an element of force, threat or coercion, or an element of deceit or fraud (which vitiates any voluntary movement by the victim). This also includes abuse of power by a person who has the position of authority or control over the victim. The vulnerable position of the victim, whether a child or a woman, is clearly brought out in such situations. A person in a position of power or authority may be bought over by money or other inducements. A guardian may force a child into marriage or may perform a fraudulent marriage of his ward. He may dedicate a girl child to a deity for prostitution. Or he may be a victim of deceit or fraud.

The third element in the definition is the element of exploitation which can be sexual exploitation, forced labour or forced services, slavery or practices similar to slavery which may cover activities such as bonded labour, debt bondage, begging or use of children as camel jockeys. Sexual exploitation would also include pornography and pedophilia. The terms, forced or compulsory labour, are understood as work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself voluntarily.¹⁷ One of the activities specifically referred to in the definition is removal of organs. Another problem area is widespread exploitation of women and girls who are mentally handicapped for prostitution or sex slavery. This activity, it is submitted, is covered by the extensive definition of "exploitation" in Article 3. Concerns however has been

¹⁷ Ali, Masud, et al. 1997. *Misplaced Childhood: A Short Study on the Street Child Prostitutes in Dhaka City*. Dhaka: Red Barnet-Danish Save the Children.

expressed that this first modern definition of trafficking is being elaborated in the context of crime control, rather than with a focus on human rights.¹⁸

Radhika Coomaraswamy, the Special Rapporteur on Violence Against Women (2000) in a report to the Commission on Human Rights on the issue of trafficking of women and girls in Bangladesh, India and Nepal defines trafficking as

1. "The recruitment, transportation, purchase, sale, transfer, harboring or receipt of persons: by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage, for the purpose of:
2. Placing or holding such person(s), whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such person lived at the time of the original act described in 1."¹⁹

The SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prostitution, 2002,²⁰ gives a narrower definition of trafficking focusing on trafficking for prostitution. Under Article 1(3) trafficking means the moving, selling or buying of women and children for prostitution within and outside the country for monetary or other considerations with or without the consent of the person subjected to trafficking. Sub-clause (5) defines "persons subjected to trafficking" to mean women and children victimized or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage or any other unlawful means. Therefore, other forms of trafficking such as trafficking for domestic work cum sex slavery, for debt bondage, for labour, for begging, camel jockeying and such other forms of slavery-like practices are not included in the SAARC convention. The convention however deals with the human rights of victims, and emphasizes the need to strengthen cooperation between countries in providing assistance for rehabilitation and repatriation of victims.

¹⁸ Doezenia, Jo. n.d (2002). *Who Gets to Choose? Coercion, Consent and the UN Trafficking Protocol*. University of Brighton: Institute of Development Studies.

¹⁹ Coomaraswamy, Radhika (2001), *Addendum Report to the Human Rights Commission regarding Mission to Bangladesh, Nepal and India on the issue of Trafficking of Women And Children* (October-November 2000).

²⁰ South Asian Association for Regional Cooperation (SAARC) 2002, *Convention on Preventing and combating the Crime of Trafficking in Women and Children for Prostitution*, Katmandu. Available at: <http://www.hsph.harvard.edu/Organizations/healthnet/SAsia/repro/SAARC.html>.

There are other definitions used by various international organizations to describe trafficking in persons. The definitions basically tend to focus on gender, age, reasons for trafficking, and the issues of coercion and violence which are often associated with trafficking. The Global Alliance Against Trafficking in Women (GATW) considers that trafficking of women refers to ‘all acts involved in the recruitment and/or transportation of a woman within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion’.²¹ The Bangladesh National Women’s Lawyers Association adapted the GATW definition of trafficking in women in Bangladesh to be applicable to both women and children.

1.2 Characteristics of Trafficking

The various definitions reflect the lack of consensus on what constitute trafficking. Over the years, the concept itself has evolved to include many more attributes and features, so much so, that the historical characterisation of trafficking are outdated, ill-defined and non responsive to the current realities of the movement and trade in people and to the nature and extent of the abuses inherent in and incidental to trafficking.²² The various definitions reflect different interpretations of the attributes of trafficking. There are certain characteristics commonly identified in maximum definitions of trafficking and can be listed as follows:

1. Most Trafficking is Women and Children Centric

All trafficking incidents broadly take place for two main purposes of sexual and labour exploitation respectively. Women and children being most vulnerable section of the society fulfill the two purposes of trafficking; their limited resources, low educational levels and low status in society make them easy prey of traffickers. Whatever limited data on trafficking available indicates that most of the victims are women and children. Moreover, there is clear evidence that overall the age of trafficked person is falling. Known patterns of illicit human mobility suggest that women and children are most vulnerable to human trafficking, although a large

²¹ Rukhsana Gazi. et al. (2001), *Trafficking of Women and Children in Bangladesh: An Overview*, Dhaka: ICDDR, B: Centre for Health and Population Research.

²² Nair, P.M and Sanker Sen (2005), *Trafficking in Women and Children in India*, New Delhi: Orient Longman.

number of trafficked men and boys have been found. From the perspective of gender and age, Radhika Coomaraswamy –the United Nations Special Rapporteur on Violence Against Women – noted the following:

“... the lack of rights afforded to women serves as the primary causative factor at the root of both women’s migration and trafficking in women. The failure of existing economic, political and social structures to provide equal and just opportunities for women to work has contributed to the feminisation of poverty, which in turn has led to the feminisation of migration, as women leave their homes in search of viable economic options. Further, political instability, militarism, civil unrest, internal armed conflict and natural disasters also exacerbate women’s vulnerabilities and may result in an increase in trafficking”²³.

2. Exploitation

Trafficking by its very nature involves exploitation of the trafficked person. There is demand for exploitable labour comes from different type of work, for example, Commercial sex work, bonded labour, domestic work(begging, house maid/servants) and entertainment sector(circuses, camel jockeying).The trafficked persons are mainly located in sectors which are difficult to monitor or address through regular means.²⁴

3. Coercion

There is involvement of factors of force, threat, deception and coercion in the trafficking process as no person without any external compulsion would like to live a life of servitude and under inhumane conditions. The external compulsion may be economic or social.

4. Time Factor

The time factor is crucial- the process of trafficking has a distinct beginning and end point with many implications for both trafficked persons and perpetrators.

²³ The quote is taken from page 4 of the report. The complete report of the UN Special Rapporteur can be accessed from the website of the UN Economic and Social Council (ECOSOC) available at <http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/E.CN.4.2000.68.En?Opendocument>.

²⁴ Asian Development Bank (2003), *Combating Trafficking of Women and Children in South Asia*, Regional Synthesis Paper for Bangladesh, India, and Nepal. Philippines, ADB.

There is harm involved for trafficker also when the process of trafficking goes on as the traffickers have to arrange the mechanism to move the trafficked persons within or across borders. The harm can be reduced the earlier interception takes place along the time continuum. This also has implications for types of support required to overcome harm, choices trafficked persons might perceive to be available, and prospects for long-term recovery. If recruiters are to be prosecuted, measures have to be taken quickly after recruitment takes place and before trafficked persons are passed onto the control of the next person in the chain of events.

5. Movement

All definitions include movement as essential feature of trafficking. This movement can be within the country or across national boundaries. Trafficking can be considered as part of migration experience. But migration and trafficking are two distinct phenomena explained later on in this chapter.

6. Third Party Profit

All the benefits are concentrated in the hands of third party. Whatever is the earning of the trafficked person in commercial sexual exploitation or in labour exploitation; the profit goes into the pockets of the third party (agents, traffickers, procurers, head of the brothel etc). The victims are also kept in poor, crowded conditions to cut down costs²⁵.

1.3 Conceptual Ambiguities, Limitations and Confusions about Various Types of Population Movements

The dynamics of population movement has undergone fundamental transformation in the 21st century adding new multifaceted dimensions, complexities and challenges. There are primarily two generic types of population movement. The first type is “involuntary” or “forced” migration in which people are compelled to leave their places of habitual residence out of fear of persecution or events threatening to their lives or safety.²⁶ Those forced to leave their homes either cross international

²⁵ Nair, P.M, op.cit.pg.18

²⁶ Martin, Susan F (2000), “Forced Migration and the Evolving Humanitarian Regime”, UNHCR Working Paper No. 20, Geneva, July 2000.

borders in search of refuge or move to another place within the state borders. The first group is known as ‘refugee’ and the second group is termed as ‘internally displaced persons’.²⁷

The second type of migration known as “voluntary” migration refers to a situation in which people move out in search of better livelihood or for other reasons such a voluntary decision to migrate is often guided by the available or perceived wider and brighter opportunities abroad. People who migrate voluntarily are known as migrants, labour migrants, and economic migrants. The term ‘migrants’ covers all cases where the decision to migrate is taken freely by the individual concerned, for reasons of personal convenience and without intervention of an external compelling factor.²⁸ Historically migration as an enduring component of human civilization, has contributed to enriching societies and benefiting economies of both origin and destination countries. It is estimated that there are about 185 million people living outside their country of birth, amounting to about 2.9% of the global population.²⁹ This constitutes the brighter side of migration. But people also migrate because of poverty, lack of employment opportunity and other reasons. Trafficking in persons is ‘dark side’ of population movement within and across country. The linkage between regular migration as the ‘bright side’ and human trafficking as the ‘dark side’ of population movement is complex.

1.4 Migration and Trafficking in Persons

The mobility of individuals, particularly of women, across national and international borders has increased considerably in South Asia over the past decade. The increasing foregrounding of women and minors in the process of contemporary migration in the past decade is a consequence of two related phenomena, namely, the feminisation of poverty and the feminisation of migration. Movement is central to both migration and trafficking and this commonality between the two builds a complex relationship. However there is a fundamental difference between migration

²⁷ According to UNHCR ‘a refugee is a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable to or owing to such fear, is unwilling to avail himself/herself of the protection of that country or return there for fear of persecution.

²⁸ IOM, *Overview of International Migration*, Migration Management Training Programme, April 1997.

²⁹ Hussain, Hameeda, ed. (2001). *Human Rights in Bangladesh 2000*. Dhaka: Ain o Salish Kendro (ASK).

and trafficking. Migration is a broad general concept and trafficking is a sub- set or category of migration, the basic difference is that trafficking involves factors like force, deceit, threat, debt bondage or other form of coercion. Radhika Coomaraswamy also stated that trafficking is distinguished from migration by a coerced transport and coerced end practices. The complexity in differentiating between the two arise when a person consents to migrate for the sake of good job opportunity but find working situation similar to slavery like practices in the destination country.

The widespread assumption that most trafficking incidents starts with kidnapping and coercion is not true.³⁰ Most trafficking starts as a migration experience; which could be legal or illegal; is for economic (employment) or social (marriage) reasons. It may have elements of deception in it from the beginning but the process of force and coercion comes into play after the initial first step towards movement has happened. Sometimes the element of coerced movement is found to be absent especially in the case of the bonded labour system where men, women and children may be exploited in their own place of origin without having to cross geographical borders. The issue of consent in physical movement brings to the fore, the problem of distinguishing between an exploited migrant and a trafficked person. Trafficked person do not have the opportunity of informed consent with respect to the experience they undergo. Cases of exploited migrants are offences in themselves but they do not become the cases of trafficking. However the majority of trafficked people are exploited migrants (United Nations 2000:ESCAP2003). The decisive factors in distinguishing between the two will be the nature of consent; the intention of the agency between the information made available at the start of the journey as compared to the circumstances they find themselves to be in at the end of the journey. A difficult and complex situation arises when migrants agree to work and accept exploitative relations, perceiving themselves “better off than if they had stayed home”.

As regular migration and trafficking both shares the common migratory space, it is difficult to clearly differentiate between regular migration and trafficking. Regular migration and trafficking are two distinct but inter-related phenomena. The demarcation between the two Phenomena in practice is often not clear or apparent.

³⁰Jaggory. (1998). Report from A Conceptual Clarity Workshop: Trafficking in South Asia. Delhi.

Therefore, efforts attempting to draw a clear line between the two concepts can be described as working in a “terminological minefield”.³¹ Sometimes attempts are made wrongly to distinguish migration as a labour issue and trafficking as a human rights issue.³² The two phenomenon are further complicated as people continue to move from regular to irregular situations and vice-versa.

Difference between Migration and Trafficking in Persons

In simple terms the difference between migration and Trafficking in Persons could be as follows:

- Trafficked persons are deceived or forced to move. Whereas regular migrants are not usually deceived or forced to leave their place of residence. But sometimes it could be difficult to draw a line between the two concepts, as there are grey areas in between blurring a clear distinction.
- Both trafficking in persons and migration share the same ‘migratory space’ as both involve movement. Nevertheless, the two phenomena have very different reasons behind movement and outcomes, with trafficked persons being exposed to a ‘harm situation’.³³ Exploitation, profit and illegality are all central to the idea of trafficking in persons. That is certainly not the case in the regular migration process.
- Trafficking is a development -retarding phenomena, whereas regular migration is generally a development enhancing process.
- Trafficking is viewed as an anti-social and morally degrading heinous event. However, migration is widely considered as a process that could enhance social progress in both the origin and destination countries, if managed properly; it could also be an empowering process for the migrants.

³¹ Skeldon, Ronald (2000), “*Trafficking: A Perspective from Asia: Perspective on Trafficking of Migrants*”, IOM, Geneva.

³² IOM(2000), “*Migrants Trafficking and Human Smuggling in Europe: A Review of the evidence with case studies from Hungary, Poland and Ukraine*”, Geneva: IOM.

³³In ‘harm situation’ the person finds himself/herself in an exploitative and dehumanising condition. Often beaten up, sexually and physically abused, made to work long hours without any remuneration. Freedom of mobility and choice are non-existent. The “harm” results from a situation of forced labour, servitude and slavery like practices in which a person is trapped/held in place through force, manipulation or coercion for a given period of time.

Migration can empower women with greater economic and social independence; it can also increase their vulnerabilities as women's decisions to migrate are often taken under conditions of distress and disparity thus heightening their vulnerabilities to various forms of exploitation, including trafficking.

Radhika Coomaraswamy has rightly said that “traffickers fish in the stream of migration” Over three million persons are trafficked globally each year and one fourth of them are children becoming victims of trafficking.³⁴

1.5 Trafficking in Persons and Smuggling in Migrants

Smuggling in migrants is a phenomenon in which a person acts to facilitate his/her border crossing in an irregular manner, with the help of an entity and by making a financial or other material payment to another person or an entity. There are differences between trafficking in persons and smuggling in migrants, both in their process of movement and in the outcome. The critical factor separating trafficking from smuggling is the presence of force or coercion throughout or at some stage in the process of trafficking-that the force or coercion being the purpose of exploitation.³⁵ According to IOM, trafficking occurs when a migrant is illicitly engaged (recruited, kidnapped, sold etc.) and/or moved either within national or across international borders. The intermediaries (traffickers) during any part of this process obtain economic or other profit by means of deception, coercion and other forms of exploitation, under conditions that violate the fundamental human rights of the migrants.³⁶ On the other hand smuggling occurs when there is only illegal facilitation of border crossing.³⁷ The consent of the individual is another important factor in differentiating the two phenomena. In a case where a person was misled about the dangers of the journey, and irrespective of the treatment he/she receives at the hands smugglers, provided there is consent to the original transport and provided an

³⁴ Sunita Krishnan and Jose Vettical (2005), “*Role of livelihood Options in the Migration/Trafficking Paradigm*”. paper presented in a Regional Conference on Revisiting the Migration and Trafficking Nexus: The South Asian Scenario, April 4-6,2005, Dhaka, Bangladesh.

³⁵ Advisory Council of Jurists, “Consideration of Issues of Trafficking”, A Background Paper, New Delhi, November 2002.

³⁶ IOM, “The Concept of Trafficking in Human Beings and Smuggling of Migrants” A Discussion Paper, October 2000, Geneva. IOM.

³⁷ Ibid

exploitative relationship does not develop or was not envisaged between the two parties, it would be considered smuggling in migrants.³⁸

However, drawing such distinctions between the two phenomena is not absolute or fool proof. In Practice, establishing a clear cut distinction between trafficking and smuggling is a very challenging task. Often it is found that a person leaves the country as a smuggled migrant, but soon becomes a victim of an abusive or exploitative situation while even in transit and eventually ending up in a harm situation, thereby falling under the situation of trafficking. Although the main purpose of migrants smuggling might be to facilitate the illegal entry of the migrant into another country, there are many cases in which smuggled migrants are exposed to violation and exploitation either during transportation to the destination country or on arrival and blurring the distinctions between them and trafficking victims.

However, trafficking in persons and smuggling in migrants are defined respectively in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (definition mentioned earlier), Especially Women and Children and the protocol against the Smuggling of Migrants by Land, Air and Sea defines “Smuggling of migrants shall mean the procurement of the illegal entry into or illegal residence of a person in (a) (any) State Party of which the person is not a national or a permanent resident in order to obtain, directly or indirectly, a financial or other material benefit”. According to IOM, trafficking occurs when a migrant is illicitly engaged (recruited, kidnapped, sold etc.) and/or moved, either within national or across international borders. The intermediaries (traffickers) during any part of this process obtain economic or other profit by means of deception, coercion and other forms of exploitation, under condition that violate the fundamental rights of migrants.³⁹ On the other hand, smuggling occurs when there is only illegal facilitation of border crossing.⁴⁰ Smuggling is defined by the manner in which a person enters a country and the involvement of the third party that provide illegal entry. A potential migrant request and pays the third party (smugglers) for assistance to cross into another State where he/she has no right of residence and the smugglers involvement goes no further

³⁸ Ibid

³⁹ Gallagher, Anne, “Trafficking, Smuggling and Human Rights: Tricks and Treaties”, *Feminist Research*, Vol.45, No.3, July 2000, pp.147-156

⁴⁰ Ibid

than the facilitation of the illegal border crossing. In case of trafficking it requires consideration not only of the manner in which a migrant enters a country but also the outcomes of the working conditions.

Trafficking involves particularly women and children and forces them into commercial sex work, work-in sweatshops, forced labour, begging etc. Trafficking is not a single event but a process starting from recruitment, continuing on with travel, and ending with exploitation of the persons. Thus the difference between smuggling and trafficking could be as follows:

- The smuggled migrant often knows to some extent the dangers and ways and means of the travel and voluntarily engage themselves in the process of irregular migration. Trafficked persons are seldom aware of the entire process. Even if they submit themselves freely to the trafficker, they can not give consent to the abuses or human rights violations they are subjected to.
- Smuggling is always transnational, whereas trafficking may not be. Trafficking can occur regardless of whether victims are taken to another country or only moved from one place to another within the same country.
- Another major difference is that smuggling ends with the arrival of the migrants at their destination, whereas trafficking involves the ongoing exploitation of the victim in some manner to generate illicit profits for the traffickers. For a practical standpoint, victims of trafficking also tend to be more severely affected and in greater need of protection from revictimization and other forms of further abuse than are smuggled migrants.

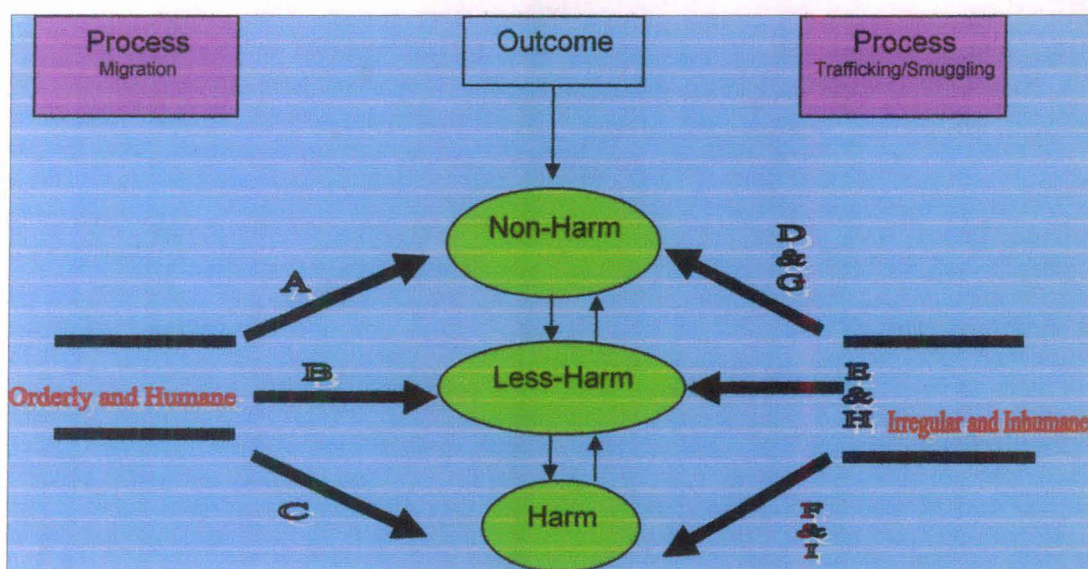
Experts opine that in practice, a clear distinction between smuggling and trafficking could be difficult to establish particularly in analyzing causes, process and outcomes. Smuggling may contain elements of deception or coercion as well. Both smuggled and trafficked persons incur debts with the intermediaries, and the abuse of human rights may occur during the time of smuggling operations also. There is often a grey area in between the two processes making any assumption to draw a line

separating the situations of trafficking with that of smuggling in persons, if not impossible, very difficult and often counter productive.⁴¹

Ascertaining a clear distinction between regular migration, smuggling and trafficking is an extremely complex undertaking. The three types of population movement are inter-twined-both conceptually and operationally. People on the move in practice can be categorized in nine different categories depending on their legal and human rights status. However, movements back and forth along the processes are not only possibilities but often realities in such circumstances as shown in the diagram below. The migrants in an orderly and humane situations are placed on the left side of the diagram and trafficked/smuggled persons on the right of the diagram in an effort to draw distinctions.

CHART-1.1

Dynamics of Population Movement in a Process –Outcome Scenario⁴²



(Source: Haque, Shahidul, "Ambiguities and Confusions in the Migration-Trafficking Nexus-A development Challenge", Regional Conference on Revisiting the Migration and Trafficking nexus: The South Asian Scenario, April 4-6, 2005, Dhaka: Bangladesh).

⁴¹ Ghosh, Jayati (Nov. - Dec., 2002) "Globalization, Export-Oriented Employment for Women and Social Policy: A Case Study of India" *Social Scientist*, Vol. 30, No. 11/12. pp. 17-60.

- A. A person who has migrated to another country with legal documents (orderly process) and is in a 'non-harm' working situation (humane outcome)
- B. A person who has migrated to another country with legal documents (orderly process) but is in a 'less-harm' situation (exploitative outcome).
- C. A person who has migrated to another country with legal documents (orderly process) but is in a 'harm' working situation (inhumane outcome)
- D. A person who has been smuggled into another country (irregular/in orderly process) but is in a 'non-harm' working situation (humane outcome)
- E. A person who has been smuggled into another country (irregular process) and is in a 'less-harm' situation (exploitative outcome)
- F. A person who has been smuggled into another country (irregular process) and is in a 'harm' situation (inhumane outcome)
- G. A person who has been trafficked either within his or her own country or another country through a forced, deceptive and abusive process (irregular process) but is in a 'non-harm' situation (humane outcome)
- H. A person who has been trafficked either within his or her own country or another country through a forced, deceptive and abusive process (irregular process) but is in a 'less-harm' situation (exploitative outcome)
- I. A person who has been trafficked through a forced, deceptive and abusive process (irregular process) and is in a 'harm' situation (inhumane outcome)

1.6 Approaches to Trafficking

The approach determines what kind of strategies the states, or an NGO, employ to fight trafficking. The strategies vary from "repressive" strategies (aimed at suppressing organized crime, illegal migration or prostitution), to "empowering" strategies that are supportive of women concerned about strengthening their rights. While both kinds of strategies have their value, the dangers are in mixing the approaches and the interests of NGOs and states, as these are often conflicting. An NGO, for example, may be interested in assisting and protecting the victimized

women, whereas the state may have a greater interest in restricting illegal migration and organized crime. The mixing of approaches might lead to undesirable side effects for women, such as restricting their freedom of movement by denying visas or entry into the country, or by using women as witnesses (for combating organised crime, for instance, without offering them corresponding protection.).The phenomenon of trafficking in women and children is looked at by following point of views:

a) **As A Moral Problem**

According to Ms. Wijers, the “repressive” approach is found where states consider trafficking in women and prostitution as an evil (inevitable or not) that needs to be controlled. Actions against trafficking within this approach aim at controlling and punishing the parties involved, and the result is that women in prostitution may risk punishment, which in turn may lead to their stigmatization for life.

b) **As A Criminal Problem**

The criminal approach aims at introducing heavier punishments, improving international police co-operation and other measures, all of which encourage a more effective prosecution of the offenders. There are risks here, as the women’s interests in personal security and protection are often subordinate to the interests of the prosecuting authorities. This, the criminal approach often strikes at the women themselves when they are found guilty of prostitution or illegal migration.

c) **As a Migration Problem**

When state authorities view the issue through the lens of “migration”, trafficking becomes a problem of illegal migration, and measures are therefore designed with the aim of “keeping the women at home”; these measures would include exercising stricter border control and supervision of mixed marriages. The approach reflects the interest of the state in protecting itself from undesirable aliens.

d) **As a Public Order Problem**

This approach views trafficking in women and children prostitution as a public order or public health issue. Solutions are to increase control by introducing such

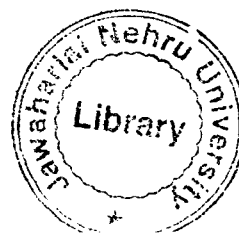
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measures as medical examination. According to Ms Wijers, all laws for women in prostitution come out of this approach.

e) As a Labour Issue Problem

With this approach, trafficking in women can be understood as the result of the poor legal and social position of women: as women, as workers and as migrants. This approach calls for labour opportunities and working rights, including pensions and state benefits etc for women in prostitution.

f) As a Human Rights Problem

Treating trafficking in women as a human rights problem offers two ways of analysis: prostitution is per se a human rights violation and should be abolished. The other is that prostitution as such does not violate women's human rights, but the conditions women in prostitution live under, such as deceit, abuse, violence, debt-bondage, blackmail, deprivation of freedom of movement etc. do. The two different analyses coincide with the ideological split in the global movement against trafficking when it comes to views on prostitution and are represented by two different global coalitions.

g) For Prostitution as "Prostitution"

One side sees *both trafficking and prostitution as forms of sexual exploitation with trafficking as the cruelest form*. This side argues that women do not enter prostitution by free will. They do so because they have had their alternatives limited by societal structures and a labour market that discriminate against them and a society that has taught women to serve men sexually. Therefore, there can be no distinction between voluntary and forced prostitution as this ignores the way society and the state have limited women's alternatives. Men who buy services from women exploit the women's vulnerable situation and exercise power over them. Eliminating violence from trafficking and prostitution cannot be done as it is built into prostitution. Moreover, it would only ease the trauma a little as, for most women; the very act of selling sexual services is a traumatizing experience. It is also a violation of a woman's human rights. Therefore, this side argues that prostitution should be abolished and that the responsibility lies with the men who largely sustain the demand and on society in

general to take a stance against women being bought (or sold). The Swedish model of criminalizing the buying of sexual services but not the selling is often taken as a good example of how to limit the exploitation of women and take away “the market” for traffickers. The Coalition Against Trafficking in Women (CATW) largely holds this view and states that “prostitution victimizes all women, justifies the sale of any woman, and reduces all women to sex”.⁴³ Subsequently CATW works against all forms of sexual exploitation of women.

h) For Prostitution as “Sex Work”

The other method of analysis *focuses on the violence and coercion in trafficking and does not view prostitution in itself as exploitative*. This side sees the above analysis of societal structures as “forcing” women into prostitution as moralising over women’s choices. Women in prostitution, they argue, find themselves on a continuum between free will and force. Instead of trying to establish whether women want to be in prostitution, the focus should be on assuring that the human rights of women in prostitution are protected. That is, women in prostitution should have the right to freedom of movement, freedom from violence and most importantly, labour rights. The argument goes further: if prostitution were given labour status (sex work), then national and international laws and mechanisms against slavery-like practices, forced labour and bad working conditions could be used against trafficking. Giving labour status to prostitution would empower women who want to be in prostitution and help those who are forced into prostitution. The Global Alliance Against Trafficking in Women (GAATW), represents this side, and works for eradication of trafficking through such means as giving labour status to prostitution. Both sides generally agree that the stigma attached to women in prostitution all over the world derives from the fact that the women do not conform to the norms of female sexual behavior and are therefore “bad women”. The way to counter this is to work towards breaking down the division of good and bad women, “Madonna’s” and “whores”, and to promote women’s autonomy in defining their own sexuality. While it is important to have a clear definition of trafficking when advocating for legal changes, the opposite is important for practical preventive and rehabilitative work such as information campaigns and counseling. Here, a broad definition of trafficking

⁴³ Papanek, Hanna, (Autumn, 1975), “Women in South and Southeast Asia: Issues and Research”, *Signs*, Vol. 1, No. 1. pp. 193-214.

prevents the exclusion of potentially good strategies and accommodates different NGOs, institutions and government organisations.

The trafficking is a multidimensional form of exploitation, wherein each dimension has its own legal and conceptual framework, and the concept of trafficking can easily be expanded, limited or shifted to accommodate institutional objectives and context. There are many forms of trafficking, each with different implications, yet forming part of 'an interrelated web of varying contexts'.⁴⁴ The Trafficking thus may be for prostitution, sex-slavery, entertainment, forced or bonded domestic work, fraudulent or forced marriages(mail- order brides),Sex tourism, camel jockeying, purchase and sale of babies for illegal cross-country adoption, organ trade, begging, drug peddling, bonded child labour in construction, carpet, brick industries etc.

It is difficult to define all possible forms of human trafficking in one definition; moreover the regions and contexts influence the interpretation of the terms. Thus, expecting universal consistency in the definitions of trafficking is unrealistic. There is multiplicity of attributes and variables involved in the trafficking process and the different perspectives on the subject are also the reasons for there being no uniform method for classifying the forms of trafficking.⁴⁵ For example, some suggested forms are defined on the basis of differences at the place of origin of trafficking victims, while some other focus on difference arising at the destinations. Some make the methods adopted by traffickers as the basis of the forms and still others use the criterion of purpose.

⁴⁴ ESCAP (2003), *Combating Human Trafficking in Asia: A Resource guide to International and Regional Instruments, Political Commitments and recommended Practices*, New York: United Nations

⁴⁵ Friedman, Matt (2001), *Human Trafficking: Some Inconsistencies with the present Definitions And Paradigm*, Nepal: Technical Consultative meeting on Anti-Trafficking Programmes in South Asia.

CHAPTER –II

TRAFFICKING OF WOMEN AND CHILDREN FROM BANGLADESH TO INDIA: EXTENT AND DYNAMICS

Trafficking is not a new phenomenon to be discussed but in recent years, it has re-emerged as a global problem, and is becoming a serious challenge in Asia, home to more than one billion of the world's poor people who are also being considered as very vulnerable. According to the United Nations Economic and Social Council, the most serious challenges facing human rights today is the crime of human trafficking and its various dimensions, including organised crime, prostitution, security, migration, labour and health. The complexity of trafficking is increased by the different political contexts and geographical dimensions of the problem; ideological and conceptual differences of approach; inadequate legal frameworks; and insufficient research and coordination on the part of actors involved – at the national, regional and international levels. It is feared that the problem of trafficking has to be considered to be particularly acute in South Asia particularly in India as a market for the girls and women from Bangladesh and Nepal who are being sold in Indian brothels in large numbers. Bangladesh is mainly a 'country of origin' for trafficking in women and children. As reported, 200,000 Bangladeshi women and children have been taken out of the country in the past 10 years.¹ At least 20,000 Bangladeshi women and children are trafficked to India and Pakistan and to West Asian countries every year.² According to another unofficial estimate, 50,000 Bangladeshi girls are trafficked to or through India every year. The girls end up in brothels in India or Pakistan or in West Asian or South Asian countries.³ Women are also trafficked to Australia. Internal trafficking in women and children occurs from rural areas of the country to the capital, Dhaka.

It is one of the most devastating and fastest growing problems in the region. Twenty years ago the problem of trafficking was associated with the third world only but now the monopoly of poor countries do no longer exist because Europe and the so-called 'emerging' countries are also directly affected by the trends. But it cannot be denied that the smaller poor and the developing countries are most vulnerable to transnational trafficking. A recent U.S. Government estimate indicates that

¹ "Human Trafficking is Going Unabated along the Borders". *Business Recorder, Global News Wire*, 4 June 2001.

² "20,000 Bangladeshi Women, Children Trafficked Every Year", *Agence France Presse*, 2 June 2003.

³ "When Victims Become Accused," *Times of India*, 13 October 2003.

approximately 800,000- 900,000 people annually are trafficked across international borders worldwide.⁴

2.1 Extent of the Problem of Trafficking in Women and Children in the World

The problem of trafficking is pervasive all throughout the world. The regional distribution of the problem as found as follows:

1. Europe

Information from across the region suggests that a growing number of women and girls are being trafficked for the purpose of sexual exploitation within and into Europe. The data and information are unreliable and there are few reports on the trafficking situation. However, the following summaries show that the main destinations in Europe are the countries in Western Europe, while the countries in Central, Eastern and Southeastern Europe provide the women and girls. Women are also coming into Europe from Southeast Asia, mainly the Philippines and Thailand, from Africa, mainly Ghana, Nigeria and Morocco and from Latin America, mainly Brazil, Colombia and the Dominican Republic.

Belgium

Most women who have been trafficked to Belgium come from Albania, Kosovo, Rumania, Moldova and Russia. They are typically between 18- 20 years of age and have been trafficked for the purpose of prostitution. Reports indicate that the trafficking in women and girls to Belgium is closely related to drug trafficking.⁵

Germany

Germany is one of the main destinations in Europe for women trafficked from Ukraine and Russia. The second largest group among prostituted women originates from Latin America, mostly from the Dominican Republic, Ecuador, Colombia,

⁴ U.S. Department of State (2004), "Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report: 2004" Available at: <http://www.hrweb.org/>

⁵ Centre for Feminist Legal Research. 1999. Memorandum on Reform of Laws Relating to Prostitution in India. Delhi

Venezuela and Brazil. About 75 per cent of the prostituted women in the country are of foreign origin.

Italy

Many traffickers use Italy to take women and girls from Albania, other countries in Eastern Europe and Nigeria into Western Europe for the purpose of prostitution. Many women are transported to Italy by boats from Albania.⁶

2. Eastern Europe, the Balkan and the Baltic States

The former Soviet Union and Central and Eastern Europe have replaced Asia as the main source of trafficked women to Western Europe. Countries in the former Soviet Union and Eastern and Central Europe are part of the world worst hit by the problem of cross border trafficking after South East Asia. Over 175,000 women and girls are annually trafficked from this region.⁷ Victims come from Russia, Ukraine, and other Eastern European countries. The major destination countries are Austria, Belgium, Bosnia-Herzegovina, Germany, Greece, Italy, Macedonia, France, Spain, Portugal, Switzerland, the Netherlands, Sweden, Denmark, Norway, United Kingdom, Japan, Israel, Canada, United States and Thailand. After the breakup of the Soviet Union, trafficking from the region has escalated from a minor problem before 1991 into a major issue. As criminal organisations have grown, especially in Russia, they have gravitated to this lucrative business. Russian organizations now play a dominant role not just in the trafficking of Russian women but also women from throughout Eastern Europe. These trafficked women are sometimes sold as bonded labourer in circuses. Russian organized crime groups and others including Albanian, Estonian, Czech, Serb, and Italian groups are involved in human trafficking in Europe. Furthermore, Russian organized crime is starting to take over the sex industry in a number of European countries.

⁶ Ibid

⁷United Nations Population Fund (UNPF) (2003), *Human Trafficking Report* Available at: Global Alliance Against Trafficking in Women <http://www.gaatw.org>

Russia

Trafficking in women and children from Russia has increased dramatically. Women and girls are sent to countries in Western Europe (especially Germany, Italy, France, Switzerland, the Netherlands, Greece, Austria, the United Kingdom), to the Middle East and to Asia (especially Japan and Thailand). Most of the trafficked Russian women and girls seem to be recruited from the provinces of Moscow and St. Petersburg.

It is estimated that about half of the trafficked Russian women in prostitution in Western Europe were aware that they would be exploited in prostitution, while the other half left Russia with no intention of engaging in the commercial sexual service and were thus lured by promises of other forms of employment.⁸ The main factors contributing to trafficking in persons in Russia as well as in Ukraine are unemployment and the low incomes earned by many women.⁹

Ukraine

Ukrainian women and girls are trafficked to countries in Western and Central Europe, but also to Cyprus, Turkey and other Mediterranean destinations. In 1998 the IOM estimated that more than 100,000 Ukrainian women and children had been trapped and enslaved as prostitutes in Europe since 1991.¹⁰ Ukraine is also a transit country, since women are taken through the country from Russia, Central Asia, India, Pakistan and Afghanistan to Eastern or Western Europe. Women from Ukraine are most often taken abroad for exploitation in prostitution and pornography. Trafficking in women has also been observed for other purposes, such as domestic work.¹¹

Albania

Albania is a country of origin and transit for trafficking into Western Europe and sometimes serves as a temporary destination for trafficked women and girls on the way to countries such as Moldova, Bulgaria, Italy or other European countries.

⁸ International Helsinki Federation for Human Rights (2000). *A Form of Slavery: Trafficking in Women in OSCE Member States*. Report to the OSCE Supplementary Human Dimension Meeting on Trafficking in Human Beings in Vienna 19 June 2000

⁹ Social Alert (2000), *SOS Trafficking in the Tracks of Stolen Childhoods*, Research on Economic Social and Cultural Rights, No 2 December 2000

¹⁰ Bazylko (1998), "Poland, Ukraine to fight Sex Slave Industry", IOM, *Reuters*, 16 July 1998

¹¹ International Helsinki Federation for Human Rights (2000). *op. cit.*, p.4

More than 8,000 Albanian women and girls are estimated to be prostitutes in Italy, and more than 30 percent of them are under eighteen years of age *NGOs report*.¹² *Prostitution in Albania* is hidden and pimps or protectors are normally part of a larger network. Reports suggest that children are trafficked for the purpose of begging and drug dealing by organized networks to Greece and Italy. Some of these children are inevitably sold on for the purpose of prostitution, though there is little available information regarding the extent of this problem.¹³ According to the *Children's Human Rights Centre of Albania*, children are currently trafficked for the purpose of prostitution and illegal adoption.¹⁴

Kosovo

Kosovo is considered to be a destination and to some extent a transit point for trafficking in persons. The women and girls are mainly from Moldova, Ukraine and Romania. Most girls seem to be around 20 years of age, although some cases of minors have been noted. If women are trafficked on from Kosovo it is mainly through Montenegro into Albania, and then on to Italy and Western Europe. The massive international presence has according to the reports of NGOs and international organizations led to an increase in the purchase of sex services and thereby underpinned the trafficking of women and girls into Kosovo.¹⁵

The Baltic States are all predominately identified as countries of origin. Women and girls are mainly trafficked into Western Europe, Poland and Israel. A study by the Foundation of Women's Forum (Sweden) found that women from the Baltic States were in a majority among trafficked women in the Scandinavian countries.¹⁶ There are few reports on the number of women and girls trafficked from each of the Baltic States.

¹² Ibid, p.7

¹³ UNICEF (2000) *Trafficking in Human Beings in Southeastern Europe*, UNICEF Area Office for the Balkans

¹⁴ Social Alert (2000), *Child Trafficking in Albania*. Research on Economic, Social, and Cultural Rights, No2

¹⁵ OSCE/ODIHR "Trafficking in Human Beings: Implications for the OSCE", *ODIHR Background paper 1999/3*

¹⁶ The Foundation of Women's Forum (1999), *Crossing Borders Against Trafficking in Women and Girls: A Resource Book for Working Against Trafficking in the Baltic Sea Region*, Stockholm

Czech Republic

The Czech Republic is a country of origin, but can also to some extent be considered a country of destination and transit. Czech women are sold both within the country and abroad and foreign women are trafficked into the country and sometimes further abroad. There are no reliable estimates on the number of women trafficked within, to and from the country. In the Czech Republic as well as in Slovakia the growing networks of organized crime have engaged in the trafficking of young women into Western Europe, especially to Germany, Italy, Netherlands and Greece.¹⁸

Poland

Poland faces the problem of trafficking as a country of origin, transit and destination at the same time. Polish women are trafficked to Western Europe mainly to be forced into prostitution. Reports are unclear and differ, for instance the number of trafficked women from Poland varies from 200 to 2,000 per year.¹⁹ It is estimated that 2,500 women from Bulgaria and Romania are in prostitution in Poland, some of them as a result of trafficking. One of the methods of recruiting and forcing foreign women and girls into prostitution in Poland is to promise them further illegal transport to countries in the European Union. The myth of an easy and wealthy life in Western Europe is one of the main pull factors for women to accept the offers of recruiters. The cheapest and shortest way to Belgium and the Netherlands, which seem to be the most attractive destinations for women and girls from the former Soviet Union, is through Poland. Poland is also a transit and destination country for trafficked women from Ukraine, Lithuania and Belarus.²⁰

The Netherlands

The Netherlands is a destination for trafficked women in particular from Ukraine and Russia. The Netherlands also seems to be a country of destination for

¹⁸ International Helsinki Federation for Human Rights (2000), op. cit, p.4

¹⁹ Ibid

²⁰ CATW, Asia Pacific. Available: <http://www.catw-ap.org/Ffacts.htm> ,

²³ Office Of the High Commissioner for Human Rights(OHCHR): Trafficking in Persons Information (December, 2001)available at: <http://amnesty.org>

young Thai women trafficked for the purpose of exploitation in commercial sexual services.²³

United Kingdom

To the United Kingdom women are trafficked from China, Malaysia, Thailand and Hong Kong, but also from Latin America, mainly Brazil. About 65 per cent of the prostitutes come from Eastern Europe and Asia. Often Albanian groups, which use sophisticated money laundering methods, organize the trafficking into the country.²⁴

3. Africa

The size of the cross border trafficking in women and children for sexual exploitation is comparatively smaller in Africa. As reported by UNPF annually 50,000 women and girls are trafficked away from Benin, Togo, Botswana, Zaire, Somalia, Ethiopia, Zambia, Nigeria and Algeria to Nigeria, Gabon, Ghana and South Africa. Western European countries are destinations for women and girls from some countries like Nigeria and Ghana.

4. Latin America and Caribbean

The flourishing sex tourism in Argentina, Brazil, the Dominican Republic, Mexico, Honduras, Costa Rica and Trinidad and Tobago is one of the major factors of increasing number of trafficking in women and girls in this region. The cross border trafficking in this region takes place between these countries and outside the region to some extent. Child sexual exploitation, including child prostitution is a serious problem in this region. Brazil has been identified as having one of the worst child prostitution problems in the whole world.²⁵

5. East Asia and Southeast Asia

Nearly one third of the cross border trafficked persons come from the South East Asia. Countries like China, Vietnam, Thailand, Cambodia, Laos, Myanmar, and the Philippines are major countries of origin in this region for cross border trafficking.

²⁴ *ibid*

²⁵ United Nations Population Fund (UNPF), 2003. Appendix: II, A Conceptual Framework for Integrating the Prevention of Trafficking in Women and Children in Population and Development Programmes: New York

Thailand, Cambodia and the Philippines are the countries that maintain huge sex market internally as well. As a matter of fact, these countries are major destinations for sex tourism from the western developed countries as well as the rich gulf countries. The growth of sex tourism in this region is one of the main contributing factors for trafficking in women and girls. Countries in the South East Asia constitute place of origin as well as destination of trafficked persons for each other. An analysis of trend in trafficking of this region shows that while a huge number of women and girls prostituting in the Thai sex market are trafficked from Myanmar, Cambodia and Laos, China and Cambodia are destinations for trafficking of women and children from Vietnam. On the other hand, Japan is a destination for trafficking of women and girls from Thailand and the Philippines. According to the Thailand's Foreign Ministry estimate 50,000 Thai Women were living in 1994 illegally in Japan working in prostitution. This situation of Thai prostitutes parallels in Japan with that of Burmese women held in Thailand. Thai women in countries like Switzerland and Germany also have considerable number in prostitution.²⁶ Similarly newly industrialising nations such as Taiwan, South Korea, Malaysia and Hong Kong are other important destinations of trafficking from South East Asian Countries. In East and Southeast Asia the main countries of origin for trafficking are Thailand, China, the Philippines, Burma/Myanmar, Vietnam and Cambodia, while the major countries of transit and destination are assumed to be Thailand, Malaysia and Japan.

Burma/Myanmar

Burma/Myanmar is regarded as both a country from which persons are trafficked into Thailand and as a transit country for the trafficking of Chinese women and girls from Yunnan province into Thailand.²⁷ Often children are trafficked with the help of family members or friends who may find them a job as a domestic servant or in a restaurant. Sometimes they are subsequently taken to a brothel, or may go there

²⁶ Preference of Asian women in European sex market is great. Brochures of European travel agencies depict Asians as most obedient and lavish prostitutes. One such agency, (Travel Switzerland), among many leaped into sex tourism business, put this description its brochure: 'slim, sun burnt and sweet, they love the white men. Kanitha Khama Travel in Netherlands gives the following description 'many girls in sex tourism come from the poor north eastern region of the country and from the slums of Bangkok. It has become a custom that one of the nice looking daughters goes into the business in order to earn money for the poor family that....one can get the feeling that taking girl here is as easy as buying a packet of cigarettes....' For details see Margot Harnblower (1993), "The Skin Trade", *Time*, June 21, 1993

²⁷ Caouette, T. (1998), *Needs Assessment on Cross-Border Trafficking in Women and Children – the Mekong Sub-region*, Bangkok

of their own accord in order to earn more money. Thousands of women and girls have also been trafficked from Burma/Myanmar to Karachi in Pakistan.²⁸

Cambodia

In Cambodia, trafficking has become an issue since the early 1990s. In response to the growing sex industry in the country most trafficking of girls and young women within Cambodia is for the purpose of commercial sexual services.²⁹ Cambodia is known as a destination for trafficked persons from Vietnam. It is also regarded as a country of origin and transit for Cambodians and Vietnamese sent to Thailand and elsewhere in Asia. Although the majority of the identified trafficked persons are absorbed by the commercial sex industry, many are also trafficked as wives, domestic servants etc. Cambodia also faces a notable problem of children trafficked to join begging gangs in Thailand.³⁰

China

Most trafficking in China occurs within the country. Important areas for abducting women are the poor rural areas of Yunnan, Sichuan and Guizhou. The provinces of Yunnan and Guangxi, which border Burma/Myanmar, Lao PDR and Vietnam, are used by traffickers to bring Chinese women and girls via Burma/Myanmar into Thailand's sex industry and in some cases they eventually end up in Malaysia or Singapore. There are also reports of traffickers bringing people from Burma/Myanmar across the border into China. Although these routes are recognized and have been discussed in various regional workshops, little information is available on the trafficking situation in China's southern provinces. China's family planning policy has left its mark on the country's demography with more boys than girls being born. Vietnamese women and girls are trafficked for forced marriage into China. The brides are sometimes resold. The IOM, which has been involved in the reception and reintegration of these women during the past three years, reports that it

²⁸Ibid

²⁹ International Organisation for Migration Project Outline (2000-2002), *Return and reintegration of trafficked and other vulnerable women and children between selected countries in the Mekong region*. Bangkok.

³⁰ IOM Project Outline: *Return and reintegration of trafficked and other vulnerable women and children between selected countries in the Mekong region (2000-2002)*, Bangkok. Available at: www.iom.int/

has assisted nearly 2,000 returned women with their reintegration into Vietnamese society.³¹

Indonesia

Trafficking in Indonesia is generally assumed to take place in the context of labour migration to the Middle East and East and Southeast Asian countries, though the issue has so far not received much attention. In mid-1997 hundreds of Indonesian women, mostly under 20 years of age, were in prostitution in Saudi Arabia, which indicates that some may have been trafficked there. Due to the economic crisis, Indonesian women have reportedly become more exposed to illegal forms of migration.

Japan

Japan is regarded to have the largest sex industry in Asia, recruiting women and girls mainly from Thailand and the Philippines but also from for instance Russia and Ukraine.

Lao People's Democratic Republic

The eight Lao provinces bordering on Thailand are known to be areas from where large numbers of people go to Thailand to work, the majority illegally. Little is known about how they cross the border and their whereabouts in Thailand. The situation concerning trafficking in women and children from Lao PDR is not well-documented, and much remains to be done before we can understand the nature and dimension of the problem.³²

Malaysia

More than two decades of labour shortage in Malaysia have resulted in a high level of immigration of professionals as well as unskilled labour, which in the case of women mostly means domestic work. For this reason women from countries like Indonesia, the Philippines, Thailand, China, and also from India and Sri Lanka, go to Malaysia. According to the IOM some of them have been trafficked. Malaysian

³¹ Ibid

³² Ibid

women are also victims of trafficking for prostitution and other purposes within as well as outside the region. However, since the issue has mainly been addressed within the context of illegal migration there are no reliable estimates of the number of persons trafficked to and from Malaysia.³³

The Philippines

In the 1990s female Filipino migrants outnumbered Filipino male migrants, especially with respect to domestic work, entertainment and commercial sex service, but also more qualified work. Within the context of large-scale labour migration, trafficking processes have developed through specialized agencies or informal networks. The victims include girls who are promised high-paying jobs, but end up as prostitutes; girls who leave as tourists, but end up as maids, dancers or bar girls; and girls forced into the mail-order bride trade. The trafficking of young children is arranged mainly through adoption, which subsequently leads to commercial or other exploitation, abduction or purchase and sale for the purposes of exploitation in prostitution or pornography. Women and girls from the Philippines who are victims of trafficking are found in Japan, Singapore, Brunei, Malaysia and the Middle East.³⁴

Thailand

In the 1980s women and girls were recruited from the poorer provinces in the north and northeast of Thailand for commercial sex services in the urban areas. This traffic consisted mostly of 12-16 year old girls from the hill tribes of the north and northeast. This pattern was to some extent replaced in the 1990s by the trafficking of women and children, primarily from Burma/Myanmar, but also from Lao PDR, Cambodia and Yunnan province in China. Today, Thailand is considered a major transit and destination country for trafficked women and children from countries in the Greater Mekong sub-region.³⁵ In addition to exploitation in commercial sex services, persons have been trafficked to Thailand to work as maids or in construction, agriculture or factories.

³³ IOM (2000), *Combating Trafficking in South East Asia – A Review of Policy and Programme Responses*, Migration Research Series 2/2000, Geneva

³⁴ Asian Regional Initiative Against Trafficking in Women and Children - ARIAT (2000), *Philippine Country Paper and A National Plan of Action to Combat Trafficking in Women and Children*, Manila

³⁵ The Greater Mekong sub-region includes Cambodia, Yunnan Province (China), Lao PDR, Burma/Myanmar

The disparity in economic development between neighbouring countries in the Mekong sub-region has been one catalyst of cross-border migration into Thailand. The opening of borders, increased mobility between countries, corruption and the high profits generated by the sex industry are some of the indirect incentives for trafficking. Thailand receives from neighbouring countries considerable number of children trafficked for different forms of labour and begging. Many of them subsequently end up in the sex industry.³⁶ Sometimes women from Russia, Yugoslavia, Poland and the Czech and Slovak Republics end up in Thailand. Thai women and girls are trafficked out of the country by sophisticated networks, in particular to Japan, Australia, India, Malaysia and the Middle East, as well as to Europe.³⁷

Vietnam

Trafficking in women and children in Vietnam is an internal as well as a cross-border problem. Vietnamese women and girls are trafficked from northern Vietnam to China, mainly for marriage, but also for labour and household work or to be sold as prostitutes. Women and girls from Ho Chi Minh City are lured to Hong Kong, Macao and Taiwan under the guise of marriages between Vietnamese and foreigners. Women and girls from the southern provinces of Vietnam are trafficked into Cambodia and further abroad. Trafficking routes in the opposite direction, from Cambodia and China to Vietnam have also been identified. Although these routes are well-known, there is a lack of information about the number of people trafficked and by what means. Reports indicate that Vietnamese infants have been trafficked for the purpose of adoption.³⁸

6. South Asia

Trafficking of girls and women appears to have become a thriving industry in the countries of South Asia. In South Asia, Bangladesh and Nepal are the main countries of origin for trafficking, while India and Pakistan are considered countries of destination, and Calcutta in India is regarded as a major transit point for other

³⁶ILO (2000), *Trafficking in Children and Women: A Regional Overview*, Background paper no.4, ILO/Japan Asian Regional High-Level meeting on Child Labour, 8-10 March 2000, Jakarta

³⁷ European Conference on Trafficking in Women (1996). *Trafficking of Women to the European Union; Characteristics, Trends and Policy Issues*. Vienna

³⁸ Caouette, T (1998), op. cit

destinations. However, large-scale trafficking in persons also takes place within these countries.

Nepal

Thousands of children in Nepal live apart from their families. Some of them have migrated voluntarily, for example to Kathmandu, to work in manufacturing, sweatshops, hotels, or as domestic workers. Many of these children then become victims of the cross-border trafficking to India. This trafficking, which mainly refers to girls, is not a new phenomenon: proven methods are used and some traffickers have been involved in the business since it took its modern form approximately 35 years ago. The open border between the two countries facilitates trafficking in persons. Local NGOs have reported that 5-8,000 women and girls are trafficked into India each year.³⁹ Many of them are lured by offers of job opportunities in the garment and carpet industry. However, the majority of these women and girls end up in the sex industry, often in Mumbai and Calcutta. Reports by NGOs estimate that 20 per cent of the Nepali prostitutes in India are under 16 years of age.⁴⁰ Until the last decade, the majority of girls trafficked from Nepal to India originate from districts surrounding the Kathmandu Valley and small areas along the Indian border and most of them were from the Tamang ethnic group. Today a much wider range of Nepali ethnic groups have been observed in Indian brothels. Poverty has lowered the resistance of village people to sending their daughters into the commercial sex service and sometimes families even facilitate the recruitment by traffickers because they see no other option.⁴¹

Pakistan

Pakistan is regarded a major destination for trafficked women and children in South Asia. Every year, thousands of Bengali and Burmese women and children are trafficked from Bangladesh across India into Pakistan.

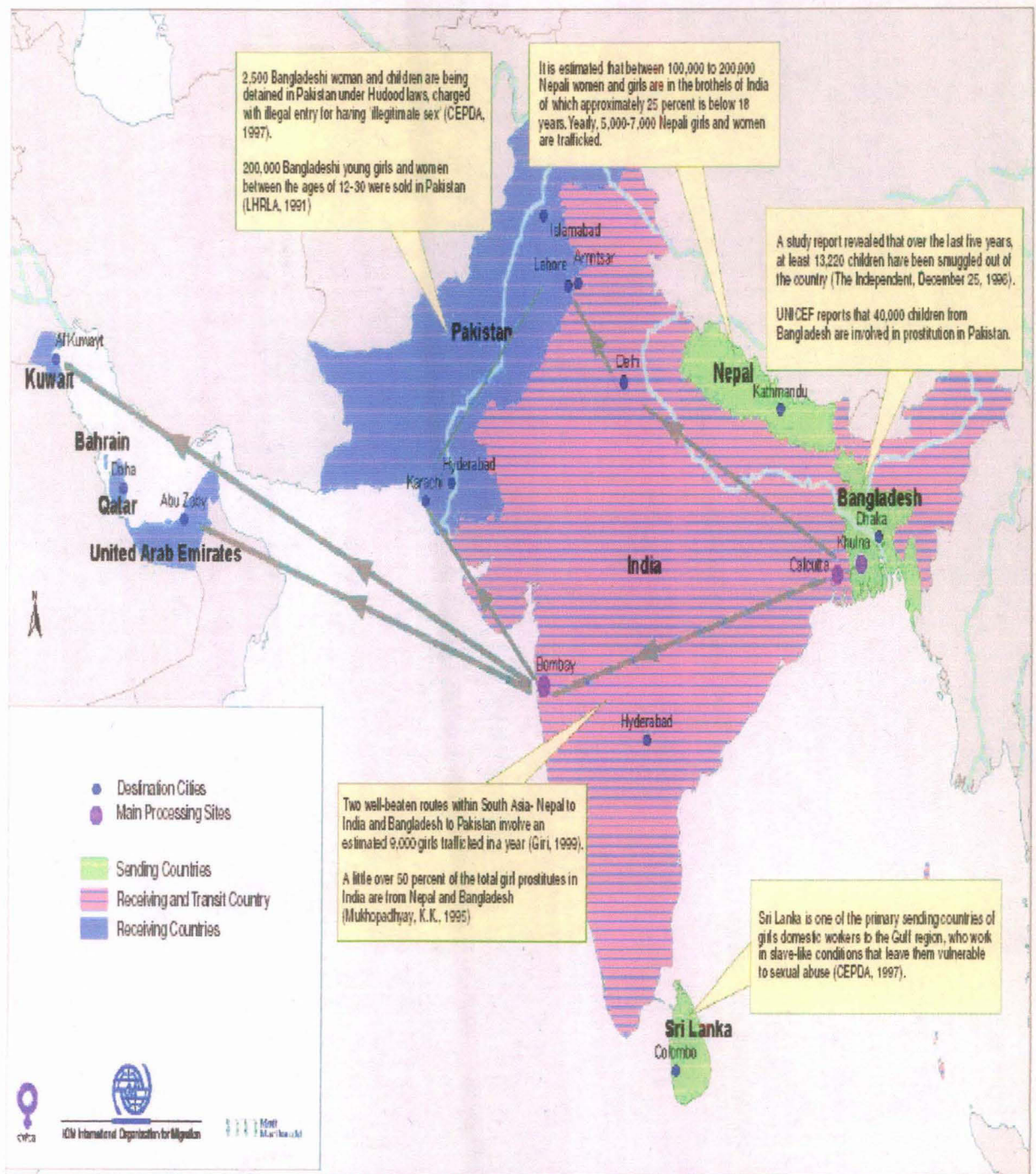
³⁹ MAITI, an NGO in Nepal, estimates that between 5,000 and 10,000 girls a year are trafficked from Nepal to India every year.

⁴⁰ ESCAP (1999), *Sexually Abused and Sexually Exploited Children and Youth in South Asia: A Qualitative Assessment of Their Health Needs and Available Services*, New York

⁴¹ Fredrick, J. & Kelly, T. (2000), op. cit

MAP-2.1

Major Trafficking Routes in South Asia



Source: Shamim, I. (2001), *Mapping of Missing, Kidnapped and Trafficked Children and Women: Bangladesh Perspective*, Dhaka: International Organisation for Migration.

They are forced into prostitution, sold or auctioned for marriage, or employed as bonded labour.⁴² The typical trafficking scenario in Pakistan is one of women who arrive in the country as migrant labourers and then end up sexually abused. There is a considerable amount of trafficking within the country, and trafficked women and girls may account for a high proportion of the prostitutes in both rural and urban areas.⁴³

Sri Lanka

Reports indicate that tribal children from the hills are trafficked to the big cities, or to the coast in the south and southwest of the country. Sri Lanka is one of the favoured destinations of pedophile sex tourists from Europe and the United States. In Sri Lanka, unlike other countries in South Asia, the majority of the child prostitutes are boys. These boys are often referred to as "beach boys" since they live and work on the beach. Other prospects that trafficked children from Sri Lanka may face are domestic work and illegal adoption. A large number of adult women go to the Middle East, primarily with the intention of working as maids. How many of them arrive there as a result of trafficking is not known.

Bangladesh

Extensive internal trafficking of minors seems to occur in Bangladesh. Bangladesh is also a supplier of young women and girls, and some boys, to the sex industry in India and Pakistan. In addition several thousands of young Bangladeshi women and girls are taken across the border to India each year for marriage. Many of these girls, who mainly originate from western Bangladesh close to the Indian border, end up in brothels in Calcutta, Mumbai and Goa or are sold several times. NGOs report that in the two latest decades 200,000 Bangladeshi girls have been trafficked to the Middle East. NGOs also report that hundreds of women and children are trafficked every month to Pakistan.⁴⁴ Bangladesh is mainly a country of origin for trafficking in women and children. A reported 200,000 Bangladeshi women and

⁴² Frederick, J. (1998), "Deconstruction of Gita", *Himal The South Asian Magazine*, October, Kathmandu.

⁴³ Ibid.

⁴⁴ Sanghera, J. (2000), *Trafficking of Women and Children in South Asia: Taking Stock and Moving Ahead*, UNICEF Regional office South Asia and Save the Children Alliance South and Central Asia

children have been taken out of the country in the past 10 years.⁴⁵ At least 20,000 Bangladeshi women and children are trafficked to India and Pakistan and to Middle Eastern countries every year.⁴⁶ According to another estimate, 50,000 Bangladeshi girls are trafficked to or through India every year. The girls end up in brothels in India or Pakistan or in Middle Eastern or South Asian countries.⁴⁷ Women are also trafficked to Australia. Internal trafficking in women and children occurs from rural areas of the country to the capital, Dhaka.

India

India is not only the main country of destination for traffickers, but also a country of origin for women and girls trafficked in the region. Most of the trafficking in India occurs within its borders, from rural to urban areas and from poorer states like Bihar to wealthier states like Maharashtra. Given the marriage imperative and the burden of dowries on the poor, much of the trafficking is conducted by men who arrange fake marriages. Family-based trafficking occurs among many low caste and tribal groups who have a tradition of female wage-earning in entertainment.⁴⁸ Religious practices like the Devadasi are used to lure poor scheduled caste women to prostitution in the major cities, paving the way for traffickers.⁴⁹ These religious and cultural links to commercial sexual services make the trafficking phenomenon in India as well as in Nepal even more complex.⁵⁰ NGOs report that Indian girls sent to Pakistan and the Middle East for prostitution and work in domestic service have been tortured, held in prison and sexually abused. Indian women and girls from areas close

⁴⁵ "Human Trafficking is Going Unabated along the Borders," *Business Recorder, Global News Wire*, 4 June 2001.

⁴⁶ "20,000 Bangladeshi Women, Children Trafficked Every Year," *Agence France Presse*, 2 June 2003.

⁴⁷ "When Victims Become Accused," *Times of India*, 13 October 2003.

⁴⁸ In India and Nepal there are communities with long traditions of working in entertainment. Due to economic necessity these communities have resorted to organizing commercial sexual services. Examples are Badi in Nepal and Banjara and Bedia in the state of Madhya Pradesh in India.

⁴⁹ Devadasi is a term signifying the offering and dedication of girls to a Goddess or God. "Deve" means God and "Dasi" stands for maid or slave. Devadasi is mainly practised by the Scheduled Castes in the states of Karnataka and Maharashtra in India. In an industrial suburb near Bombay, NGO activists took the Special Rapporteur Radhika Coomaraswamy to meet some sex workers during the day when they had to time to speak to her. Many of these women were from traditional devadasi families. Their families had given them to the village temple for sex work but after a while they left the temple and went to work in the city. For details see: Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 2000/45, Addendum, Mission to Bangladesh, Nepal and India on the issue of trafficking of women and girls (28 October-15 November 2000), [www.unhchr.ch/huridocda/huridoca.nsf/0/4cb26594f04a53a4c1256a1b0055e5df/\\$FILE/G0110865](http://www.unhchr.ch/huridocda/huridoca.nsf/0/4cb26594f04a53a4c1256a1b0055e5df/$FILE/G0110865)

⁵⁰ Joint Women's Programme Publication (1988), *Prostitution with Religious Sanction*, Banhi, William Cary Study and Research Centre, Calcutta

to the Bangladeshi border are trafficked to Thailand. India is regarded as one of the main destinations for children who are trafficked in South Asia.⁵¹

Despite the severity and its widespread occurrence, there is no accurate figure available as to how many people are annually trafficked internally and internationally. According to a U.S. Government estimate, based on 1997 figures, annually 700,000 persons are trafficked across the international borders worldwide and out of that 30 million in Asia alone are affected by Trafficking.⁵² According to an estimate of the International Organisation on Migration, size of trafficking of persons annually across international borders is between 700,000 and 2 million.⁵³ The number of trafficked persons would be much larger if the figures of internally trafficked persons are included.⁵⁴ Internal trafficking is phenomenal in many smaller countries such as Nepal, Thailand, and Colombia, etc. However the accurate data is difficult to find due to the clandestine nature of the problem of trafficking. The table below gives a scenario of minimum number of people trafficked from one country to another annually.

TABLE-2.1
Persons Trafficked Annually from Various Regions

Origin of Trafficked Persons	Minimum-Number of Persons Trafficked Annually	
	Number	Percent
South East Asia	225,000	32.14
Former Soviet Union and Eastern and Central Europe	175,000	25
South Asia	1,50,000	21.43
Latin America and Caribbean	100,000	14.29
Africa	50,000	7.14

Source: Francis T. Miko and Grace Park (2002), "Trafficking in Women and Children: The U.S. and International Response", *CRS Report for Congress*, 2002

⁵¹ Frederick, J. & Kelly, T. (2000), *Fallen Angels. The Sex Workers in South Asia*, Roli Books, New Delhi

⁵² Francis T. Miko and Grace Park (2002), "Trafficking in Women and Children: The U.S. and International Response". CRS Report for Congress.

⁵³ IOM, 2001, *Quarterly Bulletin*, No.23.

⁵⁴ Desai, M. December 2001. Child protection—Current status and recommendations of strategies for the India country programme for 2003-2007. *A consultancy report, Tata Institute of Social Sciences. New Delhi: UNICEF India Country Office.*

2.2 Trafficking from Bangladesh to India

Bangladesh is one of the poorest countries in the world; a large percentage of the vast population is young and lives below the poverty line. The slow economic growth of the country coupled with periodic natural disasters have put serious constraints on the ability of the Government to provide adequate resources for women's programmes and projects. The United Nations Family Planning Association State of the World Population 2000 report declared Bangladesh second highest in the world in incidence of violence against women.⁵⁵ With the highest population density among non-city states in the world, the ensuing population pressure constitutes a major concern for the country's continuing development. Access to land and land-ownership is uneven with a substantial and growing proportion of landless, resulting in a rising migratory pressure from the rural regions of Bangladesh to its urban agglomerations.⁵⁶

The structural poverty of the country highlighted above is the greatest impediment to sustainability as well as the producer of greater vulnerabilities for women and children. This is due to a number of factors, among which are unequal distributions of productive assets, inequitable distribution of incomes, massive under-employment, low levels of human resource development. To these must be added an unbalanced social system, a low level of law and order, and a lack of good governance. For the most part, women remain in a subordinate position in society. They are often ignorant of their rights because of continued high illiteracy rates and unequal educational opportunities, strong social stigmas and lack of economic means to obtain legal assistance. NGOs operate programmes to raise women's awareness of their rights and to encourage and assist them in exercising those rights. Yet, prevailing stereotyped attitudes and practices justified on social grounds create an environment for the acceptance of violence against women, especially in the area of trafficking.

⁵⁵ Violence takes many forms and includes wife murder for non-payment of dowry, custodial rape, attacking with acid and trafficking.

⁵⁶ The urban population has increased fourfold over the last two decades with more than 60% of the increase due to migration. Poverty is widespread, affecting almost 50% of the population (amounting to some 60 million citizens) Despite Bangladesh's commitment to eliminating poverty, the absolute numbers of people in poverty continue to rise. Malnutrition rates are still among the highest in the world with 58% percent of children under five underweight and 51% stunted. Around 30 million are considered as hard core poor, living in extreme poverty. The daily calorie intake of these "poorest of the poor" is less than 85% of the "poverty line" intake of 2122Kcal/day. Per capita income levels still remain distressingly low at around US \$1 per day.⁵⁶

The status of girl child is dismal at the individual, family and societal level in the trafficking affected areas in Bangladesh.⁵⁷

The Bangla equivalent of the word trafficking is *pachar*. It has a mild connotation, which means transfer from one place to another. If the term *pachar* is used in reference to women and children, in Bangla the phrase *nari o shishu pachar* means illegal transfer of women and children from one place to another. Trafficking, which is a serious problem and is considered a violation of human rights, is yet to be internalized emotionally by society at large in Bangladesh and also in other South Asian countries. The term itself does not capture the total implications for an adolescent girl, children and women to be abducted and taken to a brothel; threatened, beaten, and raped; and forced to submit to having sex with men, seven days a week, for several years until she eventually becomes ill which may sometime result in death.

2.3 Magnitude of the Problem

There is extensive trafficking from Bangladesh, primarily to India, Pakistan and destinations within the country, largely for purposes of forced prostitution, although in some cases for labour servitude. Prof. Shamim highlighted the fact that Bangladesh is not only a major sending country, but it is a transit country and receiving country as well.⁵⁸ There is a long porous border with India and the rest with Myanmar that is used by traffickers as the land route to India and Pakistan where the flesh trade is going in spite of the anti-trafficking laws. Some children have reportedly been trafficked to the Middle East to work as camel jockeys. Sanlaap reported that, of the 1,000 to 10,000 women found in Kolkata brothels, 70 percent were from Bangladesh. The percentage of trafficked Bangladeshi women is 13.5 percent in Kolkata, 0.2 percent in Mumbai and 2.6 percent in Delhi.⁵⁹ A study of bar girl in

⁵⁷The girl child in South Asia Region faces a lot of discrimination due to practices of son preferences the patriarchic system which put premium on the sons and girls are considered "paraya Dhan"(Other's wealth) and given least preference in the society, the trafficking prone areas are no exception to it.

⁵⁸ Sex trade involves a complex web of lot of factors thus there can not be a compartmentalization of country of origin, transit or destination country. Some countries may belong to more than one category, as in the case of India, which is a destination, a source and a transit point.

⁵⁹ Joshi, Madhu ed., (1997), *Women and Children in Prostitution: Human Rights Perspective*. Delhi: Joint Women's Group

Mumbai found that 42 percent were from Bangladesh.⁶⁰ The exact number of women and children trafficked is unknown. But the most cited figures are that 300,000 Bangladeshi women trafficked to India over an unspecified period. The Bangladesh National Women Lawyers Association (BNWLA) cited the numbers of children being trafficked from Bangladesh as follows:⁶¹

- 300,000 Bangladesh Children work in the brothels of India. 4, 700 children were rescued from traffickers in the past 5 years;
- 4,500 women and children are trafficked to Pakistan yearly (SAARC and United Nations Children's Fund [UNICEF]);
- 1,000 child trafficking cases were documented in the Bangladeshi media press during the year 1990 to 1992; and
- 69 children were reported being rescued at the border during a 3-month study in 1995.

In an attempt to determine the magnitude and trend of the problem, a mapping exercise of missing, kidnapped, and trafficked children and women from Bangladesh was undertaken based on 10 years of media coverage from 1990 to 1999 by the Centre for Women and Child Studies (CWCS).⁶² It revealed that in 1990, the number of trafficked children was 37. The trend increased until 1997, when the total was 927, with a downward trend since then (see table 2.2).The study charted the same trend in the case of trafficking in women and there are great variations in statistics

⁶⁰ SOS (2001), *South Asian Conference to Combat the Trafficking and Sexual Exploitation of Children*, 14 to 17 October in Goa. Organized by Save Our Sisters Programme. Mumbai: Women's Institute for Social Education.

⁶¹ Bangladesh National Women Lawyers Association (1997), *Survey in the Area of Child and Women Trafficking*, Dhaka

⁶² Shamim, I. (2001), *Trafficking in Women and Children: Situational Analysis*. Keynote Paper in Experience Sharing Meeting and National Workshop to combat Trafficking in Women and Children, 7-9 January, 2001, Centre for Women and Child Studies.

TABLE-2.2

Results of Mapping Exercise of Missing, Kidnapped, and Trafficked Children and Women

No. of Women	Frequency/Time Frame	Destination	Source
200-400	Monthly	---	BNWLA, 2000
24,000-48,000	Annually	---	
200,000 ⁶⁴	Over 10 years	---	Rape of Minors
200	---	Worry Parents, 1998, Pakistan, India	Rape of Minors
500	Middle East Daily	Worry Parents, 1998 Pakistan, via India (Press Statement)	BNWLA, 1998
200,000	1990-1997	---	Centre for Women & Children Report, 1998
1% of 500,000 foreign CSWs	--	India	Central Social Welfare Board, 1997; BNWLA, 1997
13	Daily	---	The Daily Ittefak, 1990; UBINIG, 1995
4,000 or more	Annually	----	
50	Daily	---	UBINIG, 1995 Approx.6,000 Annually
27,000	---	Indian Brothels	Centre for Women and Children Report, 1998
10-15,000	---	India	UN Special Rapporteur 2001

Source: <http://www.bnwla.org>

⁶⁴The figure of 200,000 victims being trafficked to India is used in many sources. The statistic seems to be cross quoted but the original source never identified.

Calculations of trafficked people are generally made with reference to commercial sexual exploitation (CSE). The figures quoted above show a high degree of discrepancy which makes the possibility of ascertaining the authenticity doubtful.

TABLE-2.3
Trafficked Bangladeshi Women by Year

Year	Total
1997	780
1998	243
1999	54
Total	1,077

Source: Asian Development Bank (2003), *Combating Trafficking of Women and Children in South Asia*

The number of women and children in sex work in India is stated to be between 70,000 and 1 million. A news item published in *The Statesman* (12 August, 2002) states that roughly two million children are abused and forced into prostitution every year in India. A UNICEF study on Maharashtra found that at any given time, approximately 40 percent of victims of CSE and trafficking are below 18 years of age.⁶⁵ According to the National Crime Records Bureau (NCRB) India data, in 1999 there were 9,368 cases of trafficked women and children in India.⁶⁶ The information on how many among these were from Bangladesh is not available. But in Bangladesh Shamim listed following children year wise trafficked from Bangladesh.

TABLE-2.4
Trafficked Bangladeshi Children by Gender

Year	Boy Child	Girl Child	Total
1990	20	17	37
1991	75	127	202
1992	97	147	244
1993	88	118	206
1994	113	104	217
1995	240	185	425
1996	197	181	378
1997	490	437	927
1998	331	354	685
1999	32	44	76
Total	1,683	1,714	3,397

Source: Shamim, I (2001), *Trafficking in Women and Children: Situational Analysis*, Keynote Paper in Experience Sharing Meeting and National workshop to Combat Trafficking in Women and Children, 7-9 January 2001, Centre for Women and Children Studies. Dhaka

⁶⁵ UNICEF and College of Social Work (1994), *National Consultation on Child Prostitution*, Mumbai: College of Social Work

⁶⁶ National Crime Records Bureau. *Crimes in India: 1997, 1998, 1999, 2000, 2002*. New Delhi: NCRB, Ministry of Home Affairs, Government of India

This table indicates the decline in trafficking but the conclusions should be drawn cautiously as not all the cases of trafficking got covered by media or police. This table however provides a rough, at least some collation of data available.

TABLE-2.5

Trafficked Women from Bangladesh in Indian Brothels

No. of Women	Nationality	Location	Time Frame	Source
70% of 1000 to 10,000	Bangladeshi	Kolkata	Last 5 years	Sanlap,2002
800 including 140 flying CSWs	Bangladeshi	Kolkata	1990-1992	Sanlap,2002
30,000	Bangladeshi	Kolkata	---	Trafficking Watch-Bangladesh Reuters,1997
2,000	Bangladeshi	Various Cities	---	CATW, Asia Pacific ⁶⁷
10,000	Bangladeshi	Mumbai, Goa	---	Trafficking Watch-Bangladesh,Reuters,1997
27,000	Bangladeshi	Mumbai, Goa	---	Shamim,2001
2.7% ⁶⁸	Bangladeshi	Kolkata	---	Central Social Welfare Board, India 1991

Source: ADB (2003): 35

⁶⁷Coalition Against Trafficking in Women (CATW), <http://www.catwap.org/facts.htm>

⁶⁸ Persons trafficked are used for various other purposes other than prostitution in Kolkata, and would not be included in this table.

2.4 Vulnerability of Rohingya Refugees

A 1998 study conducted by UBINIG on the situation of Rohingya women and children from Myanmar living in Cox's Bazar and Teknaf presents a disconcerting picture of the vulnerability of unrecognised refugees living outside the camps, particularly girls and women, to sexual abuse, including early marriage.⁶⁹ Approximately 23,000 Rohingya refugees currently live in Nayapara and Kutupalong camps south of Cox's Bazaar. Amongst the refugees, organisations working in the camps and camp officials there are hierarchies of power; many abuses, including sexual abuse and violence are taking place, but little is said and most complaints are not aired.⁷⁰ In addition to the recognised refugees, according to Dr CR Abrar, Coordinator, Refugee and Migratory Movements Research Unit, Dhaka University, there are tens of thousands of unrecognised Rohingya refugees who have arrived since 1992 who receive no assistance or services from humanitarian organisations.⁷¹ They do not want to be identified as refugees and are at constant risk of being repatriated. Of 200 sample families chosen for the study, more than half the total family members are between 1 and 15 years of age.⁷² Children under 5 years comprise 24% of the total members: The Rohingyas feel general sense of insecurity; especially women...The families having young/adolescent girls remain in constant pressure from the local young boys. There have been many incidents of sexual assault on the young girls.⁷³

The UBINIG study also found that there have been several cases of rape of young girls by *mastans* (Local term for 'Dalal' or procurer). In those families where the men are engaged in fishing, they attack girls at night and threaten them with repatriation if they try to refuse. As they are not officially recognized, the Rohingyas cannot appeal to the police for protection.

⁶⁹ Policy Research for Development Alternatives (UBINIG), *Pamphlet 2, and Fact Finding Missions on Trafficking in Women and Children from Bangladesh to India and Pakistan* (Dhaka: UBINIG, 1999) p.9.

⁷⁰ Caroline Taylor, Country Director, MSF-Holland, "Human Trafficking", *The Times of India*, New Delhi, 19 June 2001

⁷¹ Finding of Dr Abrar, Coordinator, Refugee and Migratory Movements Research Unit, Dhaka University (12 May 1999).

⁷² UBINIG, *Vulnerability and Insecurity Study on Situation of Rohingya Women and Children in Cox' Bazaar and Teknaf* (Dhaka: UBINIG sponsored by Save the Children, UK, August 1998) p.10.

⁷³ Ibid, p.15.

2.5 Forms of Trafficking

Trafficking in Bangladesh exists mainly for the purposes of forced labor⁷⁴ and forced prostitution including some other form of trafficking also. Although exact figures on the scope of the problem vary widely, the consensus is that the trafficking problem is growing rapidly. An estimated 90 percent of trafficked women were forced to engage in prostitution.⁷⁵ Reportedly, 400,000 Bangladeshi women are engaged in forced prostitution in India, and 300,000 Bangladeshi boys have been trafficked to India.⁷⁶ According to one report, every day 50 Bangladeshi girls are lured across the Indian border and sold. India shares border with most of the districts of Bangladesh, and most of that border is open to traffic. Bangladeshi girls who are trafficked to India by organized networks usually end up in brothels in Kolkata or Mumbai.⁷⁷ Many victims are raped by their traffickers or by Bangladeshi and Indian border patrol guards.⁷⁸ An estimated 40,000 female children are exploited in Pakistani brothels. From January 2000 to June 2003, an estimated 2,405 Bangladeshi children disappeared. Of those, 510 boys and 451 girls were confirmed to have been trafficked.⁷⁹ Street children living in the capital are among the prime targets of organized child-trafficking rings. According to some surveys, Pakistan and oil-rich Arab states are the principal destinations of Bangladeshi children. Boys are mostly taken to the Persian Gulf (particularly the United Arab Emirates) to work as camel jockeys or farm workers, while the girls often end up working in brothels in India and Pakistan.⁸⁰ There have been reports of trafficking in organs in Bangladesh.⁸¹ A group of anthropologists from the United States claim to have encountered “kidney theft” in Bangladesh.⁸² It has also been found that the traffickers lure poor people, including children to donate their bodily organs by offering them benign sum of money. A case

⁷⁴ See appendix no.3

⁷⁵ “Bangladesh Most Vulnerable Country for Trafficking,” *Independent Bangladesh*, 26 March 2004.

⁷⁶ “Battle against the Plague of Women and Child Trafficking,” *Independent Bangladesh*, 5 July 2002.

⁷⁷ Anindita Dasgupta, “Dreams—and Hunger—Drive Trafficking into India,” *Inter Press Service*, 9 December 2003.

⁷⁸ Goa Today, “Paradise for Paedophilia” by Miranda Alister. April, 1996.

India Today, “Sexual Outrage on the Beach” by Baria. 11 March 1996.

⁷⁹ “Some 1,000 Children Trafficked from Bangladesh in 3 Years,” *Xinhua News Agency*, 26 January 2004.

⁸⁰ “Seven Foreigners Released after Being Detained on Suspicion of Child Trafficking,” *Associated Press Worldstream*, 30 September 2002.

⁸¹ No. 78.

⁸² Nancy Scheper-Hughes, “The Organ of Last Resort.” *UNESCO Courier*, July/August 2001, http://www.unesco.org/courier/2001_07/uk/doss34.htm.

study⁸³ in Punjab developed by Vijay Pratap Singh (IPS) shows the modus operandi of the traffickers and their middlemen who hoodwink people to sell their organs. The hired lawyers file false affidavits on behalf of the donors, the doctors charge Rs.75,000 to 1,25,000 as fee for conducting illegal kidney transplantation.⁸⁴ The donor gets hardly 10-15 thousand rupees and most of the money is pocketed by traffickers. There are many instances where donors have died due to the lack of post operative care.

Trafficking of Children for Camel Jockeying, Begging and Pornography

The young boys are trafficked to serve as camel jockeys⁸⁵ in camel races which are popular in the United Arab Emirates. In 1993, the camel Jockey Association of United Arab Emirates prohibits the use of children for jockeying but these rules are often honored only in their breach. The boys are tied to the back of the camels so that they do not jump off due to fright during race, sometimes the ropes tied become loose during race and the child fall to the ground over stones and sand and often trampled to death by other camels on the track. As reported in the press a number of Bangladeshi boys were rescued in India while being trafficked for camel jockeying. The route followed generally is of first reaching Kolkata from Bangladesh, from there reaching Chennai or Bangalore and taking flight from here to Middle East.

2.6 The story of Rubel: a four year old Child⁸⁶

The four year old child Rubel from Bangladesh was trafficked by Najma with the help of the step father of Rubel. Rubel was taken to Dubai for camel jockeying. The boy had a long and painful story of physical and mental torture and agony. He lived with three other boys, one Pakistani and two Indians. They all worked as camel jockeys. Rubel expressed his traumatic experiences specially about witnessing a Sudanese boy's plunge to death from the back of a camel during a race. The regulation weight for camel jockeys were 15 kilograms and Rubel was returned to a

⁸³ See appendix one.

⁸⁴ Before the Organ Transplantation Act 1994, there was no legislation in India prohibiting the sale of Organs. The Organ Transplantation Act establishes an authorization committee to grant approval based on the fulfillment of specified technical and medical requirements. The Act has been ineffectual because of weak and tardy monitoring at the level of its authorisation committee. Moreover, proper implementations are wanting in many states.

⁸⁵ See appendix No. 2

⁸⁶ BNWLA(2001) *Movement Against Trafficking and Sexual Exploitation*. October Special Bulletin.p.12

farm after he became heavier. He described that they were compelled to work in the desert without adequate food and water in a bid to make them lose weight.

A large number of children are also trafficked for begging; especially children with disability are more vulnerable to trafficking. There are news paper reports and reliable secondary data regarding the trafficking children to Saudi Arabia for begging during Hajj. In 1997, a large number of Bangladeshi children were deported to India from Saudi Arabia where they had been taken under the pretext of visiting Mecca. They however remained in the country and were forced to beg from the pilgrims.⁸⁷ Many of the children had broken limbs due to atrocities by the traffickers to force them to beg. It seems the traffickers were not only well organized and this trafficking was guided by the demand factor as the traffickers understand the law of demand and supply very well of the trafficking trade.

Trafficked of women and children are also used as cheap **domestic help**. These domestic helps live within the confines of private homes and thus remain invisible to be approached as the employer tends to show that they are family members but their living condition could better explain the plight of such domestic helps. There are cases of Trafficked people working as domestic helps suffered from physical, mental, and sexual violence.⁸⁸ They are helpless and can not approach the law of the land due to their illegal status. Trafficked persons are also used for **performing in circuses**. In a study 13 young trafficked girl (age between 8-21 years) were interviewed who were rescued from a circus troupe in Delhi.⁸⁹ The six percent of the traffickers' interview revealed that the women and children are also trafficked for the purpose of **pornography**.⁹⁰ Human beings in general and women and children in particular are bought and sold to cater a variety of needs. The following diagram lists various forms of trafficking:

⁸⁷ Calcetas –Santos, Ofelia (1999) Report of the Special Rapporteur on the sale of Children, Child Prostitution and Child Pornography. January 29, Commission on Human Rights, fifty fifth Session. Geneva. United Nations Commission of Human Rights.

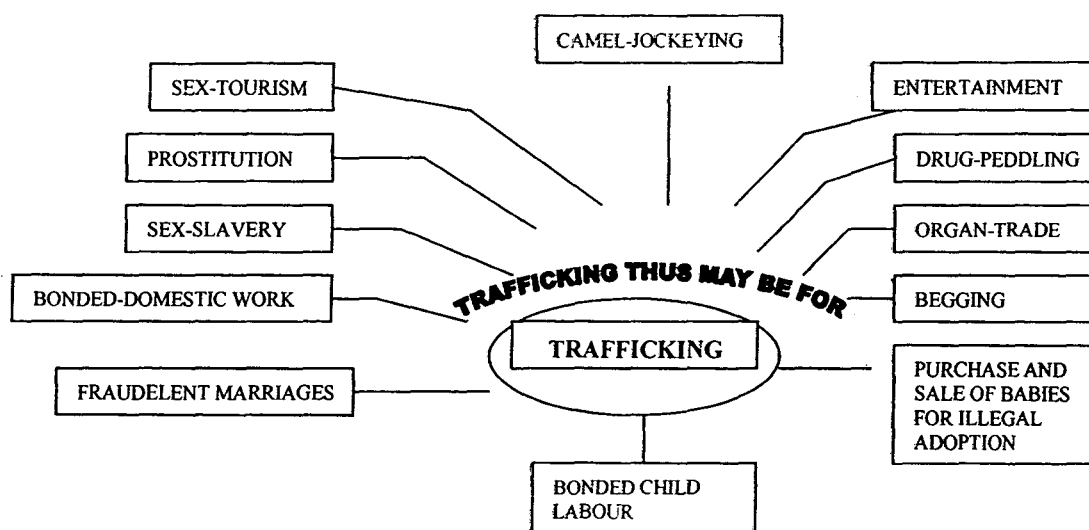
⁸⁸ Blanchet ,Thérèse (April, 2002), *Beyond Boundaries: A Critical Look at Women Labour Migration and the Trafficking Within*, A study for USAID, Drishti Research Centre, Dhaka

⁸⁹ Institute of Social Science (2005), *Children Trafficked for Labour and other Exploitation*, Orient Longman .p.135

⁹⁰ Ibid, p126

CHART-2.1

Various form of Trafficking



2.7 Methods of Trafficking:

There are four main ways women can be trafficked.¹ The most common way is the trafficker promises the potential victim a job opportunity in another country, or another area within Bangladesh. Many of the women are from poorer regions of Bangladesh and are tempted to take an offer because it means a secure life.² The second way a woman can be trafficked is if she is sold by a family member, neighbor, or friend. If a family is extremely impoverished, it is hard for them to support every family member. Therefore, they will freely sell their daughters for money to support the rest of the family.³ Another way that women can be trafficked is through a marriage⁴ or love affair.⁵ For instance, a woman from a poor family may find a man

91 USAID/Bangladesh's Anti-Trafficking Program". Dec. 2000 USAID Bangladesh: Anti-Trafficking, USAID, 12 Jan. 2005 <http://www.usaid.gov/bd/files/anti_trafficking.pdf

92 Gazi, Ruksana et al. *Trafficking of Women and Children in Bangladesh: An Overview*", N.D. ICDDR, B Documents. P.24, Accessed on 20 Sep. 2006. ICDDR, B. <<http://www.icddr.org/pub/publication.jsp?classificationID=47&pubID=3254>>

93 USAID/Bangladesh's, op. cit.

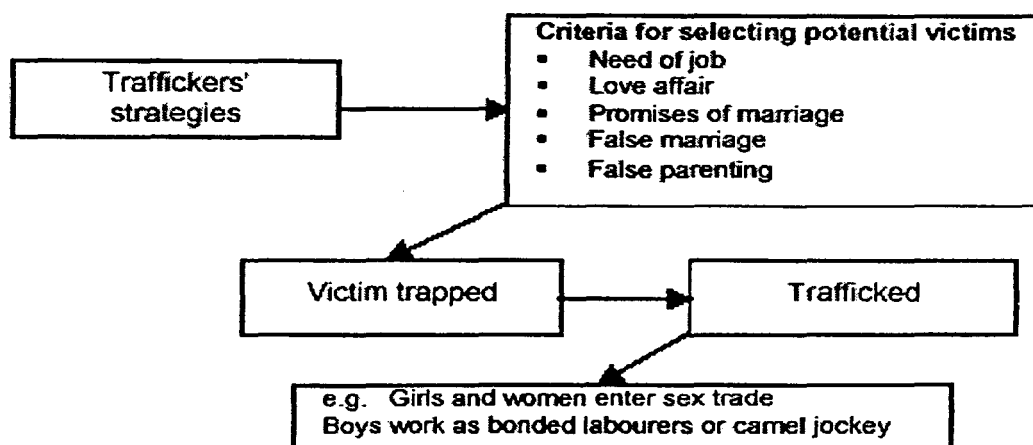
94 Girls are married at very early age even before puberty in Bangladesh in the trafficking prone areas. To quote a mother from Chapai, Nawabganj District, Bangladesh: "I am in anxiety about marriage of my daughter as she is now ten year old. She has to get married before menstruation otherwise the departed soul of seven generations of our family will not reach the behesth (heaven). For details see: Association for Community Development Report, Paradigms of Women Trafficking in Bangladesh. October, 2001

95 Gazi, Ruksana et al. op. cit. pp.24-25

that will willingly marry their daughter without having to pay a dowry. Families seize the opportunity as they will not lose money and their daughter will be married. However, after the marriage, the trafficker may take her to India or to other areas in Bangladesh and sell her to a brothel without her knowing.⁹⁶ For example, a girl can be drugged and by the time she woke could have been sold to a brothel. The **final way** that women are trafficked is through abduction. According to a trafficker that was interviewed by ICCDR, B: Centre for Health and Population Research Mohakhali, Dhaka researchers, one way that they were able to kidnap girls from a local Bengali school in Khulna, was by paying off one of the fixed van pullers that brought the girls to school and to trips to the park.⁹⁷ However, the use of abduction method for trafficking is not so prevalent in the case of Trafficking from Bangladesh to India. Most of the trafficking starts with a willing migratory purpose in the guise some lucrative job and better life to the trafficked person. The following **diagram** summarises the procurement process:

CHART-2.2

Procurement Process



Source: Gazi, Rukhsana (2001), *Trafficking of Women and Children in Bangladesh*, ICCDR, B: Centre for Health and Population Research Mohakhali, Dhaka 1212, Bangladesh

⁹⁶ Derks, Annuska. "Combating Trafficking in South-East Asia: A Review of Policy and Programme Responses." Geneva, Switzerland: International Organization for Migration (IOM), 2000.

⁹⁷ "A Trafficker Speaks." Sep. 2000. USAID Bangladesh: Anti-Trafficking. USAID. Accessed on: 12 Jan. 2007, <<http://www.usaid.gov/bd/files/trafficker.pdf>>

2.8 Who are Traffickers?

The traffickers are usually young men and middle-aged women who travel back and forth from home countries to receiving countries. They are often referred in local terms as “dalals” or “didis”. They sell girls to brothels for 15,000-40,000 Indian rupees (US\$ 500-1,333).⁹⁸ Tragically, many of the traffickers are older women, themselves in forced prostitution trying to escape abuse and bondage. In some parts of Nepal and Bangladesh family members sell young girls to traffickers.⁹⁹ In the past, in Nepal, it was the districts around Kathmandu that traditionally gave their daughters for concubinage or sex work. Today, however, the sale of children takes place in all parts of Nepal and Bangladesh. Sometimes a child can be bought for as little as Rs. 200 (US\$ 4.00).¹⁰⁰ Sometimes the family member or a relative under economic compulsions/desire also facilitates trafficking. An aunt/uncle or an elder sister who transports across borders and forcibly puts to work a niece or a younger sister for her own benefit is not seen as a trafficker.¹⁰¹ The marriage provides an excellent license ensuring that a man will not be pursued as a trafficker when he is known to entice, cheat and put a wife to work against her will for his own enrichment.¹⁰² Marriage confines women and whatever they do in obedience to a husband acquires a kind of morality in the eyes of society. The community does not intervene. Attempting to distinguish between 'true' and 'fake' marriage does not address the issue. After all, husbands' ability to make marriage look true provides the very basis for exploiting these women. In a study based on the response of the trafficked persons it was found the traffickers were the husbands in 12.1 percent of the cases, siblings in 10.2 per cent cases, and parents and in-laws in 13.3 per cent of the cases distant relatives had

⁹⁸ BNWLA. 2002. A Report on Violence against women in Bangladesh, 2001. Dhaka: Bangladesh National Women Lawyers Association.

⁹⁹ Anti-trafficking network. 2001. Report of the 2nd world congress. Dhaka

¹⁰⁰ Jyoti Sanghera (1999), *Trafficking of Women and Children in South Asia: Taking Stock and Moving Ahead*, for UNICEF and Save the Children Alliance, November 1999.

¹⁰¹ An uncle sells his twenty-year-old niece from Bangladesh to a trafficker who plans to place her into a bangle-making factory in India. The woman is sent to Rajasthan to work seven days a week for nearly no pay. The amount paid to the Uncle for his assistance was Taka 23,000. For details see: *Revisiting the Human Trafficking Paradigm: The Bangladesh Experience*, Trafficking Thematic Group, April 22, 2003

¹⁰² In a case study of 16 year old girl Khulsum whose husband within seven days of her marriage forced her into Sex Trade against her will. See details in Department of Social Services, Ministry of Social Welfare, *A Review of Existing Services Relating to Street Children (Khulna, Barisal and Jessore)* Appropriate Resources for Improving Street Children's Environment (ARISE) BGD/97/028) December 1999, Appendix A, p. 67.

trafficked the rest of the respondents.¹⁰³ It is worth noting that the traffickers were strangers only in 11.1 percent of cases (see table below)

TABLE-2.6

Traffickers are Known to the Trafficked Victim

<i>Persons responsible</i>	<i>Number</i>	<i>Per cent</i>
Family members or relatives	323	34.8
Known persons other than relatives	488	52.5
Strangers	103	11.1
Police	1	0.1
No response	14	1.5
Total	929	100

Over half the traffickers, 52.5 per cent were known to the victims. The majority, 57 per cent, said that the traffickers had first developed relationships with their family members and relatives. In 19.1 percent of the cases the traffickers established links through friends of the victim, in 21.9 per cent of the cases; the link was facilitated through neighbours. While 1.6 per cent of the respondents said that the trafficker became acquainted with them through their employer. These findings of Institute of Social Sciences suggest that often, traffickers befriend the prospective victim through in own contacts, establish a rapport with them and thereafter capitalize on this acquaintance. The gender profiles of the traffickers, 64.3 percent were stated to be in the 26-40 age group.¹⁰⁴ Thus findings revealed most of the traffickers were young.

¹⁰³ Sen, Shankar and P.M. Nayar (2005), *Trafficking in Women and Children in India*, Institute of Social Science, Orient Longman, New Delhi, p.88

¹⁰⁴ Ibid, 89

TABLE-2.7

Most Traffickers are Young

<i>Age group in years</i>	<i>Number</i>	<i>Per cent</i>
<i>18-25</i>	112	12
<i>26-30</i>	246	26.5
<i>31-40</i>	351	37.8
<i>41-65</i>	141	15.2
<i>Don't know</i>	79	8.5

2.9 Causes of Trafficking

The causes for trafficking are divided into two categories—demand and supply. There are **push factors** on the supply side and pull factors on the demand side. Push factors typically include poverty, family break-up, violence or other dysfunction, lack of job opportunities, low education levels or the wrong skills for the jobs that are available, family pressures or a sense of responsibility to provide for the family, discrimination or marginalization including the very fact of being female.¹⁰⁵ In Bangladesh, poverty, land fragmentation, floods and cyclones, landlessness, and demand for dowry, pushes people to search for opportunities outside the country.¹⁰⁶ With an average per capita income of US\$225, Bangladesh is one of the largest migrant-exporting countries in Asia. Migration takes place to the West, to the Middle East, and to Southeast Asia, but most illegal migration flows to India. Bangladeshi traffickers have built up bases in the border districts of India in West Bengal and Assam, to the north and west.¹⁰⁷

¹⁰⁵ Population in Bangladesh earns under \$1 Per day, which becomes a push factor for these women who want to find a job to create a better life for themselves and for their families.

¹⁰⁶ Anindita Dasgupta (2003), “Dreams—and Hunger—Drive Trafficking into India,” *Inter Press Service*, 9 December 2003.

¹⁰⁷ Ibid

Sometimes a compelling push factor is simply the perception that life will be better somewhere else, a perception which is often supported by the mass marketing and consumerism that has crept into even remote rural areas through increasing globalization of communications technology and advertising. The **pull factors** might include economic differentials that make even relatively poor neighbouring cities, region or countries seem a likely source of livelihood, unmet demand for cheap and malleable labour, demand for sexual services for example linked to tourism development or shifts in the supply of local women in the sex sector (for example as a result of high HIV/AIDS prevalence).

From the perspective of gender and age, Radhika Coomaraswamy – the United Nations Special Rapporteur on Violence Against Women – notes the following:

“... the lack of rights afforded to women serves as the primary causative factor at the root of both women’s migration and trafficking in women. The failure of existing economic, political and social structures to provide equal and just opportunities for women to work has contributed to the feminisation of poverty, which in turn has led to the feminisation of migration, as women leave their homes in search of viable economic options. Further, political instability, militarism, civil unrest, internal armed conflict and natural disasters also exacerbate women’s vulnerabilities and may result in an increase in trafficking”.¹⁰⁸

2.10 Feminisation of Poverty

Trafficking is the most horrendous by products of poverty. Poverty is the root cause of trafficking in the region (poverty statistics¹⁰⁹ of South Asia and Bangladesh particular).¹¹⁰ The United Nations Children’s Fund (UNICEF) and the Inter-Parliamentary Union (IPU) also identify poverty as a leading cause of child

¹⁰⁸ The quote is taken from page 4 of the report. The complete report of the UN Special Rapporteur can be accessed from the website of the UN Economic and Social Council (ECOSOC) at <http://www.unhcr.ch/huridocda/huridoca.nsf/%28Symbol%29/E.CN.4.2000.68.En?Opendocument>.)

¹⁰⁹ The poorest countries in the world are also some of the countries most affected by or involved in sex trafficking—either as countries of origin, transit or destination. The UN classifies the most poverty-stricken or “least developed” nations according to these three criteria: (1) annual gross domestic product (GDP) below \$900 per capita; (2) quality of life, based on life expectancy at birth, per capita calorie intake, primary and secondary school enrollment rates, and adult literacy; and (3) economic vulnerability, based on instability of agricultural productions and exports, inadequate diversification, and economic smallness)

¹¹⁰ In 1996 47% people were living below the poverty line in Bangladesh

trafficking especially the poor children who are more vulnerable to the lure of higher wages, which increases their likelihood of being trafficked, either voluntarily or through coercion.

The causes of trafficking are manifold and remain of great concern for the sending countries of the region. In her discussions with the women as well as with activists, the Special Rapporteur Radhika Coomaraswamy noted that poverty was a major factor and that many of these women were either sold into prostitution or left their homes to escape poverty. However, it was also pointed out that the poorest areas of Nepal were not the areas from which women are being trafficked.¹¹¹ In fact poverty by itself is not the cause of trafficking. It is the visible manifestation of a much deeper misery of a society based on son preferences and girls being considered as burden, unequal distribution of land, lack of proper land reforms, food insecurity, globalisation with its resulting gap between the rich and the poor, lack of access to universal and free education, to name some of the reasons. The women in South Asia are disproportionately excluded from development opportunities through deeply rooted gender-based discrimination.

The statistics given below indicates that there is considerable feminisation of poverty:

TABLE 2.8
Feminisation of Poverty

Indicators	India		Bangladesh		Nepal	
	Women	Men	Women	Men	women	Men
GDI Ranking	105		121		120	
Estimated earned Income(PPP US\$)	1,195	3,236	1,076	1,866	849	1,604
Combined enrollment in 3 levels of education	49	62	33	41	49	76
Adult Literacy (%)	43.5	67.1	28.6	51.1	21.7	56.9
Maternal mortality per 100,000	410		440		540	

Source: ADB (2003), *Combating Trafficking in Women and Children South Asia*, originally adopted from UNDP, Human Development Report, 2001.

¹¹¹ Yuabaraj Sangroula (2001), *Trafficking of Girls and Women in Nepal – Building a Community Surveillance System for Prevention*, Katmandu School of Law, Kathmandu, Nepal.

--All data provided is from 1999.

--No wage data available for the purpose of calculating the estimated female and male earned income, as an estimate of 75%, the unweighted average for the countries with available data was used for the ratio of the female nonagricultural wage to the male nonagricultural wage.

While women in Bangladesh have much lower skill levels than men, their contribution to the economy is largely unrecognised. Women are still primarily involved in the non monetised sector and subsistence activities, and hence tend not to be reported in macro statistics. Women make up a disproportionately high percentage of unpaid family workers. The demand for female labour is high especially in ready made garment and weaving apparel industries, where roughly a 2:1 ratio between women and men, women receive 22-30% less than her male colleague.¹¹² This is because men predominate in more skilled and management level occupations.¹¹³ Women also receive a smaller share of what society produces: they are less endowed than men with health care, education, and productive assets that could increase their return to labor. Women's nutritional levels are lower than men's; more women than men die before the age of 35. Three fourths of Indian women are illiterate. Some 90% of rural and 70% of urban women workers are unskilled. While women are vital and productive workers in India's economy and make up one third of the labor force, there is a statistical purdah imposed by existing methods of measuring labor that renders much of their work invisible. When work such as collecting fuel and fodder or working in dairy, poultry, or kitchen-gardening is added to the numbers of those who work in the conventional labor force, women's participation rate in the economy totals 51%, only 13 percentage points below the rate for men.

In India Macro economic reforms has replaced Labor-intensive cropping patterns into capital-intensive systems, particularly in the coastal districts; there is a shift from paddy production to cash crops. As a result, many women have been forced to work as day laborers on farms where wage differentials between male and female workers are high; and increasing need and demand for occupational skills, leading to an institutionalization of gender bias in agricultural and natural resource industries.

¹¹² Mukherjee, Dr. K.K.(1997), Paper presented to Joint Women's Programme(JWP) seminar, New Delhi

¹¹³ Asian Development Bank (2001), *Women in Bangladesh*, p.12

The impact of structural-economic change in the agricultural sector in India seems to have increased the proportion of casual workers, thereby demanding flexibility and mobility from the labor force. For women, the casualisation of female labor increases vulnerability to trafficking.

An examination of the highest source for trafficking of women and children in Southern India reveals that trafficking is more common in areas that are prone to drought or other natural disasters, situated in less productive agro-climatic zones and where large numbers of families live below the poverty line. Those who make low wages, if any, are functionally landless; one third of women and girls in CSW in metropolitan cities were from drought prone-areas, clearly supporting the link between poverty, powerlessness, and vulnerability to trafficking.¹¹⁴

Other factors contributing to trafficking are traditional practices in villages. Social discrimination against women is also responsible for women leaving home. Lack of access to inheritance, land and employment and the practice of polygamy made women easy prey for traffickers who exploit their desire to migrate. Child marriage and unilateral divorce also make women extremely vulnerable to the whims of male partners. This discrimination was often given as the reason why women did not wish to return to their homes once they had been rescued. They were afraid of the stigma, but they also did not want to return to the same lives that they had sought to escape.

The overpopulation of Bangladesh is also a dilemma.¹¹⁵ With a population density of 959-people/sq. km., there is a scarcity of resources such as food, jobs, etc. and thus the urge for survival is apparent.¹¹⁶ With the combination of poverty and overpopulation, many women become vulnerable to “better life” offers.¹¹⁷ For example, if a woman from a poor village moves to Dhaka, they usually have no form

¹¹⁴ Network Against Trafficking and Sexual Exploitation (NATSAP) (2001), *Concept Note: on Trafficking, India*

¹¹⁵ Ahsan, Rosie Majid, and Hafiza Khatun (2004), *Disaster and the Silent Gender: Contemporary Studies in Geography*, Dhaka: The Bangladesh Geographical Society.

¹¹⁶ “Bangladesh Data Profile.” The World Bank Group. Aug. 2004. The World Bank Group. 05 Feb. 2005

<<http://devdata.worldbank.org/external/CPProfile.asp?SelectedCountry=BGD&CCODE=BGD&CNAME=Bangladesh&PTYPE=CP>>

¹¹⁷ Gazi, Ruksana et al. (2004), *Trafficking of Women and Children in Bangladesh: An Overview*, N.D. ICDDR, B Documents. 20 Sep. 2004. ICDDR, B. <<http://www.icddr.org/pub/publication.jsp?classificationID=47&pubID=3254>>

of shelter, due to high population density, or food. Thus, they take the first offer of a moneymaking opportunity. A lack of education contributes to the problem. A 2000 UNICEF estimate shows that only 30% of women in Bangladesh are educated, which is a factor as 95% of women trafficked are illiterate.¹¹⁸ Given this lack of education, it is especially hard for women to receive a high paying job. Besides that, uneducated women may not be aware that trafficking exists and are easily misled by traffickers who pose as helpful people.¹¹⁹ Women's low status in Bangladesh, which is caused by the patriarchal society, is another factor of trafficking.¹²⁰ The power of patriarchy is explicit as it defines the role of men and women: men are the breadwinners, while women are to have children and maintain the household.¹²¹ Consequently, women are married at early ages through arranged marriages, trained to be house wives, and therefore become dependent on men.¹²² However, what happens if a woman cannot rely on men because they have abused or abandoned her? What is a woman, in a male-dominated society, to do then? She is alone and in desperate need for a job to care for her children: a perfect target for traffickers. Though women are discouraged from working in this culture, they will take any offer that will give them a stable income.¹²³

Another reason why the culture is a major cause of trafficking is the ideal that men own and protect a woman's sexuality. The slightest "sexual deviation" or "social dislocation", such as prostitution, is regarded as a disgrace in society as these women are considered "spoiled".¹²⁴

¹¹⁸ Habib, Haroon (2005), "Trafficking of Bangladeshi Women- Cause for Concern." 26 Nov. 2004. *The Independent*. 05 Feb. 2005 <<http://www.independentbangladesh.com/news/nov/26/26112004wo.htm>>

¹¹⁹ Wong, Robert (2004), U.S. Department of State Chief Political O. 26 Dec. 2004.

¹²⁰ Paul, Bimal Kanti and Hasnath (2000), "Geographical field note: Trafficking in Bangladeshi women and girls", *Geographical Review*, 90 (2), April 2000: 268.

¹²¹ Gazi, Ruksana et al. (2004), *Trafficking of women and children in Bangladesh: an overview*, N.D. ICDDR, B Documents. 20 Sep. 2004. ICCDR.B. <<http://www.icddrb.org/pub/publication.jsp?classificationID=47&pubID=3254>>

¹²² Gazi et al.

¹²³ Ibid

¹²⁴ However, if a woman is trafficked for sexual purposes and somehow escapes or is rescued, the family may not welcome her as she is a disgrace upon them. The woman is left vulnerable, and once again susceptible to the vicious cycle of trafficking and prostitution.

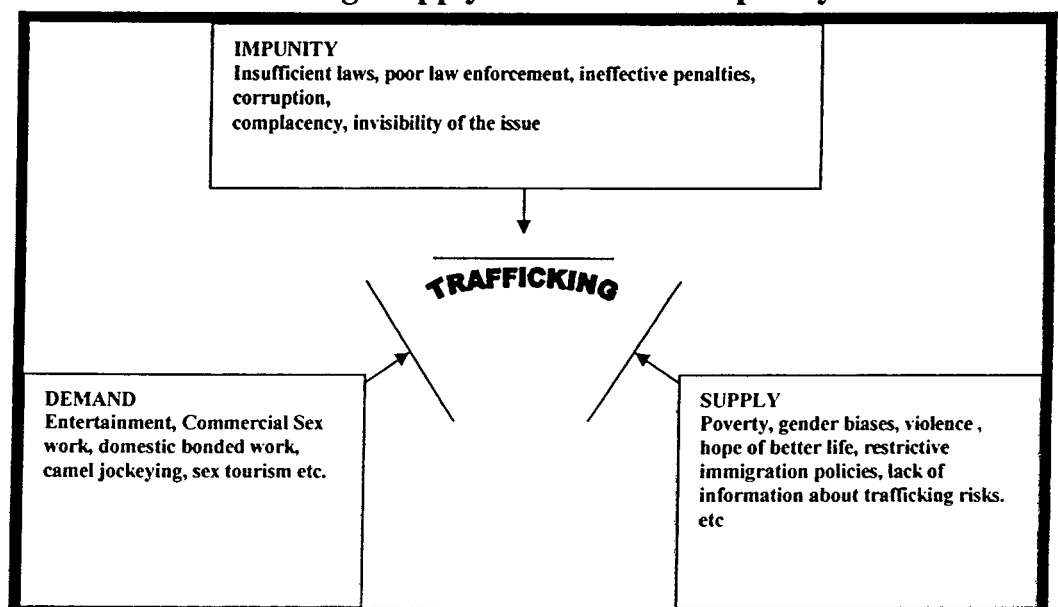
2.11 What fuels Trafficking?

Trafficking is heavily fueled by the complex set of world-wide processes we collectively label globalisation. Globalisation impacts trafficking with both “push” and “pull” factors. Many trafficked persons begin their ordeals with the expectation that they will get respectable employment, only to discover the deception after it is too late. The spread of “global culture” serves as a pull factor, raising expectations of a better life elsewhere. Traffickers in their work are facilitated by the mobility of capital, the openness of political borders, and the deregulation of trade along with transient nature of many exchanges and the lack of adequate enforcement personnel and policies. Like the global drug trade, trafficking is a mammoth economic enterprise, providing traffickers with financial resources and technological capabilities to enhance and shield their activities from public scrutiny or interference.

Insufficient laws and the secretiveness in the trafficking business, ineffective penalties, corruption, complacency and invisibility of the problem allow traffickers to practice their trade with impunity. Supply, demand and impunity together (figure given below) create a space in which trafficking can flourish. The resulting environment allows high profits at low risks for the traffickers.

CHART 2.3

Trafficking: Supply Demand and Impunity



2.12 Trafficking Routes

Bangladesh has a 4,156 -km long border with India and a 288-km common border with Myanmar. 30 of the 32 districts of Bangladesh have common borders with India, and two have borders with Myanmar. Monitoring and policing any unlawful activities be it trafficking of humans or smuggling, is a gigantic task, and the traffickers take advantage of this situation. The most preferred route, used by them, is the land route followed by air and waterways.¹²⁵ There are as many as 18 transit points along the India-Bangladesh border through which children and women are smuggled out of the country. The border areas of Khulna, Jessore, Satkhira, Rajshahi, Dinajpur, Rangpur, Mymensingh, Comilla, Brahmanbaria, and Sylhet are frequently used as land routes for trafficking. In the northern region, the districts of Kurigram, Lalmonirhat, Nilphamari, Panchagarh, Thakurgaon, Dinajpur, Naogaon, Chapai Nawabganj, and Rajshahi, and in the south, Jessore and Satkhira are the areas where women and children are most susceptible to trafficking. Cox' Bazaar is also a common site for recruiting children and women to be trafficked, because there are three Muslim Rohingya refugee camps in this district from where the traffickers collect victims. Although reports and studies identified these border routes, the traffickers use different routes at different times to avoid the police and other law enforcing agencies.¹²⁶ Therefore, for entering India through Kolkata, the two most common routes are the Benapole border and Jessore from where almost 50% of the trafficking takes place and Satkhira.¹²⁷ In Rajshahi, the Ganges-Padma river is easily crossed during the winter when water levels are low. In Nawabganj and Rajshahi, the most frequently-used points for crossing the border illegally are Nawabganj, Shibgonj, Bholahat, Godagari, and Rajshahi. In the north, Dinajpur is considered the district through which most women and children are trafficked. This region is connected to what is now West Bengal by both road and rail link. Rail links connect a number of other districts throughout the northwestern Bangladesh (Kurigram, Lalmonirhat, Rangpur, Nilphamari, Thakurgaon, and Panchagarh). The Parbatipur Railway Station

¹²⁵ Routes are usually divided into origin, transit and destination points and as dispersal points.

¹²⁶ Trafficking patterns and routes are often highly complex, ranging from trafficking within one country and cross border flows between neighbouring countries to inter-continental and globalised trade. The movement of trafficked people is generally from less developed areas to more developed regions, from countries in economic, social, and political crisis to more socially and politically stable countries, or from rural to urban areas.

¹²⁷ Policy Research for Development Alternative. Fact-Finding missions on trafficking in women and children from Bangladesh to India and Pakistan. Dhaka: Narigrantha Prabantana, 1999.30 p.

in Dinajpur brings people from all over the north. Other points through which people regularly cross the border illegally from Dinajpur and Naogaon include Hili, Nitpur, Aihi, Ciroti, Hutshaul, Nirmail, and Agradigon. The most commonly-used border points for crossing in the north are Hili, Singimari, Mogolhat, Burimari, Durgapur, Villabari, Ramkhana, Vurungamari and Batrigach.¹²⁸

Bangladesh and India have 20 official checkpoints. In Bangladesh, the collection points for trafficked women are usually far from border points and to facilitate these illegal cross border movements a well organized bribe system is existing.¹²⁹ Crossing the border takes not more than Rs.50 per person.¹³⁰ Girls from the southern part of Bangladesh are usually trafficked across northern borders.¹³¹ Points like Thakurbairi Chandurila, Kaiba Sultanpur, Chodarpur, Chapainaababgunj, Hili Akhwara, Chuadanga, and Poladanga are other commonly used entry points to India. West Bengal has nine districts adjoining the border that are mostly different from one another socio-economically and culturally. Some are more prosperous and developed agriculturally, e.g., Nadia, where farmers primarily grow jute and betel leaves, is a prosperous area. The Sundarbans area of south/north 24 Parganas is very weak agriculturally, and thus trafficking is a much more common economic activity for communities.

Crossing between Bangladesh and West Bengal becomes a daily routine for many people as they may live in either of the countries and earn their living in the other. Thus, keeping a check of those being trafficked married off, infiltrating and immigrating illegally or irregularly is an uphill task and has to be achieved through innovative methods and day-to-day vigilance. "In Kushtia area, some villages are used as stations for the traffickers. Rajshahi border, Bidirpur, and Premtali are used because there are fewer checkpoints. Jessore border is very popular with traffickers. Some hotels and godowns are used to keep the girls brought from different parts of the country. At least 13 women are being trafficked every day. In eight months police

¹²⁸ Shamim, I, editor (1997), *Proceedings of the Fact-finding Meeting and the National Workshop on Trafficking in Women and Children*, Dhaka: Centre for Women and Children Studies, 1997: 52

¹²⁹ Bangladesh National Women Lawyers Association, 1998. *Survey in the Area of Child and Women Trafficking*. Dhaka

¹³⁰ Ibid, p.22

¹³¹ UBINIG (1995), *Trafficking in Women and Children: The Case of Bangladesh*, Dhaka, p.19.

could rescue only 28 women who were being trafficked, and arrested 38 traffickers.¹³² Usually the traffickers do not accompany the women while crossing the border. Therefore, it is difficult for the border police to arrest them. There are female members in the trafficking gang, who help to hide their identity.”¹³³ Having crossed the border, the trafficked victims are mainly kept in West Bengal, and in some cases also in the state of Orissa. They are sorted and graded and sent to different destinations such as Middle East, Delhi, Mumbai, and Agra. Often, they are sold to pimps who then sell them to brothel keepers in red-light areas of Kolkata such as Sonagachi, Kalighat, and Bowbazar. Some are sent to Bashirghat in the neighboring district of 24 Paraganas.¹³⁴

There is smuggling and trafficking of goods along with the trafficked persons across India –Bangladesh border involving many people from all ranks of society and is a key source of income for many. Further, a multiple passport system facilitates easy entry of Bangladeshi girls into Kolkata brothels and close nexus exists between traffickers and border village communities.¹³⁵

In 1997, UBINIG undertook three fact-finding missions in border-belt areas and in the destination points of Calcutta, Agra and New Delhi, India. Association for Community Development (ACD), based in Rajshahi, similarly undertook a study of two unions in order belt area in 1999.¹³⁶ Both studies confirmed that the smuggling and trafficking keep on going in the India –Bangladesh Border. The following story provides a good illustration:

¹³² Ibid, p.20

¹³³ UBINIG (1995), *Trafficking in Women and Children: The Case of Bangladesh*, Dhaka, pp.19-20.

¹³⁴ Prerna (January 2, 2002), Note on Indo-Nepal and Indo-Bangladesh Trafficking: The Maharashtra State Perspective, Mumbai *Prothom Alo*.

¹³⁵ Department of Women and Child Development and UNICEF (1996), *A Report on the six regional workshops on the Sexual Exploitation and Trafficking of Children*. New Delhi: Department of Women and Child Development, Ministry of Human Resource Development, Government of India.

¹³⁶ Association for Community Development (ACD), *Socio-cultural study of Border Belt Area (Rajshahi:*

ACD, 1999). The study was of two unions, Binodpur and Monakosha and the methodology included focus

group discussions with 57 respondents, in-depth interviews with 15 respondents, and observation.

2.13 As Night Falls, Guests Start Arriving: Border Villagers Host Traffickers¹³⁷

Almost every house along the Benapole border has provisions for accommodating a number of paying guests. It may be a hut or an attractive brick structure, while inside; the owners proudly display rest areas including temporary beds, cooking utensils, glasses, bowls –an indication of how many guests they can put up at a time and on short notice. The house owners may be elderly men or women. They cater to hundreds of people traveling to India without passport. In the darkness, the clients are simply led through the border and into India, a few yards away while in the distance Bangladesh border forces personnel guard the border area in their makeshift outposts. Locally the travelers are known as *dhurs*. During the day, these 'houses' near the border are empty and look abandoned. But as night falls these rural houses bubble with life. Women light up their cookers to prepare meals for the 'guests' who suddenly arrive and keep on arriving throughout the night. They mingle with the occupants, have food and then wait for the agents to turn up. A *ghat* is a designated point from where the crossing into India takes place. It is owned by a member of the syndicate that is in charge of the operation in this village. From the Benapole customs and immigration checkpoint up to the Isamati river, about two kilometers to the west, *dhurs* make a substantial contribution to the economy of this area known as Geatipara. Each *dhur* passing through a *ghat* ends up paying up to Tk.500 for the service. In villages around Jessore, illegal travel agents operate openly. Once the deal is made through some contacts, the procedure is simple and easy. The agents guide the clients to a house near one of the numerous *ghats* of the area. Then two to three agents turn up at a convenient time, collect the fees and then lead them across the border. "These days less people are using this particular border because the Bangladesh border forces have set up a special team to crack down on the trade", said Masud Ahmed, a local businessman, adding, "Only a few days back you would find it difficult to walk on the roads due to the rush." "There are two types of *dhurs*," said a senior police in Jessore. "Those who are poor and cannot afford to obtain a passport and others who are victims of the women and child trafficking syndicate." He said that traditionally poor

¹³⁷ *The Daily Star* [Dhaka], 21 December 1997 in Shamim, Ishrat, *Mapping of Missing, Kidnapped and Trafficked Children and Women: Bangladesh Perspective* (Dhaka: International Organisation for Migration) p.38.

peasants and religious groups have been traveling to and from India without papers and the matter used to be ignored, "After visiting their relatives and shrines as far as Ajmir, these people would return home to Bangladesh. But during the *Puja* festival, as usual, thousands were crossing without papers and at one point we realized that the gangs of child and women traffickers were using this golden opportunity," he added. The Superintendent of Police, Jessore, expressed his concern over child and women trafficking. He said, "For the villagers along the border, the trade is so lucrative that unless their economic conditions improve, it is very difficult to stop the trafficking business. We are nonetheless holding regular meetings with the villagers along the border to create public opinion against trafficking in women and children..."

Villages of Jessore and Satkhira situated close to the Indian border have a long tradition of cross border travel for different purposes including seasonal work, shopping, marriage, medical care, running away from criminal cases, etc. There is a strong pull towards India and many villagers said they were better acquainted with Kolkata and Mumbai than they were with Dhaka City. The cultural proximity, the ease of travel and the possibility to blend in are unparalleled in the Middle East. Bangladeshi migrants may become "Indians" in a relatively short period of time.

Internal and Cross Border Routes in Bangladesh¹³⁸

- Sadarghat of Dhaka and Narayanganj to Barisal, Patuakhali by launch, then to Satkhira or Jessore border through land routes.
- Gabtoli bus terminal of Dhaka by road, from there by bus to Satkhira, Jessore, Kaliganj of Jhenaidah, Darshana, Meherpur, Pragpur of Kushtia, Rajshahi, or Dinajpur.
- From Saidabad to Khulna through Maa road and Moilapota Bus terminal, to Satkhira or Jessore.
- Launch from Mongla to Khulna, Vandaria to Khulna, Takerhat to Khulna, Khepupara to Khulna, then by bus to Satkhira or Jessore.
- From Chittagong and Chandpur by train to Akhaura border areas.

¹³⁸ Ali S., *Survey in the area of child and Women trafficking*. Dhaka: BNWLA, 1997(2).

- From Gabtoli Bus Terminal of Dhaka to Doulatdia Rail Station by bus via Aricha Ghat, from there by train to Poradah, then to Darshana border.
- From Poradah to Rajshahi by train and then by bus to Charghat, Bagha, Godagari or the border of Chapai Nawabganj district.
- From Poradah and Shantahar railway junction to Kurigram and Lalmonirhat.
- From Poradah to the border areas of Joypurhat, Dinajpur, Thakurgaon, and Nilphamari.
- From Sylhet to Dawkibazar via Tamabil, then across the border to Shilong.
- From Sylhet to Jokiganj, then to Manikpur, Chabria, or Loharmol, across the border and through India via Karimganj, Shilchar, or Goahati
- From Moulvibazar to the border at Dharmanagar, through Kulaura and Fultala, then to India.
- From Moulvibazar to the border at Kailashahar via Kulaura and Chatla.
- Thakurgaon, Kurigram, Lalmonirhat, Rangpur, Nilfamari, Panchaghar via rail to Parbatipur Rail Station in Dinajpur, to Hili and across the border to either Raiganj or Balurghat in India on the highway leading south to Kolkata

CHART 2.4

Traffic-Prone Districts and Upazilas of Bangladesh

Northern region	Northwest	South	Southeast	East
Dinajpur Lalmonirhat Nilphamari Panchgarh Rajshahi Nawabganj Joypurhat	Chuadanga Jhenaidah Kushtia Meherpur	Jessore Satkhira	Cox's Bazar Chattagong	Brahmanbaria Comilla
Twelve upazilas of this region are linked to West Bengal and Assam	Five upazilas of this region are linked with West Bengal	Six upazilas of this region are linked with West Bengal	Four upazilas of this region are linked with Myanmar	Two upazilas are linked with Tripura

Source: Shamim and Kabir, *Child Trafficking: the Underlying Dynamics*, 1998(1)

MAP-2.2

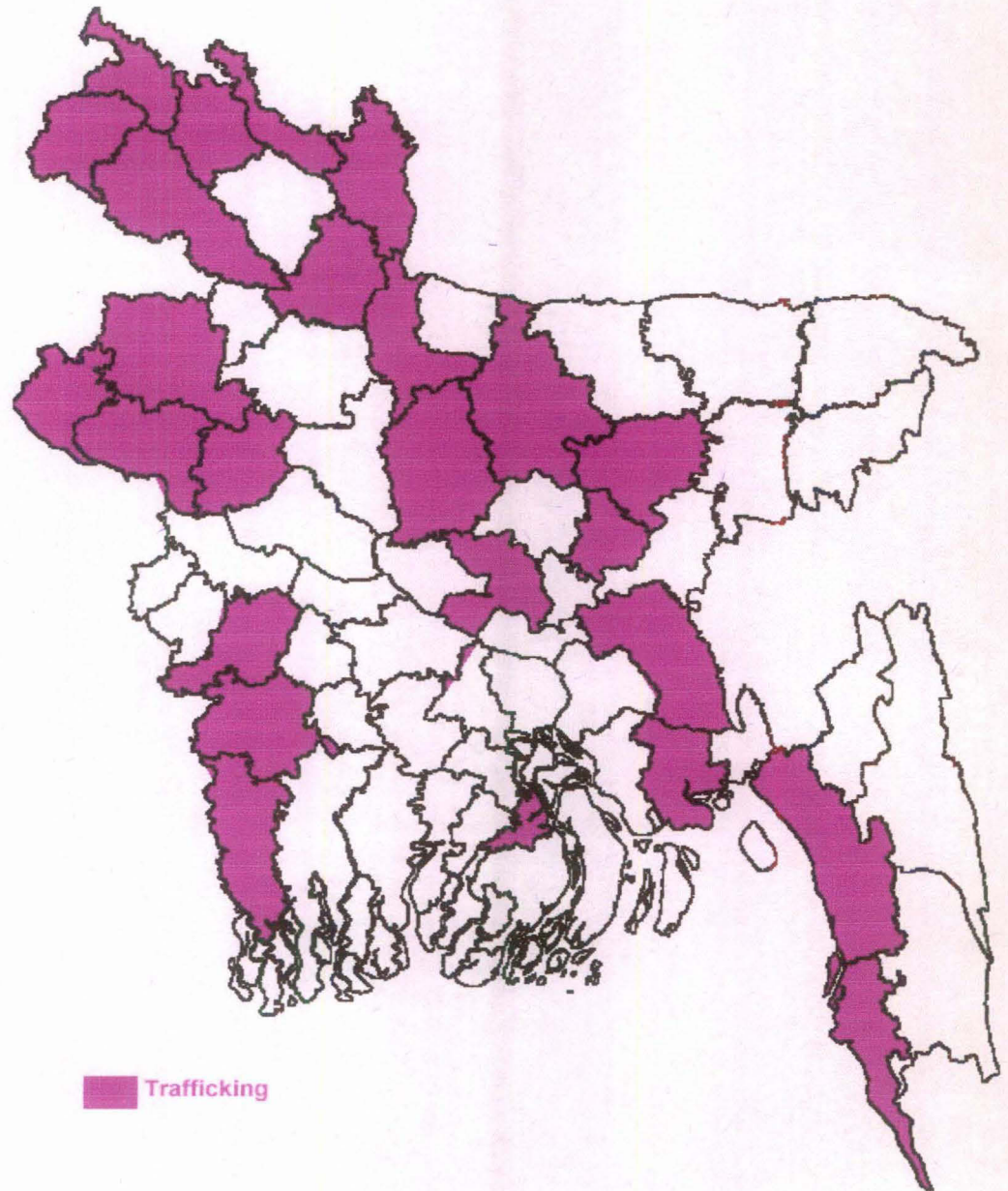
Origin Points of Victims of Trafficking in Bangladesh



Source: "Maps-Origin of People Trafficked and Trafficking Routes". May 2000. USAID Bangladesh: Anti-Trafficking Response. USAID. 12 Jan. 2005
<http://www.usaid.gov/bd/files/maps.pdf>

MAP-2.3

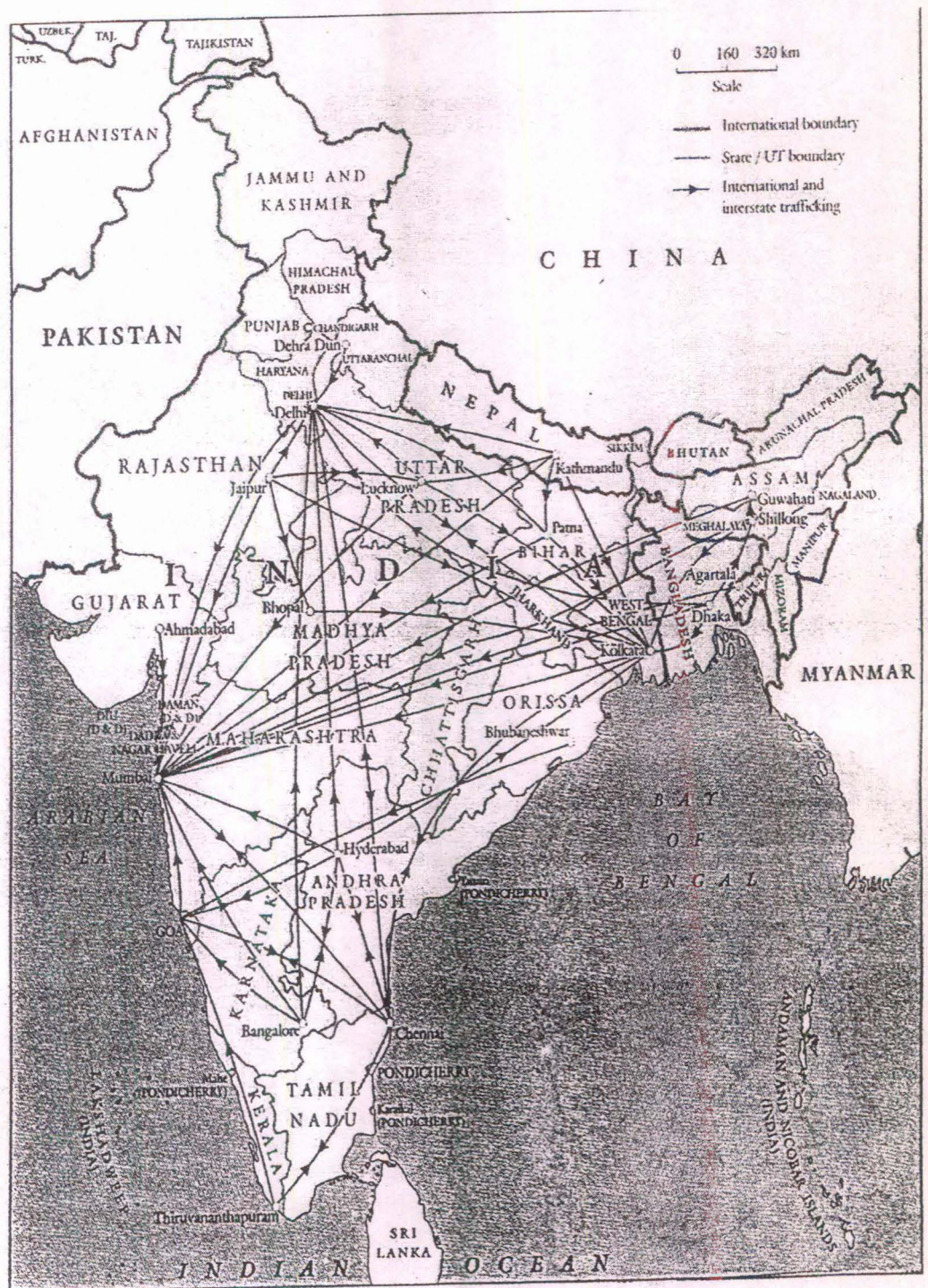
The Trafficking Affected Areas in Bangladesh



Source: ICDDR, B Special Publication No.111, 2001, ICDDR, B: Centre for Health and Population Research Mohakhali, Dhaka 1212, Bangladesh

MAP-2.4

Trafficking Routes in India



Source: Sen, Shankar and P.M. Nayar (2005), *Trafficking in Women and Children in India*, Orient Longman, New Delhi.

Once trafficked women enter India, they are generally kept in West Bengal and Orissa. The trafficked persons are sorted out like goods and after being graded and rates tags associated to each one, they may be sold to pimps or further transferred to other procurers.¹⁴³

Trafficking from neighbouring countries accounts for only 10 percent of the coerced migration in India, with approximately 2.17 percent from Bangladesh and 2.6 percent from Nepal.¹⁴⁴ The interstate trafficking in India constitutes 89 percent of the overall trafficking.¹⁴⁵ There are geographical belts of exploitation, like for instance, the pink triangle between Agra, Jaipur and Delhi. Andhra Pradesh,, Bihar ,Karnataka,, Madhya Pradesh, Rajsthan, West Bengal ,Uttar Pradesh and Maharashtra appears to be the main states from where trafficked persons are sourced, with the metro cities the most frequent destination points.¹⁴⁶

2.14 Impacts of Trafficking

Trafficking affects the mental and physical health of the trafficked persons as well as their social situation and future life. It also has legal implications and a damaging effect on society and development. As reported by Special Rappateur Radhika Coomaraswamy the conditions of prostitution in some of the brothels in Bombay and Calcutta appeared to resemble slavery-like practices. Victims are usually vulnerable, often young and single (or single mothers), from poorer educational and socioeconomic backgrounds, although some cases involving highly educated older women have been described. Most of the young girls the Special Rappateur spoke to were being held against their will, were tortured, degraded, beaten severely, and were repeatedly assaulted on the lower half of their bodies. They were deprived of food and water until they submitted. Trafficking, indeed, includes grave consequences like torture, rape, gang rape, sold, re-sold from one agent to the other where they are sexually exploited. When a trafficked female comes back reintegration within the community, even the family members become difficult as they do not accept her.

¹⁴³ Department of Women and Child Development and UNICEF (1996), op. cit

¹⁴⁴ Sanlaap (1995), *Women from Bangladesh and Nepal in India: A survey Report*, Kolkata: Sanlaap

¹⁴⁵ Asian Development Bank (2002), *Combating Trafficking of Women and Children in South Asia: India Report*, New Delhi.

¹⁴⁶ Rozario S.R. et al (1998), *Trafficking in Women and Children in India*, New Delhi: Uppal Publishing House, p. 46

Cost of Disability Caused by the Mental Health Impact

A study by an NGO in Dhaka found that more than 20 percent of street children prostitutes die before reaching adulthood; almost 22 percent become physically invalid and are fit only for begging.¹⁴⁷ As far as health effects are concerned there is no authentic study on the *mental effects* caused by trafficking and even if they are there, they have not yet been properly documented and assessed. According to a study¹⁴⁸ cost of disability caused by mental health impact roughly estimated as follows:

TABLE-2.9
Cost of Disability Caused by Mental Health Impact

Assumptions: This calculation is based on the trafficked women in the year 2001 to 2003 in the brothels of GB road as documented by this research ¹⁴⁹	Disability affected life years@40 years per person	Loss of productivity of individual due to disability @Rs.600per month(arbitrary figure of per capita income)	Cost of Care and Rehabilitation @600per person per month	Total
If the average age of the trafficked young person were to be 20years and average life expectancy in India be 60 years	1,10,000 years	Rs 79,20,00,000 (Rupees seventy nine crore and twenty lakh)	Rs 79,20,00,000 (Rupees seventy nine crore and twenty lakh)	Rs 158,40,00,000 (Rupees one hundred and fifty eight crore and fort lakh)
If there were 5 major centres like GB Road in India	5,50,000 Years	Rs 396,00,00,000 (Rupees three hundered and ninty six crore)	Rs 396,00,00,000 (Rupees three hundered and ninty six crore)	Rs 792,00,00,000 (Rupees seven hundred and ninety two crore)

Source: Asia Foundation/Population Council Horizons. 2001. Policy Analysis, Documentation of current intervention models. Community-based study of trafficking, Prevention of Trafficking and the Care and Support of Trafficked Persons. Kathmandu.

¹⁴⁷ SOS (2001), *South Asian Conference to combat the Trafficking and Sexual Exploitation of Children*. 14 to 17 October in Goa. Organised by Save Our Sisters Programme. Mumbai: Women's Institute for Social Education (WISE)

¹⁴⁸ Sen, Shankar and P.M. Nayar (2005), *Trafficking in Women and Children in India*, Orient Longman, New Delhi. P.181

¹⁴⁹ *ibid*

These costs are notional to be used as a tool to highlight the loss to a society caused by not addressing the mental health impacts of trafficking. The costs would rise further if the actual expenditure of all the contributory factors for trafficking, expenditure for the judicial and investigative process is added. The costs would become realistic if costs from smaller towns and cities and not just five major centers are included. The cost would increase if all other outcomes of trafficking are included, not just CSE.

Understanding the Psychological Impacts of Trafficking on the Person Survived from Trafficking

Trafficking is a process that demolishes a person and is not just a geographical relocation for exploitation and involves situations of extreme psychological stress, which may lead to trauma, depression and in some cases to suicide.¹⁵⁰ A trafficked woman or child may be exposed to isolation, hiding, fear, sexual abuse, rape and other forms of violence. Perpetrators often use psychological means in order to break down their victims. The power over the victims is even stronger when the criminal organizations control the whole chain from recruitment, through transportation to ultimate exploitation. In the case of sexual exploitation of children the effects may be lifelong and seriously hamper the child's physical, psychological and social development.¹⁵¹ It is not possible to attempt a complete understanding of the mind of survivor. One can however begin with understanding survivors' traumatic experiences, needs, thoughts and feelings in trafficking context. Some of the thoughts and feelings a survivor may have are described as *malevolence*,¹⁵² *helplessness and withdrawal*,¹⁵³ *dissociation*,¹⁵⁴ *distraction*,¹⁵⁵ *foreshortened view of time*,¹⁵⁶ *self blame*,

¹⁵⁰ Foundation of Women's Forum (1999)

¹⁵¹ Declaration and Plan of Action from the World Congress against the Commercial Sexual Exploitation of Children, June 1996.

¹⁵² The experience of trafficking and repetitive abuse leads to two key belief systems that determine the survivor's behaviour. These are, "*You cannot trust anyone*" and "*If you trust, you will always be hurt.*" The person may stop believing anyone and has difficulty in forming relationships. At the same time and somewhat paradoxically, the survivors unwittingly find themselves in relationships where they trust and idealise the person impulsively. This is perhaps to test whether the people they trust will hurt them or not. Soon, they recognise that the person is not what they thought him/her to be and feel rejected and hurt. These two beliefs give rise to the commonest problems in working with the survivors of trafficking: *the difficulty in forming a relationship and the phenomenon of over-idealisation of the help-provider.*

¹⁵³ The feeling that they cannot change their circumstances regardless of anything they may do. They give up trying and see themselves as helpless. They withdraw and isolate themselves and seem to be disconnected from the world. Nothing impacts them; they are neither happy nor sad. They develop a

and depression etc. It is extremely difficult for the survivor to feel empowered given the fact that he/she has been rejected and controlled for most of his life. Since such psychological trauma usually remains unaddressed and unresolved and the abused turn into abusers with a high probability of them becoming criminal. Trafficking victims are compelled to lead illegal lives. Illegality taints every dimension of their lives, making them criminals. The criminalization severely stigmatises them and intensifies their victimization and leaves them with no recourse for redress.¹⁵⁷

2.15 Children of the Trafficked Women in Brothels

Trafficking not only destroy the life of the victim but also their next generation. Children who grow up in the brothel environment are also at risk of sexual abuse from clients, police and other people in the network.¹⁵⁸ Like their mothers, both girls and boys face significant discrimination from the wider community and are rarely permitted to integrate with other children. Many girls are initiated into 'prostitution' at an early age. Boys are also at risk of sexual abuse, although less is known about their situation. Thirteen percent of the prostitutes interviewed in a Department of Social Services (DSS) study were born or brought up in the brothel.¹⁵⁹ A recent study undertaken by Save the Children Australia, with support from Save the Children Sweden presents a compelling picture of the situation of children growing up

'blunted' response to all the changes around them. Even when the context changes, i.e., they are 'rescued' and placed in a rehabilitation facility, the helplessness and withdrawal persist.

¹⁵⁴ The link between negative feelings, and the events and thoughts which trigger them, is not acknowledged. It is as if recognising the cause of these feelings will be more terrifying than the feelings themselves. This is a method of surviving, despite every situation and everything around them reminding them of the trauma they had experienced. As the survivors cannot do anything about their experiences, their minds delink the feeling from the happening. This is called *dissociation*.

¹⁵⁵ Getting involved in what is happening around them to distract themselves from the memory of traumatic experiences. Films, dressing up, fights, gossip and fantasies all form good distractions that survivors may resort to. Seeking sensation and taking risks becomes a part of the new identity. This includes experimenting with drugs, alcohol and seeking short-term relationships.

¹⁵⁶ The survivor may feel that her life is without a future. The long-term does not exist for the survivor. The future is this moment. Thus, from the trafficked person's perspective, there may be no risks or consequences, or any possibilities of change.

¹⁵⁷ Sanghera, Jyoti (2000), *Trafficking of Women and Children in South Asia: Taking Stock and Moving Ahead: A review of Anti-Trafficking Initiatives in Nepal, Bangladesh and India*. New Delhi: UNICEF Regional Office and save the Children Alliance. pp 8-9

¹⁵⁸ Ministry of Women and Children Affairs, Government of the People's Republic of Bangladesh, *National Plan of Action for Children 1997-2001* (Dhaka: Government of the People's Republic of Bangladesh, 1999). Available at <http://www.frontlinedefenders.org>, Accessed on February 5, 2006

¹⁵⁹ Department of Social Services, Ministry of Social Welfare, Government of Bangladesh, *A Survey Report on the Socially Disadvantaged Women (SDW) and their Children living in the Brothel Communities of Narayanganj, Mymensingh, Jessore and Daulotdia Ghat of Rajbari District Executive Summary* (Dhaka: Ministry of Social Welfare, January 2000).

in Daulotdia and Kandapara brothels. As is custom, until recently almost all daughters of women engaged in prostitution would follow in their mother's footsteps.¹⁶⁰ Choice of profession is rarely a possibility because prostitutes and their children are not accepted by the rest of society and are rarely permitted to integrate with those who live outside the brothel. The children experience low self-esteem and are deeply affected by the negative way in which society views them and their mothers. Thoughts of suicide are common. Seventy-eight percent of the children said they did not like their mother's profession because they do not get any respect.¹⁶¹ Three of the children interviewed reported that the school authority refused to admit them to school, presumably because they are children of sex workers.¹⁶²

Eight or nine was the age of first sexual experience reported by most girls brought up in the brothel and their first encounters were with older boys. In some cases, however, the girls are abused by their mother's clients, including being made to dance for them. While the Save the Children study indicates that some of the sexual activity is not consensual, Therese Blanchet has found from her study that it is not in the interest of prostitutes that their clients are having sex with girls who have not been registered.¹⁶³ She believes that if they are true, such coercive activities must be taking place outside the brothel.¹⁶⁴

2.16 Trafficking and HIV/AIDS

The most obvious *physical consequence* is the high risk of contracting sexually transmitted diseases (STD), especially HIV/AIDS. Fear of AIDS among customers has driven the sex industry in Asia to supply very young girls from remote villages who are believed to be untouched and not infected by HIV. These young girls may be at particular risk. Not only are they often too intimidated to negotiate the terms of sex, but preliminary medical research suggests that the younger the girl, the

¹⁶⁰ Uddin, Md. Farid; Sultana, Monira; Mahmud, Sultan; [Maggie Black, Harriet Goodman and Rachel Kabir (eds.)], *Growing up in the Daulotdia and Kandapara brothel communities of Bangladesh* (Save the Children Sweden, draft of January 2001). According to the findings, most girls accept that they will follow in their mothers' footsteps and become a sex worker, however, there are some cases where girls have resisted with the support of NGOs. See 'Good Practices' section for more information on the case of Anesa and her role in Daulotdia brothel.

¹⁶¹ Department of Social Services (2000), p.9.

¹⁶² Ibid.

¹⁶³ Therese Blanchet, 24 September 2001, Dhaka.

¹⁶⁴ Ibid

more susceptible she may be to HIV infection.¹⁶⁵ The provision of health care for these women and children is often sporadic at best. Serious illnesses often go untreated. Unwanted pregnancies and high-risk abortions are also common and may have lethal consequences. According to the U.S. Trafficking in Persons report released in 2004, women and girls who are trafficked – coerced, forced, or tricked into commercial sex are more likely to be infected with HIV/AIDS.¹⁶⁶ It is no wonder then that 43% of the 35 million infected persons living with HIV/AIDS are women and girls.¹⁶⁷ The threat of HIV/AIDS among prostituted women has not slowed down the sex trafficking and prostitution trades; rather it has increased the sex trafficking of younger girls.¹⁶⁸ That is, girls who will be perceived by clients to be “virgins” and therefore uninfected by the virus are becoming an increasingly popular commodity to trafficking syndicates. The sex trafficking is increasing the incidence of AIDS as we see occurring in India, and trafficked women and girls are more susceptible to contracting the virus because of their low status and a demand for unprotected sex as found in the reports.¹⁶⁹ In Bangladesh, it is an undisputed fact that sex trafficking and AIDS go hand in hand in poor countries.

According to the BBC News reports that sex trafficking of young girls in India has led to a rapid increase in HIV/AIDS within the country and AIDS education among the sex workers is also minimal.¹⁷⁰ India has the second highest incidence of AIDS in the world, second only to South Africa, with 5.1 million living with the

¹⁶⁵ Asia Watch and the Women's Rights Project (1993), *A Modern Form of Slavery. Trafficking of Burmese Women and Girls into Brothels in Thailand*.

¹⁶⁶ U.S. Department of State, “Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report 2004

¹⁶⁷ Ibid 76

¹⁶⁸ Kabir, Rachel, *The Situation of Adolescent Girls in Bangladesh (1999)* UNICEF: Dhaka.,p.17

¹⁶⁹ ACLAB and PIACT Bangladesh, *A Survey report on the socially disadvantaged women (SDW) and their children living in the brothel communities of Narayanganj, Mymensingh, Jessore and Daulotdia Ghat of Rajbari District* (Dhaka: ACLAB and PIACT Bangladesh, January 2000).

¹⁷⁰ Grant, Matthew. *BBC News. “Girl-trafficking hampers Aids fight”. November 30, 2004.* In big red light districts, such as Sonagachi in Calcutta, where at least 10,000 prostitutes make a living, some men continue to insist on sex without condoms. The trafficked girls are forced to oblige. Many come from rural villages and do not know what Aids is before they are sold to pimps. And as they are moved around the country they can unwittingly spread the disease. In eastern India, Calcutta has emerged as a hub for the trafficking of girls, who also arrive from Nepal, Bangladesh and Burma. From Calcutta they are often sold again to brothels in Mumbai.

disease.¹⁷¹ In Mumbai alone, it is estimated that as many as 70% of the sex workers there are infected with AIDS.¹⁷²

Many young girls who have been infected with the AIDS virus while working as prostitutes and have been rescued and subsequently returned home will, along with their families, face social stigma and exclusion from their communities. Because of this, many will return again to the brothels as the only way to earn money for their shunned families. The social impact of trafficking into the sex industry leads to stigmatisation of the victims and their families. This makes it hard for the victims to return to their families, who may not welcome them. It may also be hard to get acceptance and support from the community at large. It may be even harder if the victim is believed to suffer from HIV. There will be limited opportunities to marry and have a family, and it may be difficult to get a job. Thus, many victims who have returned to their homes will become easy targets for re-trafficking.

Rates of HIV infection among sex workers in urban areas range from 17% in Nepal (UNAIDS 2000) to as high as 72% in sex workers under 18 years of age in Mumbai, India.¹⁷³ A study of sex workers in the Terai in Nepal found that 4% of sex workers overall were HIV infected while 17% of those who had worked in India were HIV-positive. Fifty percent (8 out of 16) of those who had worked in Mumbai were found to be HIV positive.¹⁷⁴ Although there are no available data on the rate of HIV among trafficked women and children, it is reasonable to conclude that those trafficked for prostitution would assume the same prevalence of HIV as the sex workers in the area in which they are held. A study in Thailand¹⁷⁵ found the highest incidence for HIV seroconversion¹⁷⁶ to be in the first six months of sex work. The authors postulated that this was due to customers who perceived the young trafficked girl to be at low risk of infection and the relative lack of knowledge among new sex workers. In addition, trafficked girls and women are presumably less likely to be

¹⁷¹ World Health Organisation (WHO) 'WHO recognises child abuse as a major public health problem,' Press Release WHO/20 8 April 1999 (www.who.int/inf-pr-1999/en/pr99-20.html)

¹⁷² Ibid

¹⁷³ Salunke, S.R., M. Shaukat, S.K. Hira, and M.R. Jagtap, 1998. "HIV/AIDS in India: A Country Responds to a Challenge". AIDS 12 (suppl B): S27-S31.

¹⁷⁴ (FHI 2000a).

¹⁷⁵ Kilmarx P.H. et al. 1998. "Seroconversion in a prospective study of female sex workers in northern Thailand: continued high incidence among brothel-based women". AIDS 112:1889-1898

¹⁷⁶ Seroconversion is a stage during HIV infection.

beneficiaries of sex worker interventions and empowerment movements due to their forced working conditions, debt bondage, and language barriers.

Even those women and children who are trafficked for purposes other than prostitution are subject to sexual abuse and are therefore at increased risk of contracting HIV. Trafficked women and children are not able to control even the most basic aspects of their lives, least of all to negotiate safe sexual relations. As seen in other migrant groups, language barriers and displacement from family and community support systems increase vulnerability and subsequent risk of HIV infection.¹⁷⁷ In addition, those who are trafficked internationally are usually classified as illegal immigrants in their country of destination and further marginalized with less access to education, services, and protection. If they seek help, they may be subject to prosecution for the crime of illegal immigration, rather than assisted as victims of trafficking.¹⁷⁸ Although trafficked persons assume the risk of HIV associated with disenfranchised mobile populations and/or sex workers, emphasis on this risk in prevention and education programs may not be in their best interest. Messages that highlight the risk of HIV associated with migration and trafficking increase stigma, both for returned victims and other migrants. In the past, women who left sex work could reintegrate into their communities with relatively few problems, especially if they returned with some wealth. The current panic associated with the AIDS epidemic in Nepal and Bangladesh is such that women returning from India are stigmatized as carriers of HIV, regardless of whether they have been engaged in sex work. In many districts, the common perception according to an NGO¹⁷⁹ is that “a returnee from Mumbai is a carrier of AIDS.” HIV/AIDS and trafficking have similar determinants, present similar processes, and require similar rights-based responses as both affect mostly the vulnerable and disempowered populations, often associated with poverty and gender discrimination. Both are associated with migration and with sex work. Finally, both involve stigma and discrimination against affected and infected persons.

¹⁷⁷ Guest, P. April 2000. “Population Mobility in Asia and the Implications for HIV/AIDS”. In *Population Mobility in Asia: Implications for HIV/AIDS Action Programmes*. United Nations Development Programme, South East Asia HIV and Development Project

¹⁷⁸ Barry, Kathleen. 1995. *The Prostitution of Sexuality*, New York University Press, New York).

¹⁷⁹ MAITI in Nepal provided an example of this occurring in Nepal from their own early Programming to combat health concerns among migrant women.

2.17 A Case Study¹⁸⁰

Prajwala is an after care home in Hyderabad. As of December 2003, *Prajwala* is attending to the counseling and rehabilitation of more than 130 women and girls who have been rescued from brothels from different parts in India. Almost all of them are victims of trafficking, having being trafficked at some point of time. Most of them are unable to go home, and therefore, continue to remain under the shelter of *Prajwala*. They are not acceptable to their communities as they are HIV positive. One out of every three children in *Prajwala* in the age group of 3 to 18 years is HIV-positive, indicating that HIV prevalence among smaller children is higher. These children became HIV-positive after being trafficked and sexually assaulted by men based on the myth that sex with children will cure them of HIV/AIDS. In that way they transmit their diseases to these young victims of commercial sexual exploitation. Trafficking and HIV/AIDS, therefore, have a mutual relationship, each working on the other a cause as well as result.

Trafficking involves certain legal consequences also to the trafficked person depending on the legislation in the country of destination and the country of origin. In the vast majority of destination countries, trafficking is primarily seen in terms of illegal migration and prostitution. Since trafficked persons rarely have either travel documents or residence permits, the law enforcement authorities focus on the victims rather than the traffickers.¹⁸¹ Victims may be arrested and deported while the perpetrators go unpunished and continue to operate.¹⁸² Moreover, the fact that victims are residing illegally in the country leaves them unprotected by national laws and social safety nets. Most victims are either unable or afraid to ask for legal help because of past or present abusive situations, fear of retaliation, language barriers, or expectations of deportation and criminal charges. At present, the UN has made the provision of citizenship status to trafficked victims optional as it could encourage trafficking and illegal migration. Thus trafficked women and children find themselves in a state of lawlessness. This, in addition to the language barrier in many cases, result

¹⁸⁰ Case study by researchers of Indian Institute of Social Sciences, New Delhi with Inputs from *Prajwala*, Hyderabad.

¹⁸¹ A detail case study is given in the Third chapter of this dissertation originally developed by P.M. Nayar for Institute of Social Sciences New Delhi

¹⁸² Ibid

in a fear of the authorities that prevents the victims from getting the legal aid and other support they are in need of.¹⁸³

2.18 Societal Effects

The direct effects of trafficking in persons on society have not yet been sufficiently analysed. However, there seem to be negative repercussions. Trafficking manifests and perpetuates patriarchal attitudes and behaviour and undermines efforts to promote gender equality and eradicate the discrimination of women and children. Trafficking in persons is also closely intertwined with other criminal activities such as drug dealing, illegal gambling and money laundering. Such twilight or undercover activities, usually with links to organized crime, undermine the rule of law. Furthermore, the spread of HIV/AIDS and STD threatens public health in the countries of origin, transit and destination alike.

However the other opinion on societal effect of trafficking says trafficking experience although causing harm, also provide opportunities to remove themselves from otherwise oppressive circumstances. In Blenchet's recent study for USAID¹⁸⁴, women who have managed to turn these experiences into personal empowerment within their communities are termed as "self integrating".¹⁸⁵

¹⁸³ Wijers & Lap-Chew (1997)

¹⁸⁴ Blenchet, T., et al. (2002) *Beyond Boundaries, A Critical Look at Women Labour Migration from Bangladesh*. Dhaka: USAID

¹⁸⁵ The women themselves learned to survive without assistance from NGOs and Government Programmes.

CHAPTER-III

COMBATING TRAFFICKING IN WOMEN AND CHILDREN: LEGAL FRAMEWORKS IN INDIA AND BANGLADESH

There are social and economic inequalities and political conflicts which have led to the movement of persons within each country and across the borders in South Asia. The process of globalisation from 1990s onwards has encouraged free mobility of capital, technology, experts and sex tourism, illiteracy, dependency, violence, social stigma, cultural stereotypes, gender disparity and endemic poverty, among other factors, have placed women and children in powerless, on negotiable situations that have contributed to the emergence and breeding of the cavernous problem of sex trafficking in the entire region. It is posing a very serious and unique threat to community health, poverty alleviation programmes and other crucial aspects of human development.

Although the countries in South Asia have collectively shown their concern for this rising problem by signing SAARC Convention on Trafficking in Women and Children, there are some lapses and limitations in the provisions made in the Convention, yet it is an important breakthrough.

The countries in the region have realised the seriousness of the problem in the last two decades and the recently intensified emphasis on the problem of trafficking in women and children is to due to the aid money which these countries are getting from United Nations Agencies, United States and from other donor agencies which are primarily worried of rapidly increasing incidence of HIV/AIDS in South Asia as a consequence of trafficking for sexual exploitation and trafficking of women that mainly takes place for sex trade. The trade is clandestine in nature and involves various social, economic, political factors. Thus addressing trafficking problem requires a multi-pronged approach based on comprehensive network of anti-trafficking operations.

3.1 Addressing Trafficking: Approaches, Strategies and Interventions

Trafficking is a complex problem with serious visible and invisible impact especially on children. This inherent complexity necessitates that action be taken on several levels by several actors during the various stages of the trafficking process. However, of essence to developing strategies and subsequent interventions is the

approach adopted or framework within which strategic and programmatic interventions are embedded. There is a need to analyse and adopt the various approaches and initiatives to combat the trafficking of children especially for commercial sexual exploitation.

Six major approaches were identified in a groundbreaking study on trafficking commissioned by the UN Special Rapporteur on Violence Against Women.¹ Completed in 1997, this study undertook a global analysis of trends and interventions in various fields on the trafficking of women. However, many of its conclusions are relevant to the trafficking of children. The six approaches determining strategies and interventions highlighted by this study view trafficking variously as (i) a moral problem, (ii) a problem of organised crime, and law and order, (iii) a migration problem, (iv) a labour problem, (v) a public health problem, and (vi) a human rights issue. Trafficking of children and women has generally been marked by interventions that flow from one or more of these approaches. The UN Convention on Transnational Organised Crime views trafficking as a problem of organised crime, law and order, and migration. The 1949 UN Convention which preceded the new one, and determined laws and initiatives at the international and national levels until 2000, framed the issue of trafficking as a moral problem with a crucial interface with the law and order approach. The 1949 Convention, while purporting to be an anti-trafficking instrument, was basically a tool to legislate on the issue of prostitution. By failing to differentiate trafficking and prostitution, it engendered interventions that promoted moralistic stances and injunctions in relation to both adult women and minors. Contrary to the moralistic approach, strategies which foreground issues of HIV/AIDS, safe sex practices, sex education and other programmes on health, basically approach trafficking from the perspective of public health. Trafficking of children, especially for commercial sexual exploitation, has been predominantly framed within the rights approach embodied in the Convention on the Rights of the Child (CRC) and, since 1999, also within the discourse on child labour. The labour approach has allowed some interesting new approaches to tackling trafficking of children through labour sector players who might otherwise not be engaged in work to protect children, for example trade unions, professional associations and chambers of

¹ Mariane Wijers and Lin Lap-Chew (1997), *Trafficking in Women, Forced Labour and Slavery like Practices in Marriage, Domestic Work and Prostitution STV and (GAATW)*, Utrecht

commerce. The child labour approach is often combined with principles enshrined in the CRC to forge a framework that could potentially be the most empowering of approaches deployed thus far on the issue of trafficking.

Strategies and interventions to address the trafficking of children can be categorized under three major headings: prevention of trafficking; prosecution of traffickers; protection of the human rights of trafficked children. Within these, there are two principal clusters; empowering cluster and the most commonly employed cluster of repressive strategies, such as:

- Restrictive immigration policies that presume that .if we prohibit children and women from traveling or migrating, they will not become victims;
- Increasingly harsher punishment based on the notion that .if we make penalties very severe people will be deterred;
- Stringent policing and prosecution that presumes that a blanket web of strict control with powers to seize, apprehend, detain and prosecute will lead to .a cleaning-up. of criminal elements and reduce trafficking;
- Non-recognition of the informal sector of the economy with a bid to make it illegal, in the belief that .this will eradicate the problem of labour exploitation and child labour.

What do these simple equations lead us into? The repressive measures lead the states into actions such as Curbing migration to prevent trafficking or Banning Prostitution to Prevent Trafficking.

3.2 Curbing Migration to Prevent Trafficking

Equating trafficking with migration has certainly led to simplistic and unrealistic solutions. In order to prevent trafficking there is move to stop the migration of those who are considered vulnerable to trafficking. Even when curbing migration is not a stated programmatic focus, an inadvertent impetus is to dissuade women and girls from moving in order to protect them from harm. This has often resulted in reinforcing the gender bias that women and girls need constant male or state protection, and therefore, must not be allowed to exercise their right to

movement. Migration is a feature of our globalising world, and will continue to be so. As it has been found in the case of migration, the pressures that drive the movement of people are immensely powerful and entrenched. It is unrealistic and self defeating for the prosperous, industrialised countries to pursue a policy of preventing immigration: this will merely subvert it into irregular and increasingly illegal forms of entry and integration. By contrast, it should be contended that the development of systems of managed and facilitated migration are likely to prove to be of beneficial to both sending and receiving countries, as well as to migrants themselves.

Trans-border and in-country movements and migrations are occurring for a plethora of reasons: the reconfiguration of the global economy, the ability to travel, displacement and dispossession of marginalised populations, the awareness through consciousness raising that there are better options elsewhere, armed conflict and, of course, the basic human aspiration to explore the world. And these changes are occurring simultaneously with the introduction of new players in the public sphere who are decentering the power of sovereign states. Women move and are moved with or without their consent, for a variety of reasons, and trafficking in women must be understood within the context of women's migrations. Many women move across oceans not because they love cleaning other people's homes, or taking care of other peoples children at the cost of being separated from their own, but because they need jobs and those are the only ones available in the market. Similarly, women from the south are moving into the sex entertainment business, not because they are all prostitutes or genetically programmed to do sex work, but because one of the largest enclaves in the job market in the receiving country is the sex industry. Regardless of why women move, their assertion of their rights to mobility, self-determination and development, must not be confused with the violence, force, coercion, abuse or fraud that may take place in the course of migration or transport. The crime rests in the elements of abuse and violations, which are committed against women during the course of migration and not because of movement or mobility per se.

These movements across borders has ignited in a flurry of activity on behalf of Western governments, South Asian governments, and many women's groups, primarily to contain the specter of trafficking, which is considered to be a growing phenomenon, worldwide. In contemporary discourse, human trafficking has come to

be integrally interwoven with migration, mainly illegal, clandestine border crossing, and the smuggling of human beings. “The conflation of trafficking in persons with various manifestations of migration and mobility on the one hand and with prostitution and sex work on the other, lies at the very core of the confusion which underpins the contemporary discourse on trafficking of women, and girls, globally, regionally, and nationally.”²

There are the implications of conflating and collapsing the categories of migration with trafficking, and trafficking with prostitution. And there are the implications when these concepts are often also value-loaded, along with an inherent bias that marginalized people who migrate are vagrants and women who migrate into sex work are sexual delinquents. There can at least be **four problems** resulting from these conflations: **Firstly**, the equation of trafficking with migration leads to simplistic and unrealistic solutions. In order to prevent trafficking there are both conscious and inadvertent moves to stop those who are deemed vulnerable from migrating.

One manifestation of such initiatives is to try and dissuade women and girls from moving in order to protect them from harm. For example, women under 35 in Nepal can no longer travel overseas for employment especially to the Gulf countries unless they are accompanied by a relative or can show proof of consent from their guardian.³ Women under 40 in the United Arab Emirates are now subject to similar restrictions. In conjunction with these government measures, research and discussions with non-profit organizations in South Asia working for the prevention of trafficking focus on dissuading women and girls from moving out of their familiar surroundings because of the impending and possible dangers awaiting them in the world out there. Therefore, conflating trafficking with migration results in reinforcing gender biases – quite specifically, that women and girls need constant male or state protection from harm, and therefore must not be allowed to exercise their right to movement or right to earn a living in the manner they choose.

² Jyoti Sanghera and Ratna Kapur, Report on Trafficking in Nepal: Policy Analysis – An Assessment of Laws and Policies for the Prevention Control of Trafficking in Nepal at 24 (Sponsored by the Asia Foundation, Nepal, and Population Council, New Delhi)

³ Section 12 of the *Foreign Employment Act, 1985*, which restricts women’s rights to travel abroad for employment.

Secondly, curbing migration does not stop trafficking, but merely drives the activity further underground, and makes it more invisible. This lesson has been learnt repeatedly from states who have adopted increasingly stringent immigration control as a response to increased trafficking in persons and narcotics. Borders cannot be impermeable, and stricter immigration measures have resulted in pushing the victims further into situations of violence and abuse. A demand for greater border control and surveillance merely serves to drive the activity further underground.

Thirdly, when no clear conceptual or operational distinctions are drawn between migration and trafficking, and migration is considered to be equal to trafficking, then it logically follows that the number of victims of trafficking will also be considered to be equal to the number of those who have migrated voluntarily. This logic operates particularly in the case of adolescent girls and women migrants. This practice has resulted in an extremely flawed methodology for conducting surveys on trafficking in what have been now cast as ‘risk-prone’ and ‘affected districts’ in different South Asian countries. The absence of women or girls is routinely considered to be tantamount to “missing persons” and the conclusion automatically drawn is that they have been trafficked. This logic has resulted in viewing all consensual migrant females as trafficked.

3.3 Banning Prostitution to Prevent Trafficking

There has been a continued persistence among anti-trafficking players within the dominant discourse to conflate trafficking with prostitution. The anti-trafficking laws in Bangladesh and India, as well as the new SAARC Trafficking Convention, focus exclusively on trafficking for Prostitution.

By collapsing the process with the purpose, the abuse and violence inherent in trafficking is mistaken for the actual site of work and form of labour. Prostitution per se as the exclusive purpose of trafficking is an untenable definition as not all victims are prostitutes nor have all the prostitutes been trafficked. Where anti-trafficking law focus primarily on prostitution, and do not require a separate showing of coercion, deception or other abuse, women engaged in commercial sex work may be presumed

to have been trafficked, and may be subject to rescue and repatriation to their home countries against their wishes. Furthermore, trafficking for all other purposes is largely ignored, and targeting trafficking for prostitution becomes the principal agenda of anti-trafficking interventions, policies and laws. Ironically, this focus on prostitution can obscure the fact that trafficked women and girls are frequently subject to sexual exploitation by traffickers, regardless of whether they are trafficked into prostitution.

It has been also found that the trafficked women being considered as 'fallen' women are sexually abused by law officers even after they have been rescued and placed in safe custody. Police corruption in the trafficking process was an issue that was constantly raised by women's groups and women victims of trafficking. One of the victims described how, having escaped from a brothel in Kolkata, she went to complain to the police. The police called the brothel owner, who paid the police a substantial sum in front of the girl. She was taken back to the brothel and beaten till she was nearly senseless. She still suffers from injuries resulting from that episode. Other victims said that many policemen were clients of the brothels and on good terms with the traffickers, owners and pimps. Victims and women's groups in all three countries recounted many cases of police corruption and many felt it was endemic, something that was taken for granted. Unless direction comes from the top that such behaviour will not be tolerated, and unless there are punitive sanctions against policemen who indulge in such behaviour, it is unlikely that the police will play the proactive role that is expected of them.

Trafficking becomes an offensive and a violation of human rights because of the non-consensual or deceptive nature of the movement and the exploitative or servile nature of the conditions of the work and life to which the trafficked person is confined.⁴ It does not become an offense because of the purpose for which a person is moved. The common elements in the trafficking are not the movement or the site of work per se but the brokering, fraud, lack of consent and exploitative conditions of work. Unfortunately, most initiatives are directed at stopping movement, regardless of consent, especially of women, on the assumption that they will be trafficked.

⁴ Human Rights Standard for the Treatment of Trafficked Persons, (Foundation Against Trafficking in Women, International Human Rights Law Group, and Global Alliance Against Traffic in Women. 1999).

To provide protection and redress to women and girls who are trafficked, a clear distinction needs to be made between the abuse and human rights violations committed during the entire process of recruitment, transport, and confinement via coercion to exploitative labour. There is no serious or rigorous study of the sex industry in most countries. Therefore, the assumption by some activists of the expansion of the sex industry is not supported by any evidence-based analysis.

In the case of trafficking for the purpose of domestic work, forced marriage or work in carpet factories, the objective of anti-trafficking interventions has been to target the abuse, forced labour and violation of rights that is endured by those affected by trafficking and not to eradicate marriage as an institution or domestic work and the carpet industry as sectors of employment. But eradication of the sex industry in a bid to prevent the harm of trafficking is often an agenda of many interventions.

3.4 Approaches to Trafficking

The UN Special Rapporteur on Violence against Women has identified several possible legal approaches to prostitution each having some underlying basis as well as implications.⁵ These approaches can be broadly categorized into three types

- (i) the Criminalisation Construct;
- (ii) the Decriminalisation Construct;
- (iii) the Legalisation Construct

(i) The Criminalisation Construct

The criminalisation approach is largely moralistic in its construct. It takes two different forms: abolition or toleration. Both approaches view sex work as a social evil, and promote the idea that such immoral conduct should be criminalized. The toleration approach is based on the assumption that sex work is an inevitable social evil. Legislation based on this approach is generally silent about whether the activity

⁵ Coomaraswamy Radhika (2000), *Report on Trafficking by the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences*, New York: United Nations.

itself is legal or illegal. It criminalizes the outward manifestations of sex work such as soliciting, brothel keeping and trafficking. In India the Immoral Trafficking Prevention Act, 1986 adopts this approach.

(ii) The Decriminalisation Construct

The decriminalisation approach is the outcome of new world feminist construct of female sexuality. It makes a distinction between sex work and trafficking. It is based on the assumption that sex work can be voluntary and is a personal choice and thus a personal matter between consenting adults. It advocates for complete decriminalization of voluntary sex work and all related activities and the abolition of laws that criminalise such activities. Voluntary relationship between sex workers, pimps, brothel owners, and landlords as well as the practice of sex work must be removed from the scope of criminal law, and all specific criminal laws that apply to sex work be repealed. It seeks to make sex work a subject of the general laws. The decriminalization approach addresses forced sex work as a separate issue, with the recommendation that the existing legislation relating to trafficking, especially in minors, fraud, coercion, and forced labor be strengthened. This approach was debated among sex workers rights groups at the First and Second Sex Workers Conferences in 1997 and 1998 at Kolkata .

(iii) The Legalisation Construct

The legalisation approach is similar to decriminalisation insofar as it involves taking the subject of sex work outside of the realm of criminal law. However, it does not make a clear distinction between consensual sex workers and trafficked sex workers. In contrast to decriminalisation, the strategy involves legalising and heavily regulating sex work through a whole host of zoning and licensing laws. The legalisation approach is based on the assumption that a balance must be drawn between 'public' health and 'public' need. Its objective is to curb the worst side effects of sex work, such as the spread of sexually transmitted disease, including the HIV virus. The primary features of this approach are:

(a) Zoning – Zoning keeps the women in a working women's ghetto. It segregates them into a separate part of the town or locality. It restricts their private spaces because they are considered to be public women. If they venture out of the zone, their

civil liberties are restricted.

(b) *Licensing* – Licensing involves the issuing of licenses, registration, and disbursement of health cards to the women by state authorities.

(c) *Mandatory Check ups* – This practice has received the greater emphasis in the light of the HIV pandemic and the myth that women in sex work are responsible for transmission of the virus. The woman is compelled to submit herself to checks ups or else face imprisonment.

(d) *Legalisation*—it implies the recognition of sex work as a lawful activity by the State. However, the experience of those jurisdictions, which have introduced zoning and licensing laws, indicates that this approach results in excessive State control, ghettoisation of sex work, and forced / discriminatory medical and health surveillance that is usually mandatory rather than voluntary. This approach is not new and was operational in several countries at the beginning of this century, including in India. While the debate on the best approach continues to remain unresolved, the different agencies/ organizations working to combat trafficking in South Asia have tried to arrive at a acceptable programmatic construct which would best promote and protect the interest of the trafficked victim and survivor.

In contrast to the repressive cluster, the second cluster is the empowering cluster, based upon expanding and enhancing the rights of children and women who are trafficked. These are strategies that flow from the need to address the harm done to the victims of trafficking, and that ground themselves in strengthening the human rights of those affected. Empowering strategies call for clearer criminal codes and more effective and non-discriminatory enforcement of laws while at the same time foregrounding care, support and assistance measures for the victims of trafficking, Centering on the rights, realities, needs and aspirations of those who are trafficked or vulnerable to it, empowering strategies focus on: respecting, protecting and restoring the rights of those affected; supporting and assisting; enabling and facilitating; increasing the agency of those involved through principles of self-representation, participation and self-determination; and eliminating root causes. Besides migration and prostitution there are following other cross cutting areas which requires special attention while analyzing legal framework for trafficking

3.5 Equating Children with Women

The UN Protocol on Trafficking, The US Act 2000, as well as a majority of the major documents and laws addressing the issue of trafficking do not make a clear distinction between the trafficking of women and children. In commenting upon the SAARC (South Asian Association for Regional Cooperation) Draft Convention on Trafficking which clubs children and women together, the previous UN Special Rapporteur on Violence against Women stated, “The legal regime surrounding women should be based on a framework of rights and the concept of coercion when it comes to trafficking. The legal regime with children must be completely different”⁶. Treating women like children or in accordance with similar norms infantilizes women. An analysis of the laws in South Asia reveal that child trafficking is discussed almost exclusively within the framework of trafficking, sexual exploitation and law enforcement, mostly reflected in the focus on criminal provisions.

There are several problems with dealing with the issue of child trafficking within this limited framework: It tends to reinforce the image of children who move within an “abuser-victim” paradigm. Such a paradigm tends to be dis-empowering and denies children any agency. Furthermore, all children are treated in the most infantile manner. In most countries minors are defined as below the age of 18. There is considerable difference between the decision-making ability of an 11-year-old child and a 17 year old. In both situations, the agency of the child must be respected, but in one the vulnerability of the child to harm or abuse in the course of movement increases exponentially.

The treatment of children under anti-trafficking laws is also complicated by the existence of multiple laws of majority in many countries, for example UN Trafficking Protocol as well as SAARC Trafficking Convention define ‘child’ as any person under 18 years. However, the age of majority for various purposes under the laws of Bangladesh, India, and Nepal vary from 7 years (the lowest age of criminal responsibility in Bangladesh) to 21 years (the upper age for guardianship in

⁶ Radhika Coomaraswamy, *Addendum, Mission to Bangladesh, Nepal and India on the issue of Trafficking of women and girls* (28 October -15 November 2000), *Integration of Human Rights of Women and the Gender Perspective: Violence against Women, Report of the Special Rapporteur on Violence against Women, its causes and consequences, in accordance with the Commission on Human Rights resolution 2000/45: GE. 01-10865 (E)*.

Bangladesh).⁷ Labor laws may also set different minimum ages for different types of work.

In addition, despite minimum ages for marriage established by statute, religious laws and community norms permit or encourage child marriage, particularly for girls. For example, Muslim personal law in Bangladesh allows a child to be given in marriage at puberty, and Hindu personal law in Bangladesh allows child marriage without the child bride having the right to repudiate the marriage at any age.⁸ These variations can lead to a number of anomalous results in relation to trafficking, particularly trafficking of adolescents. For example, a 16-year-old could be trafficked into illegal activities (such as drug smuggling). The adolescent might be held criminally responsible and prosecuted for drug smuggling under a country's penal laws, although the child would not have been considered capable of consenting to participate in these activities under the UN Trafficking Protocol.

The primary problem with the existing legal frameworks is that they presuppose an adult victim and do not accommodate the specific issues that arise in the context of children. When children have been addressed, it is often in a way that reinforces their image as victims, and views their movement almost exclusively through the lens of sexual exploitation and prostitution. The existing framework at the national and regional levels does not effectively address push factors that lead to migration as well as trafficking. As a result, there is minimal focus on prevention mechanisms. A central problem with the law enforcement framework is that it focuses on border control measures that further prejudice the rights of children. Prosecuting trafficked children for illicit activities, such as illegal cross-border movements, prostitution or petty crime is not a solution and will drive the activity further underground.

⁷ Under Bangladesh's criminal laws, the minimum age of full criminal responsibility is 12 years, but there is a presumption of capacity to infringe certain criminal laws at 7-11 years (depending on the offense).

These variations are recognized in the Convention on the Rights of the Child, which defines a child as "below the age of 18 years unless, under the law applicable to the child, majority is attained earlier" (Article 1). The Convention also recognizes the need to consider "the evolving capacities of the child" in relation to the child's exercise of rights there under (Article 5).

⁸ Hussain, Hameeda, ed. (2001), *Human Rights in Bangladesh 2000*. Dhaka: Ain o Salish Kendro (ASK).

3.6 Issues Related to Law Enforcement

There are numerous factors which influence the effectiveness of the anti-trafficking laws. This may include the resources given to enforcement and prosecution of the laws; the training of law enforcement and court personnel on the scope and intent of the laws; community awareness and response to trafficking cases; police powers and their approach to handle the trafficking cases, ability and willingness of law enforcement and court personnel to protect trafficked persons during the investigation and prosecution of the traffickers; availability of gender sensitive and child sensitive court facilities and procedures and the police investigations, and prosecutors, judges operating free from political influence and corruption.

In case of trafficking from Bangladesh to India the major problem is about making difference between Indian Bengali and Bangladeshi. Meeting Bengali speaking trafficked people is not as difficult as in identifying Bangladeshis which is highly problematic. After crossing the border, all of them become West Bengalis. Bangladeshis in Mumbai and Delhi are invisible. New migrants try their best not to be noticed until they can blend in the heterogeneous mega cities where new comers are so many. The number of Bangladeshis in Mumbai and Delhi is practically impossible to know, not only because people hide but also because of the double/nebulous identities of many in a country where criteria of citizenship have been unclear. Bangladeshis in Mumbai readily gave an address in West Bengal; some obtained a voter identity card, a ration card or a driving license from West Bengal, some procured an Indian passport. The question whether a Bengali has come from Bangladesh or not provokes suspicion. People fear police informers and painful memories of "push back" moves remains still vivid. The older the migration, the more difficult it was to assign one exclusive nationality to a person. *Prerna* an NGO in Mumbai has found many migrants who spent their working lives in India returning to Bangladesh to vote, to marry off their children and to invest in landed property.

3.7 Issues Related to Labour Standards

The trafficked persons are forced to work in substandard, inhumane conditions which implicitly violate both human rights laws and a number of labour laws also. When the trafficked persons are employed in informal sector, it becomes difficult for

the law enforcement agencies to reach there. Migrant workers are often vulnerable due to their questionable stay in a foreign land, especially if they are undocumented. They do not complain about the abusive working conditions for fear of being arrested and deported.

3.8 Variations in National Priorities and Governance Structures

The anti-trafficking initiatives by different countries can vary according to their perception about the problem of trafficking in Women and Children. For example, India, Bangladesh and Nepal all are facing internal and cross-border trafficking but their approaches are influenced by their self perception as 'source' 'transit' or 'destination' countries. Bangladesh and Nepal both focus on trafficking of young girls and women into India Brothels while India is more serious about internal trafficking.

3.9 Two Approaches: Crime Prevention and Human Rights

Presently there are two major schools of thoughts regarding combating child trafficking, namely the crime prevention approach which identifies the whole issue as a problem of law and order and the human rights approach which is focusing on empowering women and enhancing the rights of children. One school of thought is following the **Crime Prevention Approach**, calling for better participation of law enforcement, stricter border controls, watchdog committees and community surveillance programs. Its strategies are based on the assumption that the crime prevention approach will alleviate the crime; therefore, rescue and repatriation operations, as well as interception at the Indian border are applied. This bears the danger that with further criminalization of brothels etc the criminals will operate more in underground and as a result the victims will be again more invisible and inaccessible. In addition, community members and money-lenders who make profit from the sale of children are not touched. It also considers women and girls as objects.

The crime prevention framework views the issue of trafficking as a problem of law and order involving international or local crime gangs, which necessitate cleaning up operations. This framework relies upon increased participation of law enforcement agencies, stricter border controls and surveillance, greater powers to police to search,

seize and prosecute, and tightening of legal regimes through promulgation of invariably more stringent and punitive laws.

The UN Trafficking Protocol and the UN Convention against Transnational Organized Crime are both grounded in the framework of crime prevention and were finalized under the aegis of the UN Crime Commission. Other major international instruments that take a primarily crime-related approach to trafficking are:

- International Convention for the Suppression of White Slave Traffic (1910)
International Convention for the Suppression of the Traffic in Women and Children (1921);
- International Convention for the Suppression of the Traffic in Women in Full Age (1933);
- Convention on the Suppression of Trafficking and the Exploitation of the Prostitution of Others (1949);

In addition to these instruments, regional initiatives such as the SAARC Convention for Preventing and Combating Trafficking in Women and Children and a majority of national laws deal with trafficking essentially as an issue of law and order, aiming to eliminate trafficking as a contravention of such laws. Such predominantly crime-focused instruments do not necessarily deal with the effects on the victims of trafficking or on the rights of the victim as they relate both to the act of trafficking and due redress and treatment under the law.

The **Human Rights Approach** is campaigning for more effective and nondiscriminatory enforcement of laws, calling for clearer criminal codes, and protection, support and assistance to the victims. It focuses on participation, and promotes self-representation to enable the members of a vulnerable community to identify, claim and realize their interests in self-determination with the aim to eliminate the root causes. Trafficking has been identified as a violation of many fundamental human rights (See table 3.1).

Table 3.1

Human Rights Violation in the Process of Trafficking

Criminal Violations	Rights	International Instrument⁹
1. Torture, rape, beating, Physical, psychological	Right not to be tortured or submitted to cruel and/or degrading treatment, Right to be free from physical violence (rape, sexual assault, domestic violence, forced prostitution, trafficking)	Article 3&5 UDHR, Article 6&7 ICCPR, CAT entire convention CEDAW entire convention especially Article 2, 5, 15 & 16
2. Forced drug or substance abuse	Right to personal autonomy, Right to enjoy psychological, physical and sexual health	Para 97 BPFA, Article 12 ICESCR
3. Threat of reprisals to family members back home	Right to personal autonomy	Article 12 UDHR
4. Deprivation of food, malnourishment, lack of access to medical and health	Right to enjoy psychological, physical and sexual health	Article 25 UDHR, Article 12 ICESCR
5. Physical confinement, Confiscation of passport/identity papers, isolation (prohibited from engaging in social contact, interception of letters)	Freedom of choosing residence and moving within own country	Article 13(1) UDHR Article 12 (1) ICCPR
6. Overwork, long hours no rest	Right to work freedom forced labour Right to just and favourable conditions	Article 8(3) ICCPR, ILO Convention No. 29 entire convention Article 23(1) UDHR
7. Bad conditions of work, poor health and safety measures	Right to safe and healthy working conditions	Article 23(1) UDHR, Article 7 CDESCR, Article 11(f) CEADAW
8. No or delayed payment for Work	Right to just and favourable Remuneration	Article 23(2) UDHR
9. Extraction of fees, payment, debt- bondage	Freedom from slavery	Article 11 ICCPR
10. Violation of Contract employers	Right to equal pay for equal work	Article 23(2) UDHR

It has also been found by both the United Nations Secretary General and the United Nations High Commissioner for Human Rights that trafficking indeed involves severe violation of human rights. The UN High Commissioner for Human

⁹ List of abbreviations of international instruments is given in the list of abbreviations of the dissertation.

Rights has enumerated the following basic principles that States should follow to combat trafficking:¹⁰

1. Trafficked persons should not be criminalized for the coerced illegality of their entry or residence in countries of transit and destination, or for the coerced activities they perform as a consequence of their status as trafficked persons.
2. Victims of trafficking including those with “irregular” immigration status should be granted necessary protection- physical and mental care by the authorities of the receiving country.
3. The safe return of victims, instead of automatic repatriation, should be ensured, particularly in cases of organized criminal involvement
4. Women and children should not be treated the same in the identification, rescue and repatriation process.

Efforts must be made to address the root cause of trafficking, including poverty, inequality, discrimination and racism. Several significant international treaties and agreements have been promulgated to address the human rights.

3.10 International Commitments to Combat Trafficking and Other Crimes against Women and Children

The initiatives for combating crime against women became noticeable in the twentieth century. The first such initiative was International Agreement for the Suppression of the White Slave Traffic 1904.¹¹ Another effort in this direction took place in 1910 as International Convention for the Suppression of the White Slave Traffic.¹² The International Convention for the Suppression of Traffic in Women and

¹⁰ Mrs. Mary Robinson, UN High Commissioner for Human Rights, address to the International Abolitionists’ Federation Conference on Trafficking in Women “Breakdown of Borders,” Copenhagen, December 2, 1999 (cited in Lin Chew, page 9)

¹¹ The Agreement was formulated with the intention of securing for women of full age who have suffered abuse or compulsion, as also under age girls, effective protection against criminal traffic known as the white slave traffic.

¹² This convention criminalized the procurement, enticement or leading away of a woman or girl under the age of 21, even with her consent for immoral purposes, irrespective of whether the various acts constituting the offence may have been committed in different countries

Children (1921) prohibits the enticing or leading away of a woman or girl for immoral purposes, to be carried out in another country. The Slavery Convention (1926) asked the States parties to enjoin to discourage all forms of forced labour. Slavery means the owner's control over another person. The International Convention for the Suppression of the Traffic in Women of Full Age 1933 imposes a duty on the signing countries to prohibit, prevent, prosecute and punish those engaged in the trafficking of Women.¹³ The next major development was signing of Charter of Universal Declaration of Human Rights 1948; Article 4 of the Declaration prohibits slavery and the slave trade. Article 13 recognises the right of persons to freedom of movement and residence, while Article 15 recognises everyone's right to nationality.

The 1949 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others is the main international instrument relevant to human trafficking. It is compilation of four previous international conventions 1904,1910,1921 and 1933.The Convention reflects a historical concern with the trade in women for prostitution It made procurement, enticement for prostitution punishable irrespective of the age of the person involved and his/her consent to the same (Article1) .Brothel keeping was also denounced as illegal and punishable (Article 2), the conventions also allows for the forcible expulsion of aliens who are prostitutes (Article 19) and rehabilitation measures (Article20).¹⁴ Both Bangladesh and India are party to this Convention while Nepal is not. Further came Supplementary Convention on the abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956 (Slavery Convention). It condemned a variety of slavery like practices, including debt bondage and forced marriage. State parties undertook to establish suitable minimum age of marriage and encourage the registration of marriages. Similarly, Article 8 of the International Covenant on Civil and Political Rights 1966 also prohibits forced labour, slavery like practices and provides outlines for the rights of children to a just and free childhood (Article 24). In the same year the International Convention on Economic, Social and Cultural Rights (ICESCR 1966) stipulated that states are responsible for protecting children from exploitation and must lay down the minimum age for their employment

¹³ It was too early for India being governed by colonial powers to be part of this Convention.

¹⁴ The convention does not prohibit prostitution directly, but requires punishment of third parties involved in prostitution; at the same time, it does not preclude a state party from prosecuting sex workers as well as third parties. Thus the Convention is considered to have been relatively ineffectual, since it lacks a formal monitoring mechanism and it is limited to trafficking for prostitution.

(Article 10). Article 6 of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW 1979) requires state parties to take all appropriate measures, including legislation to suppress all forms of trafficking in Women.¹⁵

The United Nations Conventions Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment 1984 provides against the expulsion or return of a person to another state if there are substantial grounds for deeming him/her to be in danger of torture. Victim Compensation measures are also stipulated in it. The 1985 Tourism Bill of Rights and Tourist code adopted by the WTO, enjoins that state parties should preclude any possibility of the tourism to exploit others for the purpose of prostitution.

The Conventions on the Rights of the Child (CRC 1989) makes a number of provisions to protect the children.¹⁶ Article 11 prohibits illicit transfer of children abroad, Article 19 provides protection against abuse, maltreatment and exploitation by parents or other caretakers, Article 21 protects in case of inter country adoptions, Article 34 protects against sexual abuse and exploitation, Article 35 provides prohibition of torture and other cruel and inhumane treatment. The CRC has been supplemented by an optional protocol on the Sale of Children, Child Prostitution and Child Pornography, which Bangladesh and India have ratified and Nepal has signed.¹⁷

The UN Trafficking Protocol 2000 has defined trafficking in a global sense.¹⁸ It has supplemented United Nations Convention Against Transnational Organised Crime. But the Protocol does not shield the victim to be prosecuted for the crime committed under force or coercion such as prostitution, working without legal permission of the country concerned, or illegal stay in the destination country with

¹⁵ This convention entered into force on 3 September 1981, 1249 U.N.T.S. 13.

¹⁶ The Convention on the Rights of Children entered into force on 2 September 1990, 1577 U.N.T.S. 3.

¹⁷ The Protocol on the Sale of Children, Child Prostitution and Child Pornography entered into force on 18 January 2002, UN Doc.A/RES/54/263. The Protocol seeks to raise the standards for protecting children from all forms of sexual exploitation and abuse.

¹⁸ The Protocol which has supplemented the United Nations Convention Against Transnational Organised Crime 2000. Article 3(a) of the Protocol defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. This victim friendly Protocol provides for preventive measures (Article 9), victim compensation and privacy protection (Article 6), Repatriation (Article 8) and strengthened border control measures (Article 11 & 12).

false identification. Thus, victims who remain in a country in order to serve as witnesses for the prosecution could be detained for months without critical services or employment. This could create unwillingness in the victims to offer testimony, which would be detrimental to the case, undermining the law enforcement objectives of this Protocol. The victims are physically harmed by the traffickers and there is no mention of "reintegration" or services of repatriation to re-associate the victim into the society. The Protocol only refers to the cooperation among the state parties to ensure safe repatriation of the trafficked person to their countries of origin. The bitter fact is that the trafficked persons in this process of repatriation are sent back to their original vulnerable position which led them to be trafficked, thus failing to ensure that the same person will not be trafficked again.

3.11 Regional and Sub-regional Instruments

There have been some efforts at the regional level too in South Asia and Asia-Pacific regions. Although not yielding satisfactory results in combating the grave trafficking situation, some important concerted efforts are the Bangkok Accord and Plan of Action to Combat Trafficking in Women 1998,¹⁹ Asian Regional Initiative Against Trafficking in Persons, Especially Women and Children (ARIAT) 2000, the ASEM (Asia Europe Meeting) Action Plan to Combat Trafficking in Persons, Especially Women and Children 2000, the Bali conference Co-chair's Statement on People Smuggling, Trafficking in Persons and Related Transnational Crime 2002 .

The prime anti-trafficking action in South Asia is the SAARC Convention on Preventing and Combating the Trafficking in Women and Children for prostitution 2002.²⁰ There are some weaknesses of this Convention. It is criticized for making no

¹⁹ The Bangkok Accord and Plan of Action to Combat Trafficking in Women, Which was adopted at a regional conference convened by the UN Economic and Social Commission for Asia and the Pacific (ESCAP) in November 1998, represents a comprehensive effort by several countries in the region to address trafficking at national, sub-regional, regional, and international levels. Its recommendations for national-level action include a number of concrete activities in the areas of prevention, protection and humanitarian treatment of trafficked persons; sanctions against traffickers; medical and psychological interventions; repatriation and reintegration; information/monitoring mechanisms; and participation. The Plan's recommendations for sub-regional and regional action include creation of sub-regional and bilateral treaties to outline procedures to take against trafficking; establishment of a regional task force, and regional and sub-regional focal points in trafficking; establishment of centres for trafficked persons; consideration of establishing new regional mechanism to implement the plan and regional funds to assist trafficked persons in any repatriation or reintegration.

²⁰ The 2002 SAARC Convention defines 'child', 'Prostitution', 'trafficking', 'traffickers' and 'persons' subjected to trafficking' in Article 1. It provides for 'aggravating circumstances', which are factual

distinction between women and children. Trafficking has been defined to include the moving ,selling or buying of a person, but does not include their recruitment, labour, transfer or receipt that does not include their recruitment, labour transfer or receipt that does not form a part of the buying or selling process. Convention on Regional Arrangements for the Promotion of Child Welfare 2002 is to promote the understanding and awareness about the rights, duties and responsibilities of children of South Asia.

3.12 The ILO Response to Trafficking

In recent years International Labour Organisation has been giving importance to anti-trafficking initiatives in the regions of Africa, Asia, and Latin America. Based on the ILO's earlier interventions and knowledge on child trafficking-one of its significant International Programme for the Elimination of Child Labour (IPEC) is gripping the structural dimensions of human trafficking across the globe, affecting women and children but also considerable number of men, and very much linked to the issues of irregular migration. The activities of IPEC commenced in Asia in mid 1990s, following the World Congress against Commercial Sexual Exploitation in Children, held in Stockholm in 1996, IPEC expanded its activities to combat trafficking in children world wide. Its programme covers some 30 countries in Africa, Asia and Latin America. It has started giving attention to Central and Eastern Europe to develop a methodology to assess the nature and dynamics of child trafficking in several Balkan countries.

The IPEC's prevention framework has been built around four major components: data collection and analysis, policy development and direct support including educational opportunities, community mobilisation and outreach. In the year 2001 ILO issued a global report on contemporary problems of forced labour. The report stressed that a person can be trafficked for other purposes that may involve forced labour, in addition to sexual exploitation. Following the publication of this report, in November 2001 the new Special Action Programme to Combat Forced

circumstances that enhance the gravity of the offence (Article 4). It also provides for the protection of victims (Article 5), mutual legal assistance (Article 6), training and sensitization of enforcement officials (Article 8) and the rehabilitation of the victims (Article 9). Offences under the Convention are extraditable (Article 7), Article 8(3) requires the state parties to establish a regional task force comprising officials from the member states, in order to facilitate the implementation of the provisions of this convention and to undertake periodic reviews.

Labour (SAP-FL) was created. The initial challenge before such efforts to combat trafficking has been to devise and put in place a coherent strategy, which identifies the ways in which, beyond its evident forced labour and child labour dimensions, trafficking can also be addressed from the perspective of labour market failure, and future programmes can focus on the strengthening of different labour market institutions as well as on the preventive measures at the place of origin.

Bangladesh, India and Nepal are also party to a number of ILO conventions relevant to trafficking in persons. Some of them to be listed are; the Forced Labour Convention, 1930 (no. 29), the Minimum Age Convention, 1973 (no.138), the Worst Form of Child Labour Convention, 1999 (no.182), The Discrimination (Employment and Occupation) Convention, 1958 (no.111) and the Equal Remuneration Convention, 1951 (no.100). Since trafficking is migration related phenomenon, the ILO conventions relating to migrant workers are also important such as the Migration for Employment Convention (Revised), 1949 (no.97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143), are also potentially relevant but these are not yet ratified by India, Bangladesh and Nepal.

3.13 Other International Efforts

World Conference on Human Rights 1993, Vienna, Austria; This world Conference declared trafficking as a form of gender based violence.

The Cairo Programme of Action adopted by the International Conference on Population and Development in 1994 called on the governments to international trafficking in migrants especially for prostitution. The Copenhagen declaration on Social Development adopted by the World Summit for Social Development 1995 also called on the countries to take effective measures against traffickers of undocumented migrants and to safeguard migrant workers and their families.

The Beijing Platform of Action adopted at the Fourth World Conference on Women: The conference included a number of measures calling on governments to address the root causes of trafficking of women and girls, to strengthen existing laws to better protect Women's Rights; to punish traffickers through both criminal and civil laws, to accelerate cooperation among law enforcement authorities to break

up trafficking network; and to allocate resources to heal and rehabilitate trafficked persons back into their society.

World Congress against the commercial Sexual Exploitation of Children 1996: It aims to award high priority and adequate resources for action against the commercial sexual exploitation of the children, strengthen the role of family in protecting children, ensure the revision and enforcement of laws, and to advocate the development and implementation of gender sensitive prevention and reintegration programmes.

Amsterdam Conclusion and Oslo Conference 1997: The conference declared that in order to eliminate the exploitation of children, poverty eradication and rehabilitation programmes need to be developed, along with a sound mechanism to monitor their progress.

Second World Congress against the Commercial Sexual Exploitation of Children 2001, Yokohama, Japan: The conference called upon the international community to promote action towards the eradication of the commercial sexual exploitation of children and address the risk factors of poverty, inequality, discrimination, violence and armed conflict, HIV/AIDS, dysfunctional families and criminality.

The Honolulu Declaration 2002: In this declaration the need to address the structural causes of trafficking were emphasized. It found poverty as the root cause of trafficking. It stressed on a broad coalition to be envisaged, bringing together concerned agencies, organisations and individuals to combat trafficking at the local, national, regional and international levels.

Brussels Declaration on Preventing and Combating the Trafficking in Human Beings: The Brussels Declaration aims at bringing about European and international cooperation against trafficking for developing concrete measure, standards, best practices and mechanisms for victim protection assistance and police and judicial cooperation.

3.14 Legal Framework against Trafficking in South Asian Countries

The awareness about trafficking in persons in the South Asian Region is a recent development and not every country is equally active to combat the problem which is common and affecting all of them. There is very little information available on the laws of Bhutan on trafficking. There is an absence of minimum age for employment of children in Bhutan which was noticed by the UN Committee on the Rights of Child in 2001. The Committee proposed that a national study on sexual exploitation of women and children should take place.

The national law of Maldives prohibits work for children below 14 years and conditions which are not suitable for the health and development of children. Government employment under 16 years of age of the children is also prohibited. Maldives does not have any specific law to prohibit trafficking in persons but the government decided to have some legislation as a follow up to Commonwealth Plan of Action on Gender and Development and as a signatory to SAARC Convention on Trafficking.

Nepal has some extensive legislations on trafficking, being worst affected by cross border trafficking and its consequences, the government of Nepal has shown its sincerity to combat trafficking in the region. Some important legislations specific to trafficking are the Mulki Ain 1963, The Human Trafficking Control Act 1986 (HTCA) the Children's Act of 1992 and the Human Trafficking (Control) Bill 2000.

Pakistan's major problem is the smuggling of children to gulf countries for camel racing. The Zina Hudoood Ordinance 1979 criminalises Zina (extra marital sex), Zina-bil-jabr (rape outside of a valid marriage), the Prevention and Control of Human Trafficking Ordinance 2002 has been promulgated to deal with all types of human trafficking and is first of its kind in the SAARC region although there are limitations to this legislation

3.15 Legal Instruments in Bangladesh

Bangladesh is committed to combat trafficking under various International and regional instruments as one of the part to them, for example the 1949 Trafficking

Convention, the 1956 Slavery Convention, CEDAW, CRC and the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography. Bangladesh has been a participant to the sessions of the United Nations General Assembly on women, children, human rights, trafficking and migration. These efforts and commitment are in consistency with a number of provisions of the Bangladesh Constitution. Under **Fundamental Rights** the Bangladesh Constitution ensures the following rights to its citizens:

1. Article 27 provides fundamental rights of equality and protection
2. Article 28 provides right to be free from discrimination on the basis of religion, race, caste, sex, or place of birth
3. Article 31 provides right to protection of the law
4. Prohibition against forced labour is given under Article 34
5. Article 35 safeguards against torture and cruel, inhumane, or degrading treatment
6. Article 36 provides freedom of movement

Besides the fundamental rights there are several national laws under which trafficking in persons can be prosecuted. **The Penal Code of 1860** deals with the sheltering of girls forced into prostitution and with the punishment for offenders who procure minor girls, both from within and outside the country. The Penal Code as amended provides criminal penalties for kidnapping, abduction, slavery, forced labour, rape, wrongful confinement, selling and buying minors for prostitution and other offenses with punishment of seven years more and/or fine. **Section 364 A, 366 A and 373** provide protection to women who are victims of sexual offences or of illicit intercourse by punishing the kidnapper. **The Code of Criminal Procedure 1898** outlines the procedural law in criminal matters. **Section 54** gives power to arrest without warrant on grounds of suspicion. **The Child Marriage Restraint Act 1929** prohibits marriage of girls under the age of 18 and boys under the age of 21 and punishes the parents/guardian who facilitates this crime.

Despite the law child marriage is a common phenomenon in Bangladesh. The **Vagrancy Act 1943** provides for the definition of a vagrant and his/her arrest and detention and rehabilitation. There are a number of girl children vagrants engaged in begging being exploited physically in Bangladesh. They can easily be seen on bus stations and railway stations. They are more vulnerable for trafficking. The **Immigration Ordinance of 1982** lay down the provision of cancellation of licenses of registered recruiting agents for overseas, their security deposits can be forfeited if they are found have violated the ordinance or to have been guilty of other misconduct including coercion or fraud in inducing someone to migrate. In the days of 1980s, women's groups in Bangladesh increasingly started raising voice against various forms of violence against women in the society including trafficking.

The already existing laws i.e. the Penal Code were found ineffective in controlling crimes against women. Thus a series of new enactments came into force. The first such act was the Cruelty to Women (Deterrent Punishment) Act of 1983. Abduction of women and children was designated 'terrorism' under the **Anti-Terrorism Ordinance of 1992**. The **Children (Pledging of Labour) Act 1993** prohibits the making of agreements to pledge the labour of children under the age of 15 years and the employment of such children whose labour has been pledged. This law was superseded by the **Women and Child Repression (Special Provisions) Act of 1995**. This Act prescribes the death penalty or life imprisonment for the unlawful importation, exportation or sale of children.

The Suppression of Immoral Traffic Act (SITA) 1993 protects all children up to the age of 18 years from sexual exploitation. The Suppression of Immoral Traffic Act 1993 provides punishment for forcing girls into prostitution and for detaining girls below the age of 18 years, against their will, in any house, room or place in which prostitution is carried out. This is the main law of Bangladesh under which most of the trafficking cases are dealt with. The other act which provides major coverage to the victims of trafficking is the **Women and Child Repression Prevention Act 2000**. The Act provides for:

“Whoever brings or traffics or sends any women abroad with the intention of using that women in prostitution or using for unlawful or immoral purposes or buy or sells or let to hire or hands her over for any kinds of torture orsimilar reason,

keeps a woman in his possession,(care) or puts under his custody, shall be punished with death sentence or life imprisonment or be punished with imprisonment which may extend to twenty years but not less than ten years and in addition, shall also be liable to fine(Section5[1])”

The Women and Children Repression Prevention Act 2000 although provides for stringent penalties against trafficking, kidnapping, collecting ransom, rape, sexual oppression of women and children and against the damaging or deformation of any part of child’s body with the intent to engage him/her in begging. The crime against women and children are rampant in Bangladesh. The provision of this Act also apply to both internal and cross border trafficking. There is a provision of Special Tribunals which may place the women/child victim with a NGO or an individual custodian during trial. It also provides for victim compensation. This act recognizes the different motives for trafficking.

However on the down side Section 54 (arrest on suspicion) is often misused and women in custody are often denied health services to a woman simply because she is a prostitute and it constitutes the violation of her human right .Under the constitution, an individual is entitled to choose her occupation. Persons above 18 years, on execution of an affidavit signifying violation, can prostitute themselves. Such a provision endangers the vulnerable segment of women and girls whose human rights are trampled upon by vested interests. The rape laws discriminate against prostitutes because they are classified as ‘habituated’ to sexual intercourse, making the conviction of their exploiters near impossible.

As acknowledged by the Government of Bangladesh Report to the CEDAW Committee1997 there has been lack of implementation of policies and laws related to anti-trafficking programme in Bangladesh. The main reason given behind ineffective and passive approach towards trafficking is mainly due to the unequal status of women in the society, discriminatory personal laws in *Bangladesh Constitution* in the areas of inheritance, marriage, divorce and guardianship of the children. There is lack of sensitivity in general about the problem in the administration and law enforcement agencies which are widely due to the stigma prevailing in Bangladesh. The NGOs and civil society groups claim that the 2000 Act is a misnomer and has not changed the

condition of women and trafficking situation in Bangladesh.²¹ The women lawyers who represent the cases of trafficking victims in the court have found that women are either intimidated by the perpetrators from seeking redress, or if they try to file a complaint with the police, their reports are not accurately recorded thus the case from the victim side remains weak resulting into less number of convictions.²² There were only three convictions for trafficking in 2000.²³

3.16 National Framework of Laws Related to Trafficking in India

India as a party to 1949 Trafficking Convention, the 1956 Slavery Convention, CEDAW and CRC, as participant to special sessions of United Nations on women, children and human rights has made some legislative provisions to combat trafficking in persons. There is a constitutional basis to combat trafficking in persons under the provisions of following articles:

- Article 23 prohibits the traffic in human beings...and other similar forms of forced labour, and the right to be free from trafficking or forced labour
- Article 32 empowers the judiciary to prevent any abridgement in the fundamental rights
- Article 14 grants right to equality and equal protection
- Article 15 guarantees freedom from discrimination on grounds of religion, race, caste, sex or place of birth
- Article 21 provides right to life and liberty
- Article 22 provides protection from arrest and detention except under certain conditions.
- Article 24 protects children under 14 years from working under hazardous working conditions in factories or mines.
- The Directive Principles of State Policy although non-binding and non-justifiable provide certain safety caps for example men and women should get

²¹ Ali, Salma, ed. (2001), *Violence Against Women in Bangladesh--2000*

²² Although the 2000 Act provides severe penalties for trafficking, very few defendants have been charged and convicted under the Act or under its predecessor, the 1955 Act.

²³ United States Department of State (2001) Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report, July 2001. Available: <http://www.state.gov>.

equal pay for equal work and the men, women and children should not be forced by economic necessity to enter unsuitable avocations.

- Article 43 provides for all workers a living wage and conditions of work to ensure a decent standard of life.

Bangladesh and India have some common laws having their roots in the British colonial Laws, for example Indian Penal Code of 1860²⁴, The Child Marriage Restraint Act of 1929²⁵, and the Children Act of 1933²⁶. The Child Labour (Prohibition And Regulation) Act of 1986 does not prohibit all forms of child labour but sets hours and conditions of work for children under 14 years. The Bonded labour System (Abolition) Act of 1976 purports to free all bonded labourers, cancel their outstanding debts and prohibits the creation of new bonded labour arrangements, in fulfillment of the constitutional prohibition of all forms of forced labor. Foreigners Act of 1946 is very relevant and need to be amended to develop human rights based approach to deal with the trafficked persons who are also prosecuted under the concerned countries act or legislation for foreigners.

The core existing laws on trafficking in India primarily are, the Immoral Traffic (Prevention) Act of 1956 (ITPA), Indian Penal Code 1860(IPC), Juvenile Justice (Care and Protection of Children) Act 2000 (JJA 2000) and Goa Children's Act 2003 (GCA 2003). The ITPA is the primary piece of legislation that governs the problem of trafficking, focusing on the procurement of, as well as prosecution of, women and girls for the purpose of prostitution. The purpose of this legislation is to abolish the trafficking of women and girls for the purpose of prostitution as an organized means of living. Specific offences under the Act include, keeping a brothel or allowing a premise to be used as brothel (Section 3), Living on the earnings of prostitution (Section 4), procuring, inducing or taking persons for the sake of prostitution (Section 5), detaining a person in a premises where prostitution is carried out (Section 6), prostitution in ,or in the vicinity of, public places (Section 7), seducing or soliciting for the purpose of prostitution (Section 8) and seducing a

²⁴ This act imposes criminal penalties for kidnapping or abduction for various purposes, buying or selling a person for slavery, buying or selling a minor for prostitution, procuring a minor girl, rape and other offenses.

²⁵ The act prohibits marriage in which the female is under 18 years and boy is below 21 years of age.

²⁶ The Act prohibits parents or guardian from pledging a child for employment, but has been effectively superseded by the Child Labour (Prohibition and Regulation) Act of 1986.

person in custody (Section 9). The objective of ITPA is to criminalize and punish any third party, including brothel keepers, managers and their assistants who benefit from the exploitation of prostitution.

Recent Amendments to The Immoral Traffic (Prevention) Act, 1956

The Immoral Traffic (Prevention) Amendment Bill, 2006 amends the Immoral Traffic (Prevention) Act, 1956 to combat trafficking and sexual exploitation for commercial purposes. The Bill deletes provisions that penalised prostitutes for soliciting clients. It penalises any person visiting a brothel for the purpose of sexual exploitation of trafficked victims. All offences listed in the Bill would be tried in camera, i.e., the public would be excluded from attending the trial. The term "trafficking in persons" has been defined with a provision for punishing any person who is guilty of the offence of trafficking in persons for the purpose of prostitution. The Bill constitutes authorities at the centre and state level to combat trafficking.

Key Issues in The Immoral Traffic (Prevention) Amendment Bill, 2006²⁷

- While prostitution is not an offence, practicing it in a brothel or within 200 m of any public place is illegal. There seems to be a lack of clarity on whether prostitution ought to be a legitimate way of earning a living if entered into by choice.
- Penalising clients who visit prostitutes could drive this sector underground, preventing legal channels of support to victims of trafficking.
- This Bill punishes trafficking for the purpose of prostitution. Trafficking for other purposes (such as bonded labour and domestic work) are not covered by the Bill.
- The rank of special police officer, who would enforce the Act, is lowered from Inspector to Sub-Inspector. Such powers delegated to junior officers could lead to greater harassment.

²⁷ See Appendix 4

The Bill constitutes authorities at the centre and state level to combat trafficking. However, it does not elaborate on the role, function and composition of these authorities.

The Indian Penal Code 1860 also deals with several concerns related to trafficking in a chapter entitled of Kidnapping, Abduction, Slavery and Forced Labour. The provisions of IPC concerning trafficking include, kidnapping, abducting or using criminal intimidation against women in order to force or seduce her to have illicit intercourse, or to marry any person against her will is punishable with imprisonment of up to 10 years and a fine.²⁸ Similar penalties apply in the case of a girl who is below 18 years, or is imported from a foreign country and is under the age of 21 years.²⁹ It is an offence to kidnap or abduct a person in order to subject that person to grievous hurt, or slavery, or the unnatural lust of any person.³⁰ It is an offense to import, export, remove, buy, sell, dispose of, accept, receive or detain a person as a slave, which is punishable with imprisonment of up to seven years.³¹ And to sell, let for hire, buy or otherwise obtain possession of a minor below the age of 18 years with the intention or knowledge that he or she will be used for the purpose of prostitution or illicit intercourse or for any unlawful and immoral purpose, is an offense punishable with imprisonment of up to 10 years as well as fine.³²

The Juvenile Justice (Care and Protection of Children) Act 2000 (JJA 2000)³³ was passed in consonance with the Convention on the Rights of the Child (CRC) which has been ratified by India, to consolidate and amend the law relating to juveniles who have violated the law and provide for children in need of care and protection. The focus of the Act is to provide for proper care, protection and treatment by catering to the child's development needs and by adopting a "child" friendly approach in the adjudication and disposition of the matters in the best interest of the

²⁸ Section 366,IPC

²⁹ Section 366 A and 366 B,IPC

³⁰ Section 367,IPC

³¹ Section,370 ,IPC

³² Section 372 and 373,IPC

³³ The JJA 2000 recognises that a child "who is being or is likely to be exploited for the purpose of sexual abuse or illegal acts" as a 'child in need of care and protection', and includes elaborate provisions for the rescue and rehabilitation of such a child'

children and for their ultimate rehabilitation through various institutions established under the Act.³⁴

The act empowers the state governments to constitute child welfare committees in relation to such areas as they deem fit.³⁵ Section 32 of the act gives any police officer, public servant, registered voluntary organization, social worker or public spirited citizen the power to produce a child 'in need of care and protection' in front of the committee. It also outlines the powers of the committees and the procedures to be followed and gives the committees the ultimate authority to dispose of the cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide to their basic needs and the protection of their human rights.³⁶ The state government may establish and maintain children's homes for the care and protection of children.³⁷

3.17 The Goa Children's Act (GCA), 2003

Goa became the first state to provide a definition of 'child trafficking' under the Goa Children's Act (GCA), 2003.³⁸ The law authorises the airport authorities, border police, railway police and traffic police to report any cases of adults traveling with a child or children in suspicious circumstances or any suspected cases of trafficking. Such adults may be detained for questioning at the nearest police station.³⁹ Any one who exploits the child for commercial sexual exploitation will be liable to pay a monetary fine and serve a prison sentence of one year, in addition to any other penalty that is attracted by any other Act in force.⁴⁰

Under the new legislation, the owner and the manager of a hotel and other establishment will be held solely responsible for the safety of a child on the premises

³⁴ 'Child' means a person, either male or female, who has not reached the age of 18 years.[Section 2(d)k JJA,2000].

³⁵ Section 29 JJA, 2000.

³⁶ Section 31, JJA, 2000.

³⁷ Section 34, JJA, 2000.

³⁸ Section 2 (z), GCA 2003 defines the Child Trafficking as , "...the procurement, recruitment, transportation, harbouring, or receipt of persons legally or illegally or illegally within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability, or of giving or receiving payments or benefits to achieve the consent of a person having control over another person for monetary gain or otherwise..."

³⁹ Section 8 (15), GCA, 2003.

⁴⁰ Section 9 (4),GCA, 2003.

as well as all the adjoining beaches and parks.⁴¹ It provides for strong action for making children available for commercial exploitation including posing obscenely, selling or abetting the sale of children even under the guise of adoption or of the dedication of a girl child as a *devadasi*. Under section 8 of the Act, photo studios are also required to periodically report to the police that they have not shot any obscene photographs of children and stringent control measures have been introduced to regulate the access of children to pornographic materials. The Act also proposes the setting up of children's court to deal with the cases under the Act.⁴² However, the rules for setting up these courts have not yet been promulgated. The Act also provides a definition of sexual assault that is designed to incorporate every type of sexual abuse.⁴³

3.18 Analysis of Existing Legal and Policy Interventions in India

The Immoral Traffic (Prevention) Act of 1956 (ITPA) deals with the trafficking of women and children together.⁴⁴ There are no separate laws dealing with child trafficking at the national level. Also, the act primarily targets sex based trafficking and exploitation, does not address any other form of trafficking. Although there is no specific definition of trafficking in the act, the focus on prostitution has narrowed the focus of the act to women and children trafficked into prostitution. The ITPA is based on the assumption that the main victims of trafficking are those who are forced into sex work by procurers, pimps, brothel keepers and madams. The primary aim of the ITPA is to punish 'immoral trafficking' and the traffickers. The ITPA was initially enacted as the *Suppression of Immoral Traffic in Women and Girls Act, 1956* in pursuance of the International Convention for the *Suppression in the Traffic in Persons and the Exploitation of Prostitution of Others* signed in New York in 1950. The ITPA is divided into two parts: the first part criminalizes the activities such as trafficking and keeping of brothels and, the second part contains certain welfare measures that are directed towards the rehabilitation of sex workers. The Act

⁴¹ Section 8 (10), GCA, 2003.

⁴² Section 27, GCA, 2003.

⁴³ Section 2 (y) i, ii, and iii, GCA, 2003.

⁴⁴ There are separate provisions under the IPC that deal with the procurement of children. Section 366-A, makes the procurement of a minor girl (below the age of 18 years) from one part of India to another a punishable offence; Section 366-B, makes the importation of a girl below the age of 21 years a punishable offence. Section 374 provides punishment for compelling any person to labour against the will of that person.

was ostensibly not intended to be used against sex workers.

The provisions of the ITPA are aimed specifically at criminalising the activities of persons engaged in the sale and procurement of women for 'the purpose of prostitution'.⁴⁵ While the IPC ignores the question of the consent of the woman, the ITPA deems consent relevant only for the purpose of sentencing and not at the stage of defining the offense. Excluding consent from the definition of the offense of trafficking assumes that women are victims who are forced into the sex trade against their will. Where the use of 'force, fraud, coercion' or even sexual violence is manifested, if the woman is or has been a sex worker unmarried or is not a minor, and then she may be less able to take advantage of these provisions.⁴⁶ The law provides no remedy to a woman who willingly agrees to enter into sex work, but is subjected to sexual abuse and other forms of exploitation by her procurers.

In fact, the phenomenon of brothel raids that began with major raids in the red light areas of Mumbai in 1996 has been one of the most problematic strategies pursued under the provisions of the ITPA. The raids are justified in order to 'rescue' children forced into prostitution, yet there is evidence that these raids raise concerns about abuse by the police and are also counter-productive.⁴⁷ NGOs have documented instances of police brutality during raids, the fact that women and children have been rounded up during the raids, and the fact that many women end up in remand homes

⁴⁵ The courts have construed the words 'for the purpose of prostitution' narrowly. There must be evidence of several instances of 'prostitution', which itself is narrowly defined as a 'commercialised vice', in order for a charge under section 5 to be successful. The provisions of the IPC are much broader in so far as they include situations outside of 'prostitution', such as 'illicit intercourse', 'forcing a woman to marry against her will' and 'procuring for immoral purposes'. The focus is on the purpose for which the woman is being sold or procured rather than on the use of force, fraud, violence and deception. Where the purpose does not qualify as illegal, such as in the case of domestic labor, than the manner in which the procurement occurs, no matter how violent, would not fall under these provisions.

⁴⁶ Although the issue of force, fraud, deception and violence are specific concerns behind the anti-trafficking provisions, these are not addressed in the legislation, nor are remedies provided for these criminal acts. The primary focus of the ITPA provisions is on whether or not the trafficking is 'immoral'. Trafficking becomes immoral if it is for sex work, as opposed to trafficking for any other purpose such as marriage or domestic work, and intercourse becomes 'illicit' if it is for monetary or any other considerations. The overwhelming focus on the issue of immoral trafficking deflects attention from the main concerns, namely the use of force, fraud, deception, coercion and sexual assault which may have been used on a woman in the process of being trafficked. And thus, as discussed in greater details in the National Human Rights Commission Report on Trafficking in Women and Children in India (NHRC Report), the ITPA is also used overwhelmingly against women and children on the charge of soliciting. *National Human Rights Commission, Report on Trafficking in Women and Children in India*, p.397

⁴⁷ McGill, Eugenia, *Combating Trafficking of Women and Children in South Asia, Supplemental Study on Legal Frameworks Relevant to Human Trafficking in South Asia*, Asian Development Bank Regional Technical Assistance No.5948,(2002),p.32

for long periods because of delays in medical examinations and court delays, without access to counseling or other services. As a result of the raids, sex workers have been leaving established red light areas and moving outside the range of health and other established support services.⁴⁸

Children are not directly addressed as a separate category. However, there are provisions that assume any child found on a premise where sex work is carried on are being used for sex work. Such provisions place a burden on the sex worker to establish that her children have not been used for sex work, and make her vulnerable to police harassment.⁴⁹ In some cases, this leads to removal of the children from the premises and placement in a government home or shelter.

In the case of **Gaurav Jain vs. Union of India, 1997**, the Supreme Court passed certain interim directions during the course of the proceedings and stated that it was in the interests of the children of sex workers and of society that they “be segregated from their mothers and be allowed to mingle with others and become part of society. The court was opposed to the establishment of separate hostels and schools for the children of sex workers.⁵⁰ While disposing of Gaurav Jain’s case, the Supreme Court observed, “even the economic capacity of the mother of the juvenile in the red light area to educate and to bring him up would not relieve the child from social trauma; it would always be adverse to keep the neglected juvenile in the custody of the mother or the managers of the brothels; thus, the child prostitute is unsafe and insecure. So, they should be rescued, cared for and rehabilitated...the three C’s namely, **Counseling, Cajoling and Coercion** of the fallen woman to part with the child or child prostitute herself from the manager of the brothel is a more effective, efficacious and meaningful method to rescue the child prostitute or neglected juvenile. The income criteria, therefore, is not a factor not to rescue the child prostitute or

⁴⁸ There have also been suggestions that these raids are at times politically motivated by communal or Ant-Migrant Groups, since most sex workers in India are from lower castes, tribal groups or neighbouring groups. *Joint Letter to the Chairperson, National Commission for Women, dated 21 February 2002, from the Joint Women’s Programme and other NGOs.*

⁴⁹ The courts have not protected the rights of the sex worker to her family. In a recent judgment dealing with the children of sex workers, the Supreme Court, after examining the constitutional provisions and various international conventions including the Convention on the Elimination of All Forms of Discrimination Against Women, reiterated that the “eradication of Prostitution is integral to social welfare and the glory of womanhood” .*Gaurav Jain vs. Union of India 1997 (4) SCALE 657 at para 16.*

⁵⁰ However, it was of the view that “accommodation in hostels and other reformatory homes should be adequately available to help segregate these children from their mothers living in prostitute homes as soon as they are identified. *Gaurav Jain vs. Union of India 1997(4) SCALE 657 at para 1.*

neglected juvenile for rehabilitation.⁵¹

In addition, if a sex worker uses her residence for the purpose of sex work she can be charged under the ITPA. The Act also makes it an offense for a sex worker support her family from her earnings where her children and other family members are not minors. These provisions appear to betray the ITPA's objective of not targeting the sex worker and also effectively undermine the rights of children to be with their families, if they so choose and it is in their best interest.

There is little disaggregated data available on the number of children under 18 years of age who have been arrested and detained under the ITPA provisions. Most of the statistics available are regarding prosecution and conviction under this act being published by the National Crimes Records Bureau (NCRB) in their annual compendium entitled *Crime in India*. According to the NCRB, the total number of cases registered between 1997 and 2001 under the procurement provisions of the IPC (Section 366-A) was 715; under the importation provisions of the IPC (Section 366-B) it was 179; for selling minors it was 56 and for buying minors it was 90. These statistics indicates that despite the fact that there are laws on the statute books dealing with trafficking, especially in minors, the number of cases registered, at least under the provisions of the IPC, are nominal. The NHRC has also set out some trends in this area, but it is based on very limited material and information.⁵² One incongruity in these statistics is that section 2.3.1b of the report states that the ITPA applies only to women and girls. The lack of appropriate data and the process of age verification renders suspect the claim that 'thousands of minors' have been trafficked into India.

Another shortcoming, identified by the NHRC report, is the process of securing the age verification of a trafficked person. According to the report, an adult woman who is arrested by the police after being rescued from a brothel can be bailed out (although contrary to what the report states, she can also be sent to a protective or

⁵¹ Gaurav Jain vs. Union of India 1997(4) SCALE 657 at para 40.

⁵² The report states that all twelve girls arrested in Jammu and Kashmir in 2001 who were under 18 years of age. In Kerala, during the six-year period from 1997 to 2002 a total number of 17 minor girls were arrested by the police. Moreover, in Kerala, five minor boys were arrested in 2001 and 4 minor boys were arrested in 2002. In Manipur, in the year 2001, all of the seven female arrested were minors. In Rajasthan, during the six-year period from 1997 to 2002, a total number of 69 minor girls and 14 minor boys were arrested. In Tamil Nadu, during the same period, the total number of minor girls arrested was 3448 and boys arrested were 714. Thus, the total number of minors, male and female, arrested during this period in Tamil Nadu under the ITPA was 4162 or 12 percent of the total number of arrests made in Tamil Nadu. NHRC Report, above at note 25 at pp. 251-53.

corrective home). At the same time, if she or he is less than 18 years old, then the provision of the JJA 2000 should apply, and he or she will be sent to a rescue home for protection and dealt with the child welfare committee. Yet under the provisions of the JJA 2000, the minor is to be given no legal representation, and is to be dealt with solely at the discretion of the committee. While the NHRC is concerned about possibility of the victim being bailed out on the basis of false evidence regarding his/her age, by brothel owners or the traffickers, the JJA 2000, inappropriately seeks to address this concern by denying the minor legal representation and placing the minor in a rescue home.

The anti-trafficking law focuses on the method of rescue and rehabilitation of the women and girls assumed to have been trafficked for the purpose of prostitution. The detention of the women, whether in a protective home or a corrective institution, is seen as the primary response to the victims of trafficking into the sex trade. Once incarcerated, a woman has no right to privacy or bodily integrity and is subjected to invasive medical examinations and enquiries into her personal backgrounds. The conditions in corrective and protective homes have been documented and have been considered barely habitable.⁵³ Incarceration, loss of liberty, forced medical examinations and appalling living conditions drive the young girls and women placed in these institutions back into sex work. Frequently, they incur huge debts to cover the cost of legal fees, bail and sureties, which reinforces their debt bondage status. Rehabilitation has the limited objective of providing the victim with temporary shelter and safeguarding her from the abusive and exploitative aspects of her work. However, these homes do not serve the function of reintegration.⁵⁴ Nor are women entitled to

⁵³ *Compendium on Child Prostitution*, compiled by Socio-Legal Information Center for UNICEF, Maharashtra; see Radhika Coomaraswamy *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Mission to Bangladesh, Nepal and India on the Issue of Trafficking of Women and Girls*, (28 October-15 November 2000), United Nations (E/CN.4/2001/73/Add.2), 2001, at paragraph 12 and 27.

⁵⁴ See Coomaraswamy *ibid*, has stated that the notion of 'protective custody' is a serious infringement of the human rights of the women concerned. She has documented the case of a woman, her sister and daughter who had been trafficked to Kolkata from Bangladesh and remained in a government home for four years, despite interventions by the Bangladeshi Consulate and NGOs. Meanwhile, the trafficker who was accused in the case was out on bail with full freedom of movement: at paragraph 51. the special rapporteur also visited a government home in Liluah in Kolkata where many of the women who had been rescued were kept. She stated that the conditions in the home resembled a prison. "the facility was surrounded by factories and an outdated drainage system, and the health conditions at the home were unsatisfactory. The living conditions were not only sparse but extremely gloomy. The trafficked women were kept with mentally ill patients, deaf and dumb women and destitute women. Records with regard to the women in the home were not properly kept and information on the women was scanty and

leave the homes of their own free will. They are regarded as being in protective custody and only can be removed through an application to the court. This procedure denies to victims the right to which ordinary criminals are entitled, namely, due process and the right to liberty. This is particularly problematic given that they are ostensibly the victims of criminal conduct and not the actual criminals. These institutions also provide few options for self-employment and alternative income generation. Marriages are promoted as primary mechanisms for the reintegration of these women into society.

The JJA, 2000 recognises that child who is vulnerable and likely to be inducted into trafficking is a child in need of care and protection and includes elaborate provisions for their rescue and rehabilitation. In such a situation the police or NGO can remove the child and place them in a protective home until his or her case is considered. In light of the provisions of the ITPA, such a child would automatically seem to include those whose parents are sex workers or who resides in brothels.⁵⁵ The GCA 2003 is important as it separates the treatment of children from women. It has also extended the definition of sex abuse without being moralistic and conservative in its language. The definition of trafficking is also extremely broad and could lead to the removal of children from the care of an adult who does not seem to conform to normative assumptions about the 'good parent'.⁵⁶

3.19 Legal Justice Vs Human Rights: A Case Study of Trafficked Girl Child from Bangladesh to India⁵⁷

A 16 year old girl was trafficked from Rangpur, Bangladesh. She was lured with the prospect of acting in films by a eunuch from Bangladesh. The region bordering Bangladesh and West Bengal has very difficult terrain which is often

not properly documented". All the women the special rapporteur spoke to were deeply unhappy and wanted to be released: at paragraph 52.

⁵⁵ The children of sex workers are by definition 'neglected children' under the JJA 2000. The law empowers the state to intrude into the privacy of the home of the sex workers and remove her children from her custody and even guardianship. Such provisions end up destroying the family of a women in sex work, and penalize her for the work in which she engages. It also violates the rights of children who should be allowed to remain with their families if there is no evidence of abuse or exploitation. The 'best interest of the child' should not be contingent on the nature of the work his/her mother does.

⁵⁶ Section 13 (5) h of the GCA 2003 envisages establishing norms for good parenting.

⁵⁷ This is a case study developed by P. M. Nair with inputs from BSF, and NGOs (Sanlaap, WISE, Purna and Asha Sadan), for details see: Nair, P.M (2005) Trafficking in Women and Children in India, Orient Longman, New Delhi, pp.451-452

difficult to guard all the time by the security officials. The girl described her traveling experience as least problematic but she did not realize that she had been taken to India. She was sold in a brothel in Mumbai, where the girl was raped and she underwent unprecedented trauma, agony and physical injury. The girl approached the local police station and registered an FIR of rape against the brothel keepers and the others. She was highly distressed and was produced before the magistrate. The police officer who recorded her FIR on the girl's statement realized that she is a Bangladeshi citizen. She was questioned repeatedly in order to confirm her identity as a 'foreign national' thus an FIR was registered against her under Foreigner's Act. Being minor she was treated as per Juvenile Justice Act in India and was kept in a shelter home.

The Juvenile Justice Board decided to repatriate her to Bangladesh. In compliance with the judicial orders the girl was escorted to by Mumbai Police to Kolkata where she was to be handed over to the BSF control room, who would take charge of her and look after her for sometime till the 'push back' was carried out. It was during this period that some NGOs (Sanlaap and Prerna) intervened and accelerated their efforts to safeguard the girl's interest. They sought help from the nodal officer of the National Human Rights Commission. Despite arguments and counter arguments the nodal officer managed to convince one senior BSF officer. The solution brought was that the girl should be handed over to some responsible NGOs in Kolkata (both STOP and Sanlaap), who would liaise with an NGO (BNWLA) in Bangladesh. Thereupon both the NGO parties will meet at the border in the presence of the BSF and the Girl will be handed over to the Bangladeshi NGO. This transfer would be properly documented. This procedure would ensure that the girl was no longer in a vulnerable situation and preventing further exploitation and re-trafficking. The Bangladesh National Women Lawyer's Association (BNWLA) worked very sincerely and processed the matter with the government and the girl was handed over to BNWLA.

Though it seems to reach at a happy ending with the trafficked victims being repatriated safely to her country, this case raises several questions; since the girl was trafficked could she have been treated as illegal immigrant, if not did she has a legal right to stay in India till she was repatriated through the proper channels?. She was a rape victim and a criminal case was pending in the court. Did she not has the right to

stay in India till the entire legal proceedings were over? What would her nationality have been during this period? Was there a need to provide her with temporary nationality till the final judicial proceedings? Would not her absence due to repatriation weaken her case in the Mumbai court? The push back system as applied to the illegal immigrants- should it be applied to the trafficked victims like this girl also? And in the eventuality of a push back, what is the mechanism to ensure that the human rights of a girl child being pushed back across the borders are not being violated? Was an FIR on a trafficked rape victim under Foreigner's Act necessary?

The accountability of the officials for their acts of omission and commission in this case is another important issue to be addressed. The most pertinent question here is whether there is any conflict between law and human rights? If the letters of the law has *prima facie*, any conflict with human rights, will the spirit of law rise to the occasion and provide harmony with human rights? The answers for all these questions do not lie in any law book, but certainly lie in the process of enforcement and the mechanism of delivery of justice whose efficiency depends on the minds and the hearts of the persons involved in the process.

CHAPTER-IV

REHABILITATION, REPATRIATION AND RE-INTEGRATION OF THE TRAFFICKING VICTIMS

According to Mary Robinson, former UN High Commissioner for Human Rights, the protection of human rights and the dignity of trafficked persons and persons in prostitution must be given the highest priority. But there is a problem of poor enforcement of international treaties and legal protection for trafficked women. Despite the numerous international agreements with provisions relevant to the trafficking of women, few are ratified, enforced and legally binding. Weak international legal instruments and poor co-ordination of prevention efforts between countries and regions means that, even if the trafficker is caught, it is often only the woman who is prosecuted as an illegal immigrant.¹ Women who have been trafficked often fail to seek help because of a well-founded distrust of police, lack of knowledge of the law and of their rights, a shortage of translators and cultural insensitivity within the judicial system. Women who do seek legal assistance or seek to assist in the prosecution of traffickers often face a system hostile to women and lacking the sensitivity or political will needed to tackle issues surrounding the forced prostitution and abuse of women. Women who are trafficked justifiably fear retribution from criminal networks and corrupt judicial systems and are vulnerable to further oppression, arbitrary arrest, custodial abuse and summary deportation.

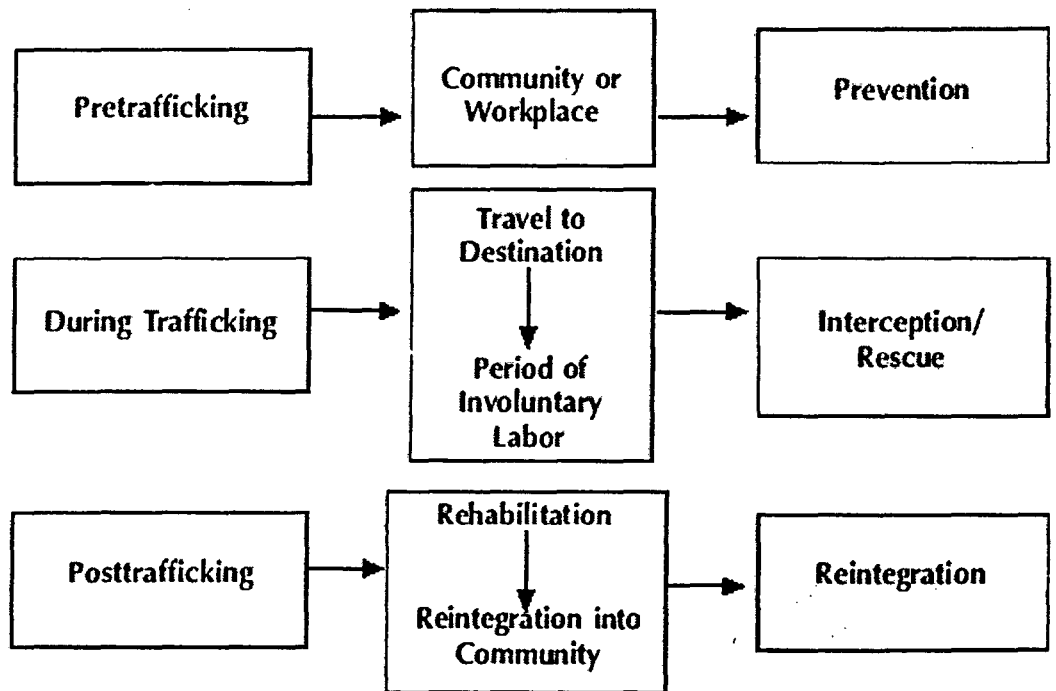
Currently, neither India, Bangladesh, Nepal nor Sri Lanka have a distinct law, policy, guidelines or programs to protect victim witnesses before, during or after the trial.² The governments and non governmental organisations have been engaged in rescue operations of the victims of trafficking as part of their anti-trafficking programmes. Anti- trafficking programmes can be roughly categorized into three areas: prevention, interception/rescue and reintegration.

¹ The testimony of a victim in a crime of violence is often the best and the only evidence that can be obtained against an accused. It is therefore incumbent upon the State, in fulfillment of its duty of meting out justice, to ensure that victims who would be witnesses are protected against the threats and intimidations psychological and physical, of the associates of the accused. The victim-witness special status needs to be recognized. The State is best equipped to provide protection and security to victim witnesses and thereby protect their human rights.

² Though some existing laws (penal codes, criminal procedure codes and constitutions) refer to witness protection, provisions appear to be insufficient to adequately protect women and children victim witnesses who have been trafficked for sexual exploitation.

CHART 4.1

Trafficking Programming Framework



4.1 Rescue Operations

Rescue is the first step towards releasing the victims from the clutches of traffickers and setting them away from the trafficking network. Generally the victims are rescued by means of a police raid in brothels or any area where a possibility of trafficking victims is found. It is a thorny issue and has its limitations largely due to the attitude and violent behaviour of the law-enforcing agencies. The minors are sent to the state run or an NGO shelter. Most are unable to go back to home because of a whole series of problems. When they are released they are again at risk of being re-trafficked. An effective rescue process should have some pre and post rescue strategies to be followed. Some of important Strategies can be as follows:

Strategy for Pre-rescue Operations:

1. Cultivating networks of informants who will provide specific information about trafficked victims or woman willing to be rescued from brothels. Specific information may be in the form of letters, emails, photographs.

personality traits, identification marks and scars, addresses, physical presence of relatives and people known to victim, computer graphics generated by the description and mannerisms (e.g. accent, distinctive body language like frequent rubbing of fingers, blinking of eyes or any other). It is desirable, that a small remuneration is paid to the informant, which sustains their motivation.

2. Identify the victim by the use of decoy customers and authenticate the available information. The decoy customer should try to motivate the trafficked person to talk on a one-to-one basis and to facilitate further rescue operations.
3. Involving an NGOs and Social Workers in Rescue operations carried out by the Police or the Community.
4. Prepare a strategic plan for rescue operation with minimum loss of time. The plan should include the following: -
 - a) Compilation of all available valid information. For example, physical layout of the brothels and hideouts, specific characteristics of the location, etc. Seek help of key informants such as petty-shop owners, sweepers, part-time maids, milkmen or any other persons who may provide their service to the brothels/hide-outs, local contractors and builders who would know the layout of the brothels/hide-outs.
 - b) Rescue team, preferably trained, should consists of the designated Special Police Officer as defined under Section 13 of Immoral Traffic Prevention Act, 1956, Assistant Commissioner of Police and/or District Commissioner of Police, police personnel including women, NGO representative and social worker. The number of rescue team members should be constituted depending on the size (number of brothels/victims) of the rescue operation.
 - c) Maintain confidentiality and secrecy of the rescue operation, all members of the rescue operation should gather at a commonplace or location at least 2 hours before the actual rescue operation.

- d) To prevent leakage of information, prior to the actual rescue operation, mobile phones and any other mode(s) of communication belonging to the rescue operation team members should be taken in custody by the rescue team leader.
- e) The strategy that would be adopted for the rescue operations and its various steps should be explained at this time. To each team member, explain his/her role in the rescue operation and clear any doubts that she/he may have.
- f) Preparing key players: Formation of teams would depend upon the situation and targeted number of brothels to be covered and expected number of minors to be recovered.
- g) Under no circumstances should the decoy customer(s) be exposed before, during and after the rescue operations.
- h) Under no circumstances should the rescue operation be revealed to any person (s) other than those directly involved". If by any chance, the media does happen to get word of it, they should not be allowed to cover the rescue operation.
- i) Check /verify vacancies available in Government and other certified Homes, so that the rescued victims can be taken to the appropriate Homes for safe custody. This should be done in total confidentiality, so that any information on the rescue operation is not leaked.
- j) Before conducting rescue operations, all police formalities should be completed.
- k) During the rescue operations, the rescue team members should not physically touch the girls, women, or their belongings. Only female members of the rescue team should deal with the victims.
- l) During the rescue operations, no rescue team members should use abusive language towards the girls and women.

Rescue Operation at a Community Level

- The community should be sensitised about trafficking, the harm resulting out of this exploitative situation, and what to do in case they have knowledge of such an incident. Community members should be motivated to keep a watch in the community for irregular movement of child victims to and from the area, their possible traffickers and hideouts.
- The Community members should immediately provide information on suspicious people or to the nearest NGO working on rescue of trafficked victims. In absence of an NGO, the nearest police station may be informed.
- Involve community group in rehabilitation of the victim, if he/she is from the same community.

Strategy for Rescue Operations

1. Bangladesh National Women Lawyer Association (BNWLA) found that planned rescue operations should be carried out on brothel communities. The cooperation of local area police is very much required.³
2. The rescue team members should be placed in strategic location as pre-planned for the rescue operation, before entering the brothel/community,
3. Immediately going to the place/area where the trafficked victim is being kept/confined.

³ On 10 November 1996, the Bangladesh National Women Lawyer Association (BNWLA) received information about the activities of child traffickers. The information was immediately passed onto the Special Branch of the city police. The lawyers of BNWLA along with Special Branch officers went to the spot, but the initial attempt to apprehend the traffickers failed as the local people were non-cooperative. The two children were actually on their way to Duabi to be employed as camel jockeys. The BNWLA lawyers and the police learned that two children were actually taken to Tongi by one Nargis. The BNWLA faced an obstacle as the police of Gulshan thana needed permission to enter Tongi thana area. After completing the formalities, the Gulshan police entered Tongi but Nargis had fled with both the kids, but the police was able to arrest another woman named Anwara Begum, a member of the trafficking ring. The investigation team found that several children were trafficked by Anwara Begum. The team rescued two boys from her custody. Later, two other boys were also found near a slum where Nargis had abandoned them. As a follow-up action, the BNWLA lawyers had opposed the bail petition of traffickers, and the remand was granted under section 12 of the Women and Children Repression (Special Provision) Act, 1995 (39). (Source: BNWLA Annual Report 2000).

4. Removing the victim from the brothel/community as quickly as possible. He/She should collect all his/her belongings. In case, she has a child or children of her own, it should also be assured that she is not separated from them.
5. The child victim should be treated with sympathy and not as a criminal.
6. Removing any mentally-challenged or ill child victim or woman in the brothel, irrespective of their age.
7. Seizing/collecting all records showing expenses/income/payment/financial transactions and any other important document from the brothel owners, as they would form important piece of material evidence in the Court.
8. Identification of the victims should be kept confidential, her name, address, photograph or any other information should not be published in any newspaper, magazine, news-sheet or visual media. This is mandatory as per Section 21 (India) of the Juvenile Justice (Care and Protection of Children) Act, 2000.
9. Identity and location of decoy customer should be kept confidential.
10. The rescue team members should be accountable to the rescue team leader and any violation of the rights of the victim should be dealt in appropriate manner.

Strategy for Post –Rescue Operations

1. The victims should be separated by sight and sound from the accused. While taking the child victim to the Police Station, the child and brothel owners/traffickers should be taken in a separate vehicle. If this is not possible, they should be kept separate from each other. This is to prevent the accused from threatening or intimidating the child.
2. The child should not be kept in the lock-up under any circumstances. The victim should be immediately taken to a certified place of safety after the raid. The victim is not an accused person and should not receive the same treatment as the accused. Keep her separately from the brothel owners/traffickers.

3. The rescue operation should be documented, in presence of two independent reliable witnesses and get it signed by them for authentication. It can be used in court proceedings and for further research purposes.
4. The First Information Report (FIR) should be immediately registered by the victims or NGO in the Police Station and it should contains details of location of crime, description of offence, victim and accused, chronology of crime right from the time the child was trafficked. The FIR should be as detailed as possible. The child should receive a copy of the FIR and it should be kept in safe custody of the NGO/Protective/children Home, where the child is kept.
5. Invoking all relevant Sections of Indian Penal Code, 1860 and Immoral Traffic Prevention Act, 1956 and Juvenile Justice (Care and Protection of Children) Act, 2000 against the trafficker and brothel owners.
6. The Child must be hand over to a representative from the Protective/Children Home run by either the Government or NGO. The child should be counseled about her stay in protective custody and that she has been kept there for her safety and well being.

4.2 Rehabilitation

After rescuing the victim, there arises the need of keeping them in a different social environment to detach them from their previous inhuman life. Rehabilitation is the most challenging activity that requires a pragmatic programme of action to restore the trafficked women and girls in their social life. The rehabilitation programmes should have an alternative employment opportunity for the trafficking survivors. Otherwise there is a possibility of that the rescued person in absence of a livelihood can go back to the previous living. Moreover, the prevailing norms and value system of our society do not easily accept the return into family and social life. Sometimes repatriation can be unsuccessful also.⁴

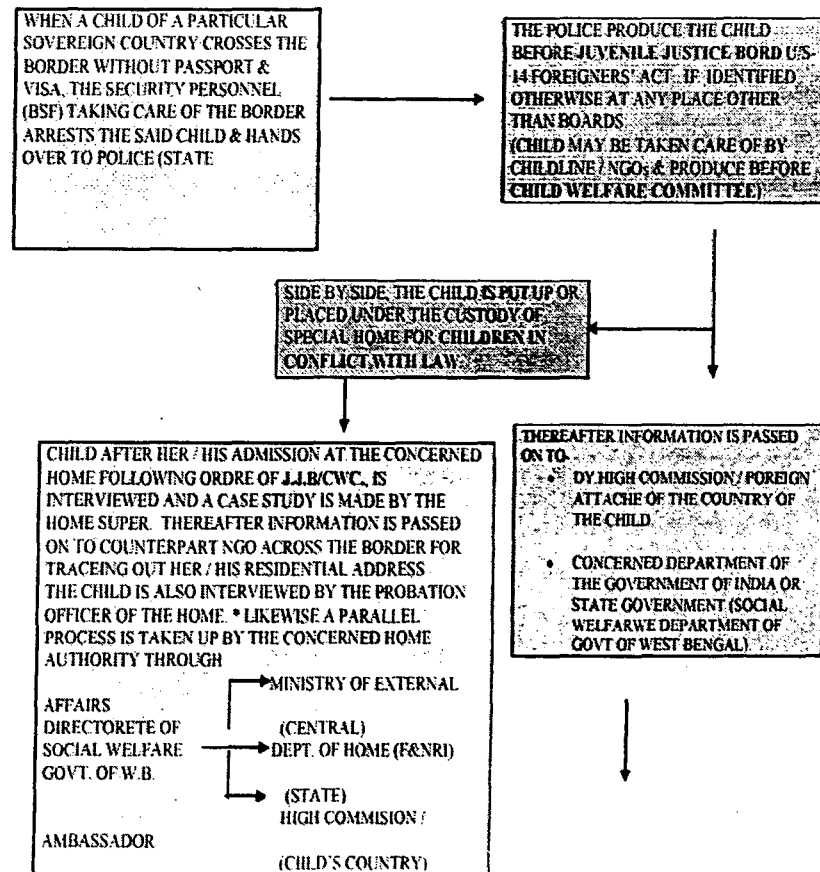
⁴ A 15-16-year old girl came to Dhaka with her grandmother. One day she had a fight with her grandmother and left the house. She was found near New Market with physical and mental stress. The BNWLA team rescued her. She slowly recovered from that condition. The BNWLA counselor took her back to her home. Her mother was angry and did not want to talk to her daughter. Considering the situation, the daughter asked the counselor to take her back to the shelter home. Then suddenly the mother started to get concerned and asked where was her daughter all these days, etc. She also shared information regarding her family and husband. She also informed that their financial condition is so

4.3 Repatriation

'Repatriation' means voluntary return to the country of origin of the person subjected to trafficking across international frontiers. The minors have no choice, and they have to be taken back to their place of origin, but an adult women has the right to choose to stay in the country if she so wishes. The choice of women is not even considered, because the focus has always been to protect the interest of state over and above the interest of women.

CHART-4.2

Repatriation Process of a Child (From Foreign Country) Case of a Bangladeshi Child in West Bengal (India)



poor that it would be difficult for her to sustain the daughter. However, the counselor convinced the mother to keep her daughter for few days. After few days, the girl was back to the shelter home in Dhaka with a relative. Neither her father nor her mother wanted to take her responsibility. (Source: BNWLA annual report 2000).

THE ORDER IS ISSUED FURTHER DOWN TO THE LEVEL OF DIB CONCERNED DISTRICT.

DIB INFORMS THE FOLLOWING DEPARTMENTS TO-

- RESPECTIVE J.J. HOMES TO KEEP THE CHILDREN READY FOR REPATRIATION.
- SUPERINTENDENT OF POLICE TO ARRANGE FOR THE LOGISTICS UP TO THE BORDER.
- INFORM THE IMMIGRATION & CUSTOM POLICE.
- BSF TO ARRANGE A MEETING WITH THE BDR REGARDING THE ISSUE (REPATRIATION BY LAND).

N.B.

- JUST TO AVOID THE TIME CONSUMING PROCESS IN LAND, REPATRIATION IS ARRANGED BY AIR IN SOME CASES.

DIB INFORMS AIRPORT POLICE, AIRPORT IMMIGRATION & CUSTOM POLICE.



REPATRIATION BY AIR

REPATRIATION BY LAND



SUPERINTENDENT OF POLICE DEPOSITS THE CHILD TO BSF IN THE PRESENCE OF IMMIGRATION DEPT. AND BSF IN ITS TURN DEPOSITS THE CHILD TO BDR.

THE AUTHORISED NGO OF BANGLADESH ON THEIR PART MAKES ARRANGEMENT TO COME TO THE AIR PORT TO TAKE OVER THE CHARGE OF REPATRIATION OF BANGLADESHI CHILD AND THE AUTHORISED NGO OF THIS PART LIKE PRAAJAK ALONG WITH OTHER AUTHORITIES AND SUPPORTING DOCUMENTS / TRAVEL PERMIT FOR IMMIGRATION CLEARANCE HANDS OVER THE BANGLADESHI CHILD

THE ORDER IS ISSUED FURTHER DOWN TO THE LEVEL OF DIB CONCERNED DISRTICT.

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- RESPECTIVE J.J. HOMES TO KEEPO THE CHILDREN READY FOR REPATRIATION.
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4.4 Example of a Rescue and Arrest of a Notorious Trafficker

The BNWLA repatriated 10 boys from India. Once the boys are taken across the border, their names are changed and they travel to Duabi via India with their new names. In this way one notorious trafficker Fitu Miah took seven boys from village Hangamy and Raninagar under the Sibganj Police Station in the district of Chapai Nawabganj. When the boys were repatriated, the BNWLA investigated and discovered the chain of network. The alleged ringleader of child trafficking racket Fitu Miah was identified and arrested with the help of the police. Fitu Miah collected children openly, but the police did not act. Fitu Miah used to say that if give me a boy weighing below 15 kilos, he will bring 2,000 Taka per month for you.⁵

4.5 Reintegration

‘Reintegration’ means social and economic integration acknowledging her right to self-determination. It is a better alternative to rehabilitation and implies a far less judgmental. Most importantly, it incorporates the notion of social acceptance and the reclaiming of dignity for women. However, often the societies become judgmental in re-integrating the victims into the society.

4.6 Bangladesh Government’s Initiatives for Trafficking Prevention Programs

1. Ministry of Women and Children Affairs (MWCA)

MWCA is implementing one large-scale project, Child Development: Coordinated Program to Combat Child Trafficking (CPCCT), the main objective of which is to conduct motivational activities and to support the efforts of organisations working in the areas of prevention, rescue, repatriation, and reintegration of survivors of trafficking. It should be noted that this government project only focuses on children and does not include women. This tendency to focus on children has been reinforced through the adoption of the National Plan of Action (NPA) to implement commitments made at the Yokohama Conference in December 2001, again to counter the commercial sexual exploitation of children only. There is a great need to

⁵ Richard P. Empowerment, Community Mobilization and Social Change in the face of HIV/AIDS. *AIDS* 1996; 10 (Supplement 30): 27-31.

undertake a comprehensive anti- trafficking program for all trafficked persons: women, children, and men. There are many instances of men being trafficked while migrating either irregularly or legally. MWCA is also implementing a project titled “Empowerment and Protection of Children and Women” which was started in 2001 with support from UNICEF. The project addresses children in especially difficult circumstances, including street children and trafficked children. The Ministry received support for preparing an assessment of progress on NPA since the Stockholm Declaration for the Yokohama Conference. These activities included the preparation of some best practices as well as the draft NPA, which has since been approved by the Cabinet and is now in the early stages of implementation. MWCA is implementing 28 other projects with direct links to poverty reduction, gender mainstreaming, micro credit policy, empowerment of women, capacity building, etc. in rural areas.

The CPCCT project of Women Affairs Department under MWCA provides for temporary shelters in 25 upazilas and one rehabilitation center for rescued children. However, at the time of writing it is not clear if this component will be continued once the revised project proforma is in place. The project has encountered difficulties in locating suitable premises, and there is concern about the capacity of the agencies to provide adequate standards of care. There is an ongoing need to rethink how temporary shelter is provided to children, and the potential to adopt more innovative ways of caring for trafficked persons without inflicting more harm or stigmatization. These are difficult issues to address given MWCA’s funding constraints.

2. Ministry of Home Affairs (MHA)

The MHA has established an internal structure to address trafficking concerns. Training has been delivered on a relatively ad hoc basis to build awareness among the Ministry’s mandated staff. IOM recently completed a year pilot project, “Capacity Building of Law Enforcement Officials to Prevent Trafficking of Women and Children,” in 2001 funded by Canadian International Development Agency (CIDA). For example, one component dealt with improving the investigation and interview skills of officials.

Training and building awareness of how best to receive and process trafficked persons is a key as these enforcement officers play vital roles in combating trafficking of women and children.

The actual operation of rescuing trafficked children falls within the mandate of the Home Ministry, while MWCA undertakes programs and activities for prevention and rehabilitation. The main activities are in training, communication, management of information systems, repatriation, providing temporary shelter, and rehabilitation of rescued children. In addition, the Home Ministry is responsible for providing awareness, training to journalists, lawyers, teachers, youths, health and family planning workers, and the employees of the Department of Women Affairs.

3. Ministry of Information

The Ministry of Information (in cooperation with the project CPCCT under MWCA) has produced material for electronic and print media to raise awareness and build resistance to trafficking. Some 20 awareness-raising programs have been developed to be telecast on all the TV channels. Short 5-minute films have also been developed to play in 1,000 cinema halls through the country. In addition, 48 radio programs will be broadcast under the project.⁶

4. Local Government Division:

Under the Ministry of Local Government Rural Development and Cooperatiion, the Division has attempted to enforce registration of all births, deaths, and marriages. The efforts are designed to strengthen the registration system, collect and analyze sex-disaggregated vital statistics, establish the right to identity of children including girl children, and facilitate the protection of the rights of married women. Target groups are women and girls. As the Local Government Act is now in the process of being drafted, one of the major responsibilities of the Union Parishad (UP) is enforcement of registrations of birth, death, and marriage, by simplifying the registration procedure and taking it closer to the people (i.e., by preparing simple messages for the general public on the importance of birth, death, and marriage registration). There are also provisions for orienting UP members, local NGOs,

6. Asia Foundation/Population Council Horizons 2001. RETA 5948, Inception Report: Combating Trafficking of Women and Children in South Asia. Manila.

women's organisations, and government functionaries to the importance of this legislation. The Local Government Division plans to undertake public education programs (seminars, workshops, drama, folk song, etc.) and use the media to create public awareness on vital registration. While the main objective of these programs is to reduce child labor and early marriage, NGOs like the Aga Khan Foundation and the Association for Community Development in Rajshahi have been organizing training courses for the empowerment of local government elected female members of UPs to introduce anti-trafficking messages into these birth and marriage registration campaigns.

The Bangladesh Government does not have any specific program or project responsible for integration of trafficked children and women. Under MWCA, two shelter homes have been established (Nari Nirjatan Protirodh Center and One Stop Crisis Centre). These two shelters are mainly dealing with women victims of violence. There are some facilities for building skills that mostly concentrate on traditional trades. The vocational and skill development activities are for poor vulnerable women but not specifically for trafficked victims. The main constraint in this sector is that government does not have any mechanism to rescue the trafficked children, therefore no records or comparative studies on the effectiveness of different approaches for integration of women and children are available. The CPCCT project, under MWCA, has the provision to strengthen the integration of trafficked victim children, but there is no report on activities to date.

4.7 Bangladesh-NGO Activities

ACD, based in Rajshahi, is involved in building awareness, community vigilance, and informal contacts and referral systems to prevent children from being trafficked. ACD stands out from other NGOs for having built a positive working relationship with the police, encouraging them to bring lost and rescued children to the ACD shelter home. ACD has also developed positive relationships in the district with the local elected members of the union parishads and other leading community members. ACD trains peer educators in their groups for adolescent girls, boys, and young men; organises training, workshops, seminars, rallies, and courtyard meetings; and distributes leaflets, booklets, and posters.

ACD, with the financial support from Save the Children Denmark and Norwegian Agency for Development Cooperation (NORAD), has been implementing interception projects in the northern part of Bangladesh. It also runs a shelter home for the children of trafficked victims or sexually abused children. It receives rescued children from police custody and keeps them in a child-friendly environment.

Bangladesh National Women Lawyers Association (BNWLA) is a legal aid organisation that has been implementing its anti -trafficking projects since 1993. It conducts meetings with community members, social leaders, and law-enforcement agencies to prevent trafficking in children and women; provides support for investigation of specific incidents; and maintains liaison with police stations, jails, courts, and journalists. BNWLA has published booklets, fact sheets, and posters on anti -trafficking issues and is updating a database on trafficked persons.

BNWLA is the pioneer national NGO that started its work rescuing trafficked victims and providing them with legal assistance. It now initiates legal action against traffickers and works with its counterparts in India to help trafficked victims return to Bangladesh. It currently runs one of the largest shelter homes in Bangladesh. After identifying victims of internal trafficking through extensive investigation in brothels and police stations by its field officers and investigators, BNWLA rescues and releases survivors of trafficking from various confinements with the assistance of law-enforcing agencies. For cross border trafficking cases it organizes repatriation of survivors with the assistance of partner organizations and government departments concerned of both Bangladesh and India. BNWLA's comprehensive recovery program for trafficked persons includes providing safe shelter, medical treatment, psychosocial counseling support, formal and non formal education, and recreational and vocational training on various trades.

Rights Jessore has been implementing a mass information campaign in the Jessore district (a border community) to mobilize different professionals to combat human trafficking. Recently Rights Jessore organised a 2-day dialogue session between the NGOs of the Bangladesh border area and West Bengal. During these sessions, the need for a bilateral treaty with smoother mechanisms for repatriation was frequently identified. The organization builds the capacity of local government

representatives in combating trafficking of women and children, and organizes rallies, meetings, and mikings at the local hats.

Centre for Women and Children Studies (CWCS) has been working to raise mass awareness about trafficking since 1997. Currently, the Centre is working in eight northern districts to create awareness through campaigns, workshops, and dialogues with members of the community, professionals, local leaders, law-enforcing agencies, and local administration at the district, upazila, and village levels.

Dhaka Ahsania Mission has a Children and Women Trafficking Prevention program to raise awareness regarding different aspects of trafficking. DAM has produced different types of educational materials on the trafficking issue based on community-level consultations. The Dhaka Ahsania Mission (DAM) provides support services in communities for awareness raising, rescue, repatriation, rehabilitation, or reintegration of the victims of trafficking. It holds courtyard meetings with the village community and has a shelter in one of the border areas for rescued victims.

Action Against Trafficking and Sexual Exploitation of Children (ATSEC), a network of 15 NGOs, has been implementing prevention projects in partnership with NGOs to raise awareness of trafficking of children among vulnerable populations, particularly rural women and border region communities. ATSEC has also developed a resource center to provide culturally sensitive information about counter trafficking issues and is producing IEC (information, education, and communication) materials for a comprehensive anti trafficking campaign nation wide. This project also seeks to strengthen the capacity of NGOs to build anti trafficking initiatives into their overall programming.

Breaking the Silence, an organisation working on the issue of noncommercial sexual abuse of children, has developed groups of adolescent girls (15 volunteers) and boys (10 volunteers) who impart messages about child sexual abuse through a child to-child approach, informing their classmates and arranging discussions with adults.

Research and Services NGO in Bangladesh (INCIDIN) Bangladesh, has been implementing a project, 'Misplaced Childhood' aimed at providing drop-in center support services in Dhaka City.

INCIDIN Bangladesh works with boys and girls engaged in street based prostitution in Dhaka to improve their health (both physical and psychological), and provides opportunities for alternative forms of employment. It seeks to link up with other NGO and government interventions for improved service provision to children, better coordination, and rapport building.

Karmojibi Kalyan Sangstha, in Rajbari, had been supporting a primary school outside a Daulotdia brothel for children of sex workers and other local children.

Aparajeyo Bangladesh offers drop-in centers for street children. It recognizes that integrated efforts are required to combat children's lack of trust, low self-esteem, and shame (particularly if they have been sexually abused and/or exploited). Some children are extremely traumatized and may require more psychosocial care and services than others to help them recover.

BNWLA, ACD, Dhaka Ahsania Mission, and Ain o Salish Kendra have worked in the field integrating the trafficked children and women they have assisted to return to Bangladesh. It appears from their work that personal influence, community acceptance, and high regard for the NGO are critical for ensuring community acceptance and trust to encourage integration. The main trend of integrating trafficked children and women is to engage them in non formal or formal education systems, and organize special vocational training for developing skills. Vocational skill training is also a feature of many NGO interventions for children who have been sexually abused and exploited or who are at risk of being sexually exploited. Some NGOs admit they need to do more to challenge gender stereotypes and encourage girls to explore other skills.⁷ The Institute of Digital Technology, a local computer institution, has designed the 6-month training package, taking into consideration the trainees' understanding and ability. BNWLA has also organized some four marriages for the adolescent survivors, as part of the integration approach. Some children have been returned to their parents. BNWLA also encouraged other NGOs to open non exploitative job options for trafficked children and women. They have sent some girls to different NGO offices. Thirty children have received skill

⁷ For example, girls living in the BNWLA shelter home learn embroidery, painting, and tailoring. Recently BNWLA has started providing computer literacy training to 12 semi-literate girls.

training on different trades. Twenty-five children have been provided an education by establishing a school where a special curriculum is being followed.

A further 77 children have been integrated under different projects of BNWLA. In the Adolescent Girls' Hostel of Aparajeyo Bangladesh, several girls who did not pursue higher studies are garment workers.⁸

4.8 Government of India's Initiatives for Trafficking Prevention Programs

Certain public expenditure schemes have pro-women allocations⁹, though they are not exclusively targeted to women. For instance, there are several schemes for poverty reduction and employment generation that include women components. Similarly, public provision of drinking water supply and sanitation, fuel, housing, and improved energy resources like biogas are of immense benefit to women. Women and children participation in the Integrated Child Development Services (ICDS) program has increased.

Apart from the women-specific programs (all of which are ongoing), no action has been initiated to identify girl- and women-related provisions in the composite programs and schemes. ICDS is the largest poverty reduction scheme available from the Government of India that can build upon prevention of trafficking. It has been implemented widely in several states in red-light areas or source areas, and is the principal means of organizing children, adolescents, and mothers from below-poverty line families. Several innovations are tied to the ICDS at the state level, and it is a crucial program for identifying beneficiaries for schemes related to trafficking.¹⁰

⁸ The girls working in the garment industry may not earn much, but none are compelled to go back to the street or sex work. The efforts to build street children's awareness, pride, and confidence in themselves means that many girls want to forget their past life.

⁹ Department of Women and Child Development (India)(DWCD) provided a recent gender analysis of the 2001/02 and 2002/ 03 budgets, revealing that: The budgetary allocation for women-specific schemes increased from Rs3,260 crores in 2001/02 to Rs3,358 crores in 2002/03 (representing an increase of 3%). Pro-women schemes have seen enhanced financial support from Rs13,036 crores in 2002/03, an increase over 2001/02 of 23% and specific increases are noted for girls' elementary education (Source: *India Year Book*, 2001 and 2003).

¹⁰ The ICDS program is to be universalized by the first year of the Tenth Five-Year Plan. DWCD aims to extend the ICDS to 5,000 administrative blocks from the present 4,388 blocks by the end of the next year. Recommendations have also been made for mobilizing community support and participation in the ICDS program, over and above ensuring availability of quality infrastructure. (Source: *India Year Book*, 2001 and 2003).

The Swarn Jayanthi Swa-Rozgar Yojana is another major poverty reduction program in the Government of India (the prologue to the Integrated Rural Development Program (IRDP), Department of Women and Child Rural Agency (DWACRA), and other rural development programs for self-employment) and is a vital scheme for development of trafficking source areas. It provides an opportunity for NGOs/self-help groups/women's groups to support local-level livelihood activities linked to decentralized government structures.¹¹ DWCD (in collaboration with UNICEF) has developed a national media strategy through consultation with NGO stakeholders. The media strategy will cover print and electronic media at the national and regional levels so as to achieve the widest outreach possible for anti-trafficking awareness.

4.9 NGO Activities in India

Samskar, a rural-based NGO in Andhra Pradesh (Nizamabad) works with the *Jogin* community. Using an integrated strategy, it has access to land and community mobilization. For example, it has prevented *Jogins* from dancing at funerals (as traditionally practiced) or being sexually exploited in Nizamabad district. The *Jogins* are empowered thanks to awareness, literacy, leadership building, and child development programs, as well as rehabilitation, provision of shelter homes, and other sustained community interventions.

STHREE from Anantpur (a drought-prone area in Andhra Pradesh) works on livelihood issues with communities including self-help/ housing, SC/ST/caste entitlements, free education, housing, and bonded labor programs.

Prajwala of Hydrarabad works with HIV-positive children from the community, runs transitory schools for 800 children of CSWs, and provides skill training.

Help (Ongole), **Rise** (Tirupathi), and **Odanadi** (Karnataka) deliver preventative measures to children (many are children of CSWs or from high-risk communities).

¹¹ For example, in Madhya Pradesh and Kerala states these schemes have been well converged with Panchayati Raj Institution (PRI). Other DWCD programs include the Support to Training and Employment Program (STEP), setting up of training-cum-production centers (supported by NORAD), and the Socio-Economic Programme.

In Karnataka, the **Mahila Samakya Program** (a government sponsored program), **Working Women's Forum, India** and **Joint Women's Programme (JWP)** work with *Devadasis* through strategies such as empowerment, education, livelihood options, and advocacy/consciousness.

The **STHREE Adhra Kendra** in Pune enhances community participation by organizing and raising awareness, administers women's help centers in three cities of Maharashtra, and runs trauma counseling centers.

Prerna in Maharashtra has been at the forefront of raising awareness and runs highly acclaimed centers for children in high-risk areas. National/regional campaigns have been undertaken to create awareness of prevention of trafficking within the larger community, as well encouraging the flow of information and advocacy from the grassroots to policymakers (through rallies, IEC materials, etc.).

In Kolkata, **Sanlaap** has organized public-awareness activities and promoted community participation to address the problem of trafficking. Sanlaap's special programs include rehabilitation of cross-border victims, counseling, and drop-in centers.

The **Sonagachi project** works with commercial sex workers (CSWs) of Calcutta. It has attempted preventative strategies such as establishing self-regulatory boards, taking a stand against child and forced trafficking, and setting up women's collectives (as a beginning in this area).

The **Joint Women's Programme (JWP)** started a service center in red-light areas of several metropolis, set up crèche/balwadi programs for children of victims, and founded women's clubs or *mahila mandals* that could provide other services. It has established grassroots alliances with NGOs, government functionaries, and other key stakeholders at the village level.

Programs for sensitizing the police, judiciary, and media have also been taken up by several NGOs (SAK, Pune, JWP Delhi, etc.).

Anti- trafficking work in urban areas presently is only carried out by a few NGOs in Mumbai, Delhi, and Kolkata. But source-area prevention and rehabilitation

models have been implemented effectively in South India in the high-supply states of Andhra Pradesh, Tamil Nadu, and Karnataka. These programs take a proactive, community-based approach, bringing the most vulnerable members of a community to center stage through empowerment strategies (including social mobilisation).

A community-based approach is being used to deliver HIV/AIDS programming effectively in the southern states. At present, these programs are more narrowly focused on condom distribution, but it is possible that such programs could be strengthened to mobilize the community from within against trafficking. India by adopting – interceptions and rescue activities.

If victims are rescued before they have been exploited too severely, the probability of being accepted back into their communities is much higher—if that is the choice of the victim. This tactic also means the traffickers can be identified and cases pursued immediately.

Stop Trafficking, Prostitution and Oppression of Women and Children (STOP) in New Delhi, **Odanadi** in Mysore, and **Sanlaap** in Kolkata provide instances that due to the covert/dangerous clandestine nature of operations, the sooner the victim is rescued, the better the possibilities are possible for reintegration from a psychological point of view.

The government has an extensive network of short-stay homes and homes set up under the Juvenile Justice Act for protection and rehabilitation of the victims of prostitution. DWCD, under section 21 of the Prevention of Immoral Trafficking Act, has established protective homes for girls and women detained under this Act. Currently there are 80 such homes that provide custodial care, education, vocational training, and rehabilitation including arranging marriages for the inmates. A network of short-stay homes is also in place under the sponsorship of DWCD (state and central level). Juvenile homes (360) under the Juvenile Justice Act have been established for the protection and rehabilitation of victims, where medical services and counseling are made available.

The Central Social Welfare Board also provides financial assistance to NGOs to run development and care centers for the children of victims of commercial sexual exploitation who are extremely vulnerable to sexual exploitation. The quality of these

rescue homes is a crucial and very significant factor, which determines the effectiveness of the strategy, yet there have been few efforts to monitor their quality. For instance, the Mumbai High Court has set up a special committee of voluntary-sector representatives, scholars, and human rights lawyers to supervise the functioning of all state-run residential institutions for children in the state of Maharashtra.

NGOs have played a significant role in the rehabilitation of trafficking victims. However, the biggest challenge is timing and the mechanisms by which victims can be returned to their family (if appropriate) while avoiding further victimization. NGOs realize that unless there are adequate back-up systems, simply rescuing the victims through raids by the police can actually drive the victims further into bondage or discrimination.

STOP (New Delhi) has undertaken direct rescue, repatriation, and rehabilitation of trafficked women and children for several years with great success, often in collaboration with Maiti Nepal and BNWLA/ATSEC networks in Bangladesh. Sanlaap (Calcutta) has also been actively involved in rescue and repatriation. Figures in the case of rescue of women and children from Nepal and Bangladesh by STOP and Sanlaap have been recorded in the cross border section. The government has an extensive network of short-stay homes and homes set up under the Juvenile Justice Act for protection and rehabilitation of the victims of prostitution. DWCD, under section 21 of the Prevention of Immoral Trafficking Act, has established protective homes for girls and women detained under this Act. Currently there are 80 such homes that provide custodial care, education, vocational training, and rehabilitation including arranging marriages for the inmates. A network of short-stay homes is also in place under the sponsorship of DWCD (state and central level).

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In terms of rehabilitation and reintegration programming in India, the picture is currently mixed. Source-area prevention seems to have a lion's share of resources (one source estimates 80% of resources). Sustainable rehabilitation seems very difficult and scarce, especially in providing economic alternatives on a viable and large-scale basis. Once victims of trafficking have been rescued, they are faced with a new set of challenges. In many cases return to their places of origin is difficult, if not impossible. Social stigma from their families and communities is enormous, especially for CSWs. Many survivors chose to leave their communities anyway, and have little desire to return unless the causes for their exclusion or estrangement have been resolved (for example, abuse within the home, conditions of poverty with no livelihood choices).

The **Gudia program** in Uttar Pradesh has innovative strategies utilising cultural medium and tools to integrate victims in the mainstream. Initiatives such as

¹² Perna (2000), *Note on Indo-Nepal and Indo-Bangladesh Trafficking: The Maharashtra State Perspective*, Mumbai

these aim at sensitizing the general public and thereby creating an enabling environment for the rehabilitation of CSWs. The work of those organizations involved in assisting survivors to reintegrate (or integrate) into a different way of life is complex. There are immediate short-term issues that need to be addressed as well as creating a longer-term view of life for the survivor with greater choices and little or no temptation to return to the place where they were exploited. Despite living under extremely exploitative circumstances, some survivors, after assessing their options, still choose to return. This appears to be especially the case for women who have been working in brothels who find the option of a restricted married life—even if that is available to them—too confining. Once they became used to their working and living conditions in the brothel, some find these circumstances more empowering and tolerable. Similarly when survivors experience extreme stigmatization, their options for survival are very limited and the psychological burden very strong, and hence they choose to return to their previous work.¹³

There are differing responses to these circumstances from organizations working from different ideological foundations. Some organizations consider that commercial sex work of any kind is immoral and at any cost women should be protected from returning. Others take a rights-based approach that recognizes that any individual has the right to choose to be a commercial sex worker. (This does not mean that these organizations condone the harm that is done to many survivors.)

STHREE (Ananthpur) runs ad hoc rehabilitation homes that became a necessity, as many victims need a transitory space to cope, to be counseled, to be protected, and to start the integration process. **Abhaya** in Trivandrum has also provided shelter homes for rehabilitation and skills in a complex outside Trivandrum. **Ashramalayas** in Sagar (Madhya Pradesh) provide Bhedia children an opportunity for rehabilitation.

¹³ Several case studies by AIDS Prevention and Control (APAC) in Tamil Nadu state indicate that after several years of being trafficked, women did not want to take back the responsibility of running homes, paying electricity bills or school fees, or other routine responsibilities. They could have short-term gains in terms of a more luxurious life style of eating biriyani, drinking liquor, and frequenting movies ... buying luxuries not always possible in their prior poverty circumstances.

Samaskar in Nizamabad, **Help** in Ongole, and **Rise** in Tirupathi (all in the state of Andhra Pradesh) provide vibrant examples of NGO initiatives in setting up rehabilitation homes.

The new scheme of DWCD, Swadhar, would seem the ideal model for such rehabilitation processes too. Success of rehabilitation strategies varies for example between trafficked CSWs and those with traditional sanctions (such as *Devadasis*, *Joginis*). The traditional CSW (i.e., the *Devadasis*) often conclude practice around 35 years of age as they have a community of their peers with arrangements for a semblance of reintegration into the community. In the other CSW cases, relapse is very high as sustainable livelihood programming is neither available on a large-scale nor is accessible to them. One reason could be the comparative levels of earnings between these categories of victims. The highway victims, however, are the most difficult to rehabilitate.

4.10 Problems of Rehabilitation, Repatriation and Reintegration

There are many problems in rehabilitating and reintegrating the trafficked victims as reported by the BNWLA which are stated below:

- The rescued victims cannot recall their name of native village, upazila, and/or district properly. They cannot even remember the name of their parents.
- Neither they remember their mother tongue nor they could learn the language of the new country (The country where they have been trafficked to).
- Cost of repatriation is difficult to manage or sometimes it is impossible to manage stigma at the family and social level.
- Bureaucratic (administrative) complexity in terms of repatriation.
- The right address and documents are sometimes unavailable from the place they were rescued and which are also very inadequate to prove their citizenship.
- The communication of the rescuing staff between the sending and the receiving countries is very weak and not helpful for rescue operation.
- There are no laws regarding repatriation of trafficked victims.

The reintegration programs should be of short term and long term in nature. Short-term needs to support survivors include immediate shelter and protection, reproductive and general health care, psychosocial counseling, and care for trauma and life skill training.¹⁴ Longer term needs and interests of survivors include programming that is built on the intended outcome of increasing life options, rather than simply returning the survivors to their original home or family.¹⁵

Awareness raising is also required in the communities where survivors settle to ensure that revictimization does not occur. Assisting families of survivors to link with economic development programs available in their community, or literacy programming for girls and women, might provide greater stability to the family, and increase the probability of acceptance of the survivors especially if they return with some economically viable skills themselves.¹⁶ Combined approaches to provide income-generating skills and other self-esteem building opportunities, as well as counseling to overcome posttraumatic mental health problems, are required.¹⁷ More consideration should also be given to reintegration of migrants into development activities in general.¹⁸ Community awareness regarding the specific circumstances and needs of migrant women can also help reintegration and foster empowering project outcomes. Trafficked persons can also be incorporated into these programs, but without the label of “victims.” They could become part of the mainstream of returning migrants without further stress on their circumstances that leads to further stigmatization.

¹⁴ Life Skill is usually offered to provide different livelihood options, as well as literacy and, for children, education opportunities. There is increasing concern that some of the counseling services provided in the shelters are of poor quality, and that the types and levels of psychological harm done to survivors are not well understood.

¹⁵ Options need to be considered for longer-term integration (return to home environment, different community, remain with fellow survivors in community living situations, etc.). Support to the survivor should be continued as she or he makes his or her own choice. Working with children in this regard is more challenging, but again the causes for the children’s vulnerability to trafficking in the first place need to be considered as their future is planned, as they may have no desire to return to their families

¹⁶ It is also necessary to monitor posttraumatic stress symptoms. Clinical experience has demonstrated that the trauma many of the survivors have suffered causes long-term psychological and physical harm, and few services are available in the mainstream health services for these effects of trafficking

¹⁷ One approach to address livelihood issues would be to encourage poverty reduction programs to offer groups of trafficking persons’ access to development resources through mainstream project activities. This approach requires sensitivity, however, to ensure that survivors are not further stigmatized by mechanisms that single them out.

¹⁸ For example, services for returning women migrants to assist in rebuilding family cohesion, especially if they have been absent from their children for long periods. Programs for reinvestment of remittances in more sustainable income-generating activities, or building these savings into other microfinance programs can assist in building more sustainable livelihoods for the whole community, and spreading the benefits of migration more effectively

The effectiveness of reintegration activities is not clear as there is limited monitoring of existing activities. More documentation of monitoring is urgently needed to help assess the relative effectiveness of different kinds of intervention. More information and feedback into program design and implementation is required through improved monitoring mechanisms. Furthermore, appropriate indicators have not been identified even for shorter-term outputs from community development-based programming, let alone those required for longer term assessment of factors such as community behaviors and attitudes towards traffickers and trafficked persons.

CHAPTER-V

CONCLUSION

The phenomenon of trafficking is truly global, affecting richer and poorer countries alike. Although it has severe and adverse impact on society, the problem till recently has a definitional crisis. There was no commonly agreed definition to all the nations of trafficking until the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) came into existence. The scope and extent of initiatives addressing trafficking at the micro, meso and macro levels are quite multi pronged and have added to expanding the conceptual understanding defining trafficking. There is need to have a local definition to closely look at the problem and formulate an appropriate strategy as the international definition may not cover the specific country issues. To illustrate, in Nepal there is increasing evidences of trafficking of boys, therefore definitions must not exclude these aspects. Similarly, internal trafficking is also of concern in the South Asian Countries.

Globalisation and Increasing Demand of Cheap Labour

A large global labour force with little or no legal safety and precautionary measures has been thrown up with the opening up of the global markets and the processes of globalisation. This has increased the vulnerabilities of people and opened them up to exploitation by the entire nexus of those making a profit out of trafficking.

The 'source areas' or 'points of origin' are often the more deprived regions or countries, and the 'points of destination' are often, although not always -- urban conglomerates within or across borders, or sites such as tourist destinations where demand for cheap labour and commercial sex is developed. Importantly, it is the (real or perceived) differential between the economic status of source and destination area that is important. In practice, children may be trafficked from one poor area to another poor area as long as there is some clear economic incentive for this to happen. Many causes have been attributed to the growth of trafficking in adults and in children, including poverty, lack of sustainable livelihoods, structural inequities in society, gender discrimination, war and armed conflict, and other forms of natural or constructed disasters.

With the development of economy in countries of destination, the growing demand in cheap labour force in informal economies from one side and economic and political instability, unemployment, war and post war economic depressions, economic decline and absence or very limited job opportunities, extreme poverty and absence of future prospects, combined with luring attractions of good life standards in the destinations countries create a good supply of people who search for improvement of their lives. However, it is critical to understand that these factors are not in themselves the causes of trafficking; they merely exacerbate the vulnerability of marginalised and disadvantaged groups and render them increasingly more amenable to a variety of harms. These factors contribute to the freeing-up of marginal and vulnerable groups and hence create a potential supply of migrants and livelihood-seekers.

Trafficking as Demand Driven Phenomenon

The trafficking of people is, most importantly, a demand-driven phenomenon. It is contingent upon unmet demand from particular sectors of the economy for certain types of labour that would enable maximization of profit. And trafficking for commercial sexual purposes is tied in to the expansion and diversification of the sex entertainment industry, as well as to the expansion of marketable, intimate services and arrangements, including marriage. It is the drive to maximise profit in a situation of least risk that creates demand for workers who are the most exploitable and controllable. Children, followed by women, fit this description perfectly. All trafficking includes aspects of forced or exploitative labour, be it productive or sexual labour. Hence in ascertaining the causes of trafficking, the distinction between causes of vulnerability that creates supply, and the nature and incidence of demand, needs to be maintained. Like smuggling, the sale of children and bonded labour, trafficking in children feeds upon the vulnerability of the marginalized and on their need to seek alternative life options at the economic and/or social levels; it is caused by the drive to extort the maximum benefit or profit through extreme and heinous forms of exploitation and abuse.

Root Cause of Trafficking in South Asia is Poverty and Patriarchy

In many studies on trafficking in women and children in Bangladesh and India, it has been purported that the root cause of trafficking is poverty and patriarchal ideology. The patriarchal ideology has constructed the mindset of the people in such a way that women are treated as 'commodity' who can be sold and bought. The social apathy is reflected in that the people in general are not aware of trafficking, and even the issues related to trafficking of women and children have not been seriously considered at the individual and organisational levels. Due to lack of this seriousness, the problem did not get priority. The problem is being treated as a part of government activities against women's oppression and not in the sense of a regional and international problem.

Need of bilateral Agreement between India and Bangladesh

Bangladesh and India need to sign a bilateral agreement specifically to deal with the ever increasing incidents of trafficking across the border which make the already existing problem of illegal Bangladeshi migrants in India more critical.¹ The SAARC Convention on Prevention of Trafficking in Women and children for Prostitution, is yet to be internalised (although with its limited scope) by the countries in the region. Further, the patriarchal structures and gender based violations of economic and social rights of women contribute to feminisation of poverty, thus making emigration for women the only way to escape and solve the unsolvable problems. Tightened migration policies of destination countries also contribute to increase in trafficking in human beings.

Need for a Gender Sensitive Approach in Migration Policies

There is a need for a gender sensitive and an integrated approach to all aspects of mobility. Many countries in South Asia do not have declared policy on migration. This is unlike countries such as Philippines and Sri Lanka that proactively promoted employment opportunities abroad for their emigrant workers. There is, thus a need to formulate a national/regional policy on migration. This should be done in consultation with employers' and workers' representatives and other stakeholders. A central role needs to be played by the States of sending countries to manage migration. The

¹Bhattacharya, Manjima. 1998. Trafficking in South Asia. A conceptual Clarity Workshop Report. 29 July-1 August 1998, Anandakam, New Delhi.

creation of a nodal ministry or agency that regulates, monitors, collects data and coordinates all aspects of migration within the government and private agencies is necessary. Such a nodal agency could ideally be set up under a statute and be empowered with powers and finances necessary for this purpose. Such a policy should have within its scope the enactment of legislation that would protect rights of migrants and empower agencies charged with migration responsibilities.

The International organisation for Migration (IOM) has called for a 'cluster approach'. This refers to the need for sending, transit and receiving countries to work in a coherent and coordinated manner. Some of these could be the 5+5 dialogue or bilateral agreements between countries of origin and transit of asylum seekers or migrants.² Contrary to popular perception, more than half the migration of persons is from one developing country to another, where wage differentials are not large. Many of these are likely to be irregular migrants. ILO reports that Nepalis and Bangladeshis in India are likely to be among the largest numbers of irregular migrants world-wide.³ Thus there is a need for a cluster based approach for dialogue to take place among affected countries in the region.

Moreover, a gender sensitive policy making visible the concerns of women migrants is essential. Such policy should clearly address the issue of emigration of unskilled single women. This would include a strong pro-active system run by the state of monitoring migration by all person particularly single women, a system of registering details of workers, potential employers and recruitment agencies, entering into model employment contract as a prerequisite for emigration, limiting the fees charged by recruiter, providing skills training, making provisions for the welfare of the family of the women migrant and providing for control by the woman over remittances. Close attention needs to be paid to increasing remunerative employment options for women within sending countries and addressing the question of gender discrimination in employment and wages and ascribing money value to unpaid family labour performed by women wherever possible. A welfare fund could be created out

² ILO reports a surge in bilateral efforts at the current time. Already in 2004 a Global Commission on Migration comprising several countries including India has been set up chaired by Switzerland and Sweden. See for instance the Barcelona Process and Puebla Process dealing with trafficking and migration, the Berne Initiative for migration governance, etc. For details see, ILO, *Towards a Fair Deal for Migrant Workers in A Global Economy* (2004)

³ ILO, *Towards a Fair Deal for Migrant Workers in a Global Economy* (2004) at 12.

of State funds for the purpose of assisting women migrant workers who require emergency help and that could disburse soft loans.

Need of Coordinated Response on National, Regional and International Levels

Trafficking in human beings as one of the most complex and growing human rights issues with important ramifications in the area of health, law enforcing, and socio-economic development in general, calls for urgent and extremely coordinated response on national, regional and international levels. In developing anti-trafficking strategies the multifaceted nature of it should be taken into consideration and different in time frame and aims strategies should be developed, serving all to the same important goal: prevention of trafficking and limiting its impact. The counter trafficking policies of governments should be based on recognition and very clear understanding of its nature, root causes and transnational character of it. The State should view it as a violation of rights of its citizens. Protection and safety of citizens is the responsibility of the States. Although there are number of measures taken by the Government of India as well as by the government of Bangladesh, these programmes and policies vary not only between the countries within one region, but also within one country and sometimes it is hard to see co-ordination at the level of state agencies. To combat trafficking in South Asian Region requires major political will by government and civil society groups. For sex trafficking to be halted requires a two-front war: going after the criminals, and addressing the poverty factor that motivates sex trafficking in the first place.

Suggestions:

There should be a “P” policy framework that addresses simultaneously programmes on ‘Prevention’, ‘Prosecution’ and ‘Protection’. It should include all important actors: Government, NGO’s, International organisations and Intergovernmental organizations. The prevention programmes should be as short term and long term. In order to measure outcomes of information, campaigns should be designed in phases that have clearly presented objectives. They should be addressed both to potential victims and to society at large. The effectiveness of anti-trafficking programs in many ways depends on effective collaboration between relevant actors.

Countries of destination and transit should support financially and organizationally governments and NGOs in countries of origin to run effective anti trafficking campaigns. There should be established working collaboration between Governments of countries of destination and origin, as well as collaboration between consular departments of Embassies, ongoing working collaboration between NGOs or national and ethnic communities (Diaspora communities)

Prevention

Awareness raising Activities

The following awareness raising activities should take place with the help of government and civil society agencies:

- Orientation on employment market in the country of destination: possibilities and requirements of legal migration and possibilities of getting legal employment in the countries of destination, kinds of jobs on demand at labor market of country of destination, as well as certain standards of payment in these countries and legal system of employment
- Presentation of information on phenomenon of trafficking: cruel nature and illegal status in the country, involvement into clandestine jobs and sex industry, risks of HIV/AIDS and STD associated with the work in sex industry. There is still no general understanding or acceptance of the definition of trafficking. It is important to differentiate between illegal migration, migrant smuggling and trafficking. It is necessary to stress the situation of internal trafficking as well.
- Gender sensitization programs, addressing key aspects of gender discrimination should take place within the community.
- There should be prepared special curriculum on legal migration, illegal migration and dangers of trafficking, as well as gender equality for Universities and schools.
- There should be prepared special projects to train media.

- Training programs should be developed for law enforcement officials, border guards, law and policy makers, teachers, medical and immigration personal on trafficking.
- To have clear picture on various manifestations of trafficking research should be done on forced labor, child trafficking for begging, impact of trafficking on health of victims and societies they live in. The last should form a separate branch for studies.
- There is not sufficient research on traffickers. Thus the research works should be promoted in this area.
- To measure the effectiveness of information campaign, it is necessary to run public survey.
- NGOs should play important role in developing and implementing these programs and should be supported both by Governments and International organisations.

Addressing Root Causes of Trafficking

- To address the root cause of the trafficking problem is the best way to uproot it. The following suggestions are put forth in this direction:
- States should establish high level commissions on status of women, responsible for developing and supervision of policies that eliminate gender discrimination of women. Commissions should be composed of government officials, NGO's, public leaders and experts on women's issues. It is important that such commission would have clear mandate, vision and be effective. The commission should be financially supported and technically equipped.
- These commissions should address and develop programs on advancement of women, violence against women in society, family, discrimination in labor market and career development for women.
- National Plan of Action has to be developed to coordinate anti trafficking efforts.

- Preventive anti trafficking strategies should involve all groups of population: Refugee and IDP women, minority groups.
- A comprehensive network of NGO advice centers should be established to advise potential migrants
- Violence against women should be addressed and recognized in wide context: States should recognize the violence against women as criminal offence and ensure that victims of violence get state support: access to medical assistance, psychological and legal assistance and in extreme cases temporary housing.
- It is necessary to ensure that women are not marginalized in low paid labor market. Programs should be developed on vocational training and education for women to enter into modern labor market. Provision of real economic and social alternatives should be made available to women to enable them to fend themselves. Trainings on leadership and provision of micro credit and grants programs for women would strengthen their position. Good examples are micro credit programs based on mutual responsibility. Better adjusted to conditions of each separate country, these programs prove to be very good tools to encouragement and support for women. Women in rural areas and border regions should always be included into these programs.
- It is necessary to establish mechanisms of involvement of women in decision making positions. There should be worked out special mechanisms such as introduction of quotas with the support of political parties.
- Restrictive immigration policies should be liberalized and work permits should be provided to qualified women and men. There should be bilateral agreements or special agreements between the country of origin and destination on legal labor opportunities.
- In case of legal labor contract prior to migration, there should be provided special trainings for women and girls in order to meet the requirements of labor markets.

- Companies that exploit cheap labor should be charged with penalty or criminal charges.
- Countries providing jobs to nationals of countries of origin shall provide gender parity.
- States should sign and make use of bilateral, international cooperation in meeting root causes of trafficking and empowerment of women
- States should support NGO's that provide assistance in these areas

Prosecution

First and foremost, the states should ratify the following International instruments:

- “UN Convention against Transnational Organized Crime and its supplementing Protocol to Prevent Suppress and Punish Trafficking in Persons, especially Women and Children and The Protocol against the Smuggling of Migrants by Land , Sea and Air
- UN Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, which allows for individual complaints and commissions of inquiry
- The UN Convention on the Rights of Child as well as Optional Protocol on the Sale of Children , Child Prostitution and Child Pornography
- The States should become signatories to UN Convention on the Rights of Migrant Workers and their Families
- States should establish Ombudsmen institute or equal opportunities commission to monitor the implementation of legislation and protection of the rights of victims.⁴
- European Convention on Extradition and UN Crime Convention

⁴ Ahmed, Natasha. (2001). *In Search of Dreams: Study on the Situation of the Trafficked Women and Children from Bangladesh and Nepal to India*. Dhaka: International Organization for Migration.

- Appropriate mechanisms should be established to regular reporting to UN on implementation of above mentioned instruments.

In criminalising the trafficking, all aspects of its impact should be taken into consideration. Many countries still lack definition of trafficking and are covering the problem with some indirect penalties—such as illegal border crossing, preparation of bogus documents, forced marriage or keeping brothels (India), trafficking in children only (Russia). Some have introduced the partial definition focusing narrowly only on sexual exploitation. The legislation should include the following elements presented in the definition of trafficking:

- Acts: recruitment, transportation, harboring, transfer or receipt of a person
- Means: threat, use of coercion, fraud, deception
- Abuse of power or position
- Purpose: forced labor, slavery, slavery like practices

All actions, related to trafficking should be treated as criminal offences: such as aiding, attempting, omission to act and conspiracy to trafficking whether they have been implemented by individual members of trafficking group or organised criminal groups. Laws should have equal action for all. Offences performed by traffickers: such as slavery, slavery like practices, forced or compulsory labor, torture, cruel, inhuman treatment, rape, murder, exploitation should also find expression in Penal Code.

Taking into consideration extraterritorial nature of trafficking, many states have included into their legislation extraterritorial jurisdiction, when the act is committed outside the territory of the country, but influences on it. Countries should sign agreements between countries to facilitate extradition in cases of human trafficking. It is important to have differentiated smuggling and trafficking laws. Besides, the following aspects should also be taken care of.

- It is necessary to formulate sanctions towards individuals, criminal groups and legal entities involved in trafficking such as imprisonment, special fines, and

confiscation of assets that has been resulted from trafficking income and closure of establishments.

- Laws should formulate measures of compensation to the trafficked persons
- Special investigation techniques should be introduced in cases of trafficking
- There should be good coordination between governments, inter governmental and law enforcement bodies in setting up structures and screening processes to detect traffickers.
- Protection and assistance to victims should be also build in criminal law
- There should be established an effective network of police officers assigned by their governments to collaborate on issues related to trafficking : such as investigation and exchange of information

Protection and Assistance of Victims

Governments should commit themselves to undertake measures for the effective protection of and assistance of victims of trafficking.

A broad range of interrelated measures should be developed to protect the rights of human rights of trafficked persons. It is important not only in the countries of destination, but transit and is very important for successful reintegration in the country of origin. In the countries of destination provision to victims of trafficking of legal status will make them eligible to vast array of social and legal services: psychological and health rehabilitation, information on their rights , provision of residence and employment will assist the victims regain control over their lives and make decision on testifying against the traffickers.

a) Identification of Victims

- In cooperation with NGO's standard procedures should be established to recognise victims. Standardised questionnaires should also be prepared for all the agencies that come into contact with victims. Cultural mediation is necessary to assist law enforcement officials when interviewing victims. There

should be very good cooperation between police and NGO's on providing accommodation to victims.

- It is obligation of states to identify all the state and non state actors that will come in contact with victims and provide them special trainings

b) Trafficked Persons should not be criminalised

- Trafficked persons should not be prosecuted even if they agreed to use fraudulent documents and work illegally. Even if prostitution is illegal in the country of destination, the victims should not be prosecuted for that as they have been forced to do that.

- It is necessary to advertise the emergency hot lines in the languages that victims can understand. The victims must get this information from law enforcement officials that work with them and NGO's .States should finance or support NGO's to organize that. As it was mentioned above states should provide free of charge safe housing to victims, adequate medical treatment, counseling in their native language.

c) Legal framework for witness protection must be created and implemented

- It would be better that victim protection agency should work with victims to prepare them to act as witness.
- NGO's should act as counseling, assisting agents to victims.
- States should consider relocation of witness in the cases of necessity and protection of their relatives.
- Protection is cross border process. It should continue in the countries of origin. Countries of origin should guarantee safe repatriation and integration.

Extraterritorial Impact of the United States' Victims of Trafficking and Violence Protection Act of 2000

Specific advocacy needs to be developed on the extraterritorial impact of the United States' Victims of Trafficking and Violence Protection Act of 2000, and the adverse consequences it has had on woman's rights in the South Asian Region. This includes the pressure exerted on the governments under the provision of the Act to demonstrate that they are proactive on the issue of trafficking. The Act provides that the President of the United States may authorise the suspension of non-humanitarian, non-trade related assistance to any country that does not meet certain minimum standards for the elimination of trafficking and is not making significant efforts to bring itself into compliance with these standards. This could include US opposition to loans and other assistance from the Asian Development Bank and other international financial institution such as the World Bank and the International Monetary Fund.

The Trafficking in Persons Report (TIP Report), published annually the US Department of States, slots governments into three separate tiers based on their efforts to counter trafficking. Tier One Countries are in full Compliance with the minimum standards for the elimination of trafficking. Tier two Countries are making sufficient efforts to comply with the minimum standards for the elimination of trafficking, however, they need to do more. In addition, there is a Tier Two Watch List, where countries will need to demonstrate more fully their efforts to comply with the minimum standards or they will be placed in Tier Three and subjected to penalties. Tier three countries are regarded as failing to make efforts to combat trafficking. The criteria for determining which countries are placed into which tier remains highly ambiguous and there is some clear evidence that it is also highly political. For example, Nepal moved up from Tier 2, in the 2004 TIP Report, to Tier One in the 2005 Report, even though no major policy changes or ant-trafficking laws were adopted by the new monarchical state. The main concern expressed in the 2005 TIP report was that of '...political instability and security problems associated with the Maoist insurgency affecting a large part of country'. Bangladesh moved out of the Tier Two Watch List in the 2004 TIP Report, to Tier to Tier 2 in the 2005 TIP Report

and one of the reasons for this appears to be the severe penalties imposed on traffickers by the state. The Suppression of Violence against Women and Children Act provides for capital punishment for trafficking in women and children, and recently Dhaka court exercised this provision by sentencing an Indian woman to death for attempting to traffic a four year old boy out of the country.

India has been placed in the Tier two Watch List of the 2005 TIP Report in its second consecutive year for “its inability to show evidence of increased efforts to address trafficking in persons, particularly its lack of progress in forming a national law enforcement response to inter-state and trans-national trafficking crimes.” The fear of sanctions appears to be one of the reasons for the Indian Cabinet approval of the new ITPA amendments which criminalizes the client of sex workers.

In light of the provision of US Act there is some concern over how countries may or have responded to other issues of trafficking. For, example, a country might substantially increase criminal penalties for trafficking and related offences and expand police powers to investigate trafficking cases, without adequately addressing problems of police corruption and the harassment of trafficked persons, such as women who have been trafficked into prostitution. In South Asia, the US Anti-Trafficking Act appears to have had particularly adverse effects, with governments adopting policies and enacting laws that focus on trafficking for the purpose of prostitution and law enforcement, and that fail to distinguish between women and children. As a result, women have not only been infantilized and had their mobility restricted, but women and children have also had to rely on clandestine migration regimes to cross borders, thus pushing them even further into situations of abuse, vulnerability and exploitation. The initiatives that centre the criminal and prosecutorial side of trafficking and advocate harsh penalties are deemed adequate under the TIP approach. Thus there is a continuous targeting of sex workers, undermining their rights and the rights of their families.

Role of the Media

The media has a very important role to play in the arena of trafficking. It is critical for different constituent groups to actively participate in debates on television, produce campaigns for the visual media and contact journalists for the purpose of

advocating a right perspective in anti-trafficking interventions. Currently, the media is focused on harms and injuries, and has reproduced the conflation between sex work and trafficking that has produced some of the confusions in this area. The demolition of the red light area in Baina, Goa demonstrates that it is not at all easy to persuade the state government not to take destructive action. Even the intervention of the National Commission for Women in this case was unable to prevent the demolitions. Therefore, intense advocacy needs to be built up to impact the state, which requires sensitization and support of the media.

In South Asian region the problem of trafficking is very acute. Trafficking in children and women is a manifestation of a deeper problem in a society that has lost the ability to care for its women and children; a community that is either ignorant of the exploitation or does not feel shame in trading its children and women for gain; where men and women have lost the meaning of life. In all of the identified areas of trafficking one finds that trafficking in women and children is a consequence of violence that is perpetrated against them. Mahatma Gandhi has very righteously said that

'...it is a matter of bitter shame and sorrow and deep humiliation that a number of women have to sell their chastity for men's lust. Man, the law giver, will have to pay a dreadful penalty for the degradation he has imposed upon the so called weaker sex. When women freed from man's snares rise to her full height and rebels against man's legislation and institution designed by him, her rebellion, no doubt, non violent, will be nevertheless effective.'

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Trafficking for Kidney Transplant

Introduction: The illegal trade in the sale of kidneys in Punjab, as elsewhere in India, has increased over the years. Organ harvesting has turned into a flourishing illegal business that is sustained by the growing demand for kidneys for transplant and the various loopholes in the legal process for kidney transfer. Obviously, the rackets involved in this process are well-organised and cannot survive, let alone flourish, without the nexus of doctors, advocates, police officials, middlemen and some government agencies, including the authorisation committee. The donors usually belong to the poorer sections of society, and most often than not, it is the migrant labourers who become easy targets for the traffickers.

Modus operandi of traffickers in Punjab: The traffickers and their middlemen involved in this business in Punjab lure the donors with huge amounts of money ranging from Rs.50,000-1,00,000. The donors belong to different states including Punjab, Bihar, Rajasthan, U.P., Delhi, Madhya Pradesh, Andhra Pradesh, Manipur and Maharashtra. Once the potential donors are 'identified' and lured, the traffickers bring them to the main 'demand centres', which are Amritsar, Jalandhar and Ludhiana. The donors are categorised according to their blood groups. Files are prepared in the private clinics of the operating doctors.

Lawyers prepare false affidavits on behalf of the donors and recipients and attest that the donor is donating the kidney on humanitarian grounds and that no money is involved in the entire transaction. Lawyers usually charge Rs.5,000 for preparing false affidavits. The operating doctor conducts laboratory tests for the donors in a diagnostic centre and charges 40 per cent commission for producing false test reports. The tests cost rs.75,000 to Rs.1,00,000.

The authorisation committee approves the removal of the kidney from the donor and the transplant. It is supposed to conduct an enquiry to verify the details as per § 9(5) of the Transplantation of Human Organs Act, 1994. However, the committee usually does not verify the details of the transplant. In fact, the common allegation against them is that they do not always follow the rules or guidelines in

approving kidney transplants. Instead, the committee is said to charge Rs.25,000-30,000 to clear files and authorise illegal transplants. The operating doctor charges Rs.75,000-1,25,000 as fees for conducting the illegal kidney transplant. Moreover, the patient or the recipient is charged Rs.1,00,000-1,50,000 as hospital fees. Police officials and politicians are also said to get huge amounts of money to protect the racketeers.

Condition of the victims/ donors: In the entire transaction, the donors rarely get more than Rs.15,000-20,000 for donating their kidneys. Often, the middlemen or the traffickers purloin most of the money. A donor is treated well by the trafficker before the kidney transplant. Once the transplant is over, the donor is discharged from the hospital. Post-operative care for the donors is either inadequate or absent. As a result, the donors suffer from severe weakness and contract other ailments. Some donors succumb to physical weakness due to the lack of post-operative care. In many cases, the dead bodies are either thrown into rivers or jungles or cremated as unclaimed bodies.

Case studies: AV, a 17-year old boy, was trafficked by a middleman named BS from the premises of an important temple, where he had gone to worship. AV was a resident of Ludhiana, but the traffickers, along with others, prepared false papers, which showed him as 'RU', son of AJ of Jalandhar. One of his kidneys was to be given to SZ of Chandigarh. In the affidavit, RU's age was shown as 22 years. The affidavit also mentioned that RU had been living with the patient, SZ, for the last ten years and working as his domestic servant, that his parents had expired, that he had no relatives, and most importantly, that he had offered his kidney purely on humanitarian grounds, out of his love and affection for his master and without any monetary considerations. When the police took over the case, they found that AV's parents were alive and that he had two brothers. The trafficker had prepared false documents to facilitate the organ transplant. The police took over the investigation of the case by registering an FIR in the Amritsar Police Station u/s 295A, 363, 367, 368, 420, 468, 469, 471, 506, 120 B of the IPC and S 18, 19 and 20 of the Transplantation of Human Organs Act, 1994.

- Sixteen-year-old HS a resident of Amritsar, was trafficked by a middleman from the area near the Golden Temple in Amritsar on the pretext of donating blood. He was told that he would be paid Rs.1,500 for one bottle of blood. He was admitted to the Kakkar Hospital in Amritsar and operated upon in July 2002. His kidney was

removed and transplanted to MG from Jammu. In the documents, the name of HS was shown as TS and his age was given as 23 years. He was falsely shown as a domestic servant of the patient MG, who had been residing with her for the last ten years. The documents also stated that his father and mother had expired, that he had no family, that he had offered his kidney 'purely out of love, affection and on humanitarian grounds without any monetary consideration'. When the police took over the case, they found that his parents were alive and that he had siblings too. The trafficker had prepared false documents to facilitate the organ transplant. The case was detected, thanks to the alacrity of the police officers.

The investigations by the Punjab Police in these cases have brought out the role of several key players, including doctors, their assistants, hospital managers, members of the authorisation committee, forensic medical experts, advocates, policemen, agents and middlemen. The police response in these cases has been prompt and systematic. They have not spared anybody, neither the police officials whose roles were suspect in this scam of trafficking for kidney transplants, nor the abettors and the conspirators.

Rough Ride for Children from Bangladesh as Camel Jockeys

Camel racing is one of the most popular traditional sports in the Gulf especially in the United Arab Emirates (UAE). It has been in practice for hundreds of years. Camel racing demands light-weight jockeys, which is why children are preferred. However, this opportunity has been capitalized on by traffickers, who look for children in vulnerable situations and traffic them to be exploited as jockeys. It would be pertinent to examine the reasons why children are abused in this manner.

- It is easy to exploit children because of their innocence.
- The vulnerability of children from poor families exacerbates the situation.
- Children tend to unquestionably accept the commands of their elders and their tolerance levels are high.
- Children can be exploited with impunity as they do not complain or do not know how to complain.
- If the persons being used as camel jockeys are light, the camels have to carry less weight and are able to run faster.
- If children are tied to the back of the camel, the uneven movement of the camel during a race creates severe inconvenience to the children, who scream and this, in turn, accelerates the speed of the camels. Therefore, children are easy targets of exploitation.

Here are a few reports which appeared in the media and which will give a fair idea of the nature of trafficking in children for camel jockeying.

On 17 September 1997, the Chennai Police rescued 38 Bangladeshi children who were going to be flown out to the UAE, apparently to serve as jockeys in camel racing. The children were accompanied by adults, who had travel documents showing these children as their wards. However, immigration officials smelt a rat. They separated the children from the adults and interviewed them. This exposed the trafficking scenario. The Frontline report shows that the adults accompanying the children had paid agents up to 60,000 Bangladesh takes for a job in Dubai and that they were apparently given a 50 per cent discount on the fee for taking the children along as their wards.

On 3 January 2000, nine Bangladeshi children, aged between four and eight, who were being smuggled to Saudi Arabia for abuse as camel jockeys, were detained at Chennai International airport by immigration officials. These children were accompanied by four women posing as mothers. The immigration officials learnt that the travel documents were forged. Enquiries revealed that the group had left Dhaka on 1 December 2000, sneaked into India through Bashirhat, reached Howrah to get a train to Chennai and were to leave by flight from Chennai to Dubai.

On 12 September 1997, 16 children and 18 adults who were to board a flight to Sharjah were detained by the law enforcement officials at Bangalore airport. The children were tutored to say that they had come from West Bengal and not Bangladesh. The ostensible purpose of their journey was to visit a centuries-old *durgah*. Timely intervention by alert officials saved the children from being trafficked.

A report in Frontline, which covered the Chennai detention of 12 September 1997 mentioned above, presents the state of the trafficked children as below:

The plight of the children is heart-rending. They seem to be still in shock, with people asking them questions they hardly understood; they answered the questions in whispers. Most did not even know where they were from. After a lot of coaxing, one of them said, with tears rolling down his cheeks, 'I want to go back to ma.'

According to Salma Ali, Executive Director of BNWLA, approximately 600 boys from Bangladesh have become victims of camel jockeying in the UAE. Interviews with some rescued children show that being in an alien environment, far away from home and parents, was enough to break down a child. They have divulged the details of the inhuman treatment that is meted out to most of the children. It came to light that these children are usually made to starve so that they remain light. Moreover, at times, children fall from the camels and are seriously injured, sometimes fatally. If they are lucky enough to survive but grow beyond the prescribed weight, their future is again at stake. There is hardly any place for them to go. Repatriation can be difficult since they are trafficked at a young age and hence, may not recall the details of their families or places of origin. They do not have any legal status in the country and can even be imprisoned. Some of them do manage to find alternative employment in some other vocations or in the camel stables.

The traffickers are a cunning lot and take the children through routes which are not easily detectable. They also train the children to talk in a manner that is least

likely to arouse suspicion. The traffickers move the children from Bangladesh to India across the borders, catch buses/trains to various locations and then take the children by flight to the Middle East. During this transit within India, the organized criminals involved in the racket prepare forged documents, viz. passports, visas, etc., and therefore, ensure the dispatch of the children.

The children are usually brought in as illegal migrants and thereafter, trafficked to the Middle East for camel jockeying. Trafficking takes place under the façade of migration.

The available trends show that the movement is from:

Bangladesh → India → Middle East

The traffickers normally travel from Bangladesh to Kolkata by bus and thereafter by trains to Chennai and Bangalore from where they board flights to the Middle East. The documents are usually fabricated in such a way that two to three children are shown against one or two adults, as their own children. It looks like a family on the move. Children are tutored so that even if they are questioned by law enforcement agencies, the deception is not easily detectable. Moreover, the children are under constant fear of being harmed if they betray the traffickers.

The law enforcement scenario presents a mixed picture. Trafficking for camel jockeying is generally not recognized as a criminal issue and, therefore, action against the traffickers is rare. Even if the law enforcement agencies learn that the children have been lured, they usually tend to see it from the perspective of illegal migration. Thus, the trafficker as well as the trafficked are detained for violating the immigration rules and are subsequently deported. As a result major crimes of abduction/kidnapping, violation of human rights, servitude, and exploitation are

Ignored and go unpunished. The traffickers get away very easily, even if they are caught. Moreover, once the victims are deported, they are no longer available for supporting the prosecution against the traffickers. Thus, a criminal case on serious charges against the trafficker cannot be instituted in a court of law, for want of adequate evidence. However, with respect to the 17 September 1997 episode in which the Chennai Police rescued 38 Bangladeshi children who were going to be flown out to the UAE, the children were deported to Bangladesh and the trafficker was convicted and sentenced to nine months imprisonment in June 1998.

Trafficking for Forced Child Labour

The Amritsar Police rescued 53 minors who were forced to work under different establishments of jewellers in the famous Guru Bazar on 24 July 2002. Guru Bazar is said to be the largest jewellery market in Asia.

It all started when UK, a 12-year-old Bengali boy, complained to the Amritsar City Superintendent of Police that he was beaten mercilessly with a 'belan' by his master RB two years ago and made to work as a labourer in the latter's jewellery shop in Guru Bazar. He was paid a paltry sum of Rs.10 per week. The boy narrated similar stories to the police about the plight of other children working in different jewellery shops. The police officers were convinced about the genuineness of the allegation and the extreme exploitation of young children. Once things were prima facie clear, they lost no time. They constituted teams who raided the suspect jewellery establishments and rescued 53 child labourers. About 15 persons were held for trafficking the children from West Bengal and pushing them into forced labour. The large-scale rescue operation required adequate manpower. Therefore, more than 200 police personnel were deputed for the task.

The modus operandi of the traffickers was almost commonplace, viz. Capitalise on and exploit the vulnerable situations that the children were in. Most of these exploited children were brought from West Bengal on the pretext of getting them jobs with attractive wages, but after reaching Punjab, they were pushed into cheap labour and subjected to brutal physical and mental torture. The masters did not even allow them to go home if they desired to do so. These boys were subjected to the worst kind of exploitation at the hands of the contractors who were extracting work from them for long hours in return for a paltry amount.

According to the boys, their respective contractors had assured their parents of promising futures for them. 'But on the contrary, we are surviving under very unhygienic conditions. All of us are bundled into one small room', said the children in one voice.

The Tribune dated 25 July 2002 reported the incident as below:

53 bonded child labourers rescued

Our Correspondent

Amritsar, July 24: As many as 53 bonded child labourers, aged between nine and fifteen years, working with different jewellers in Guru Bazar, were rescued here last evening. Fifteen persons were arrested in this connection.

The search for livelihood brought them to the holy city, all the way from West Bengal. Some were even suspected to be Bangladeshis. Most of these children were brought on the pretext of getting them employed on attractive salaries, but on coming here, they were forced to do cheap labour, apart from being subjected to physical and mental torture.

It is learnt that these children were also being used for smuggling gold, diamonds and other precious stones in the Guru Bazar area.

A crying UK (12) said that his employer RB mercilessly beat him up every time he failed to prepare the food in time. He said he was brought by RB two years ago and made to work both in a jewellery shop and in the house for just Rs.10 a week.

YW (10) had a similar story to tell. He was brought here by his maternal uncle. He recalled how he was severely beaten up by his employer when he broke a glass.

Other children who were rescued by the police were Khagan (14) from Kolkata, Manyal (12) and Billa (15).

Those arrested were Abdul, Nasir, Shahjahan, Sheikh Mujibudeen, Bapi, Naseerudin, Sukumar, Shakti, Sham Sunder, Somnath, Nirmal Dinesh Kumar, Rabial and Joharwan.

Guru Bazar in Amritsar is known for its fine jewellery. The finished products are in high demand in several parts of India, especially Bihar and U.P. This flourishing business requires delicate handling of the jewellery by the workers. Adult labour turns out to be expensive, whereas child labour can be procured at very low cost. This is the demand factor that has led to trafficking of children from various places to Amritsar.

A case had been registered u/s 308, 370, 371, 374, 34 IPC, 26 of the JJ Act, 2000 and S. 14 of the Child Labour (Prohibition and Regulation) Act, 1986. The allegations in the FIR are grave. Starting with the charge of buying

and selling a person as a slave, and habitually dealing in slaves and unlawful compulsory labour, the FIR addresses the various criminal activities of traffickers and speaks about the extreme acts of exploitation, which even include attempt to commit culpable homicide. After carrying out investigations, the Amritsar Police has filed a chargesheet against the accused and the case is pending trial as of September 2003.

KEY FEATURES OF THE IMMORAL TRAFFIC (PREVENTION) AMENDMENT BILL

This Bill has five main features. First, it deletes the provisions related to prosecution of prostitutes soliciting for customers. Second, it provides for prosecution of clients. Third it defines the term "trafficking in persons" and provides for penalties. Fourth, it increases penalties for some offences. Fifth, it constitutes authorities at the central and state level to combat trafficking. The proposed amendments in the Bill are compared with the provisions of the Immoral Traffic (Prevention) Act, 1956 in Table 1.

Table 1: Comparison of the Bill with the existing law

	Immoral Traffic (Prevention) Amendment Bill, 2006	Immoral Traffic (Prevention) Act, 1956
Definitions	<p>"Child" means a person who has not completed 18 years.</p> <p>"Prostitution" means the sexual exploitation of persons for commercial purposes or for consideration in money or any other kind.</p> <p>Anyone who recruits or transfers a person for the purpose of prostitution by means such as threat, coercion or abuse of power commits the offence of "trafficking in persons".</p>	<p>"Child" means a person who has not completed 16 years of age. Any person below 18 years but above 16 years is a "minor".</p> <p>"Prostitution" means the sexual exploitation or abuse of persons for commercial purposes.</p> <p>Not defined.</p>
Offences	<p>Any person found in a brothel for sexual exploitation of any victim of trafficking shall, on first conviction, be punishable with imprisonment for up to 3 months or fined up to Rs 20,000 or with both. On subsequent conviction, he can be imprisoned for a maximum period of six months and fined up to Rs 50,000.</p> <p>On first conviction, punishment for keeping or allowing premises to be used as a brothel is one to three years rigorous</p>	<p>No provision.</p> <p>On first conviction, punishment for keeping or allowing premises to be used as a brothel is one to three years rigorous imprisonment</p>

	imprisonment and a fine of up to Rs 10,000. Subsequent convictions are punishable with three to seven years imprisonment and a fine of up to Rs 2 lakh.	and a fine of up to Rs 2,000. Subsequent convictions are punishable with two to five years imprisonment and a fine of up to Rs 2,000.
	Trafficking in persons is punishable on first conviction with rigorous imprisonment for a minimum of seven years. On subsequent conviction, the offender would be imprisoned for life.	Procuring or inducing a person for prostitution would be punishable on conviction with rigorous imprisonment for three to seven years and a fine of up to Rs 2,000. If the offence is committed against a person's will, the penalty would be imprisonment for 7-14 years.
	The offence of procuring or inducing a child for the sake of prostitution is punishable by rigorous imprisonment for seven years to life.	The offence of procuring or inducing a child for the sake of prostitution is punishable by rigorous imprisonment for seven years to life. In case of a minor, it would be rigorous imprisonment for 7 to 14 years.
	No provision.	Seducing and soliciting for the purpose of prostitution is a punishable offence.
	No provision.	Prostitutes can be removed from local jurisdiction of a Magistrate and be prohibited from re-entering the place.
In-camera Trial	All offences under the Bill shall be tried in-camera, i.e. the public would be excluded from attending the trial.	No provision.
Enforcement	A special police officer, not below the rank of Sub-Inspector, shall be appointed to deal with offences under the Act.	A special police officer, not below the rank of Inspector, to be appointed to deal with offences under the Act.
Authority	The central and state governments may establish authorities to combat the offence of trafficking in persons.	No provision.
Money Laundering	Trafficking in persons added to the offences listed in the Money Laundering Act, 2002.	No provision.

PART B: KEY ISSUES AND ANALYSIS

Objective of the Bill: The Bill aims to combat trafficking in persons for sexual exploitation. It does not prohibit prostitution. It addresses the issue of trafficking through both supply side (by measures to punish traffickers) and demand side (penalties for clients) mechanisms. There are three issues that need to be considered. First, whether prostitution ought to be a legitimate way of earning a living if the person enters or stays in the profession out of choice. Second, whether the demand side mechanism of punishing clients would be the best way to tackle trafficking. Third, whether trafficking in persons for purposes other than sexual exploitation would be penalised. These issues are discussed below.

Legality of Prostitution: The Bill defines "prostitution" as sexual exploitation or abuse of persons for commercial purposes and a "brothel" as any house or place which is used for purposes of sexual exploitation for the gain of another person or for the mutual gain of two or more prostitutes. Although the Bill does not penalise an individual if he is in prostitution for his own profit, it penalises prostitution if carried on in a brothel or from any public place within 200 metres of an educational institution, place of religious worship, hotel, hospital, nursing home or any public place notified by the Commissioner of Police or Magistrate. Such clauses, while technically not prohibiting prostitution, make it almost impossible for a person to operate as a prostitute. Thus, the Bill lacks clarity on whether prostitution ought to be a legitimate way of earning a living if the person enters or stays in the profession out of choice.

Punishing Clients: The Bill seeks to penalise any person who visits a brothel for the purpose of sexual exploitation of a trafficked victim. The issues that arise out of such a provision are as follows. It would be difficult for a person visiting a brothel to distinguish between a trafficked person and a non-trafficked person. A person is penalised only if he sexually exploits a trafficked victim. If the victim is not trafficked, the client would not be penalised. Any person visiting or found in a brothel can be penalised if the purpose of the visit is sexual exploitation of a trafficked victim. However, as the term 'sexual exploitation' is not defined in the Bill, it could lead to harassment of every person who visits a brothel irrespective of the object of his visit. International experience suggests that the provision to penalise clients may not be an effective way to curb sexual exploitation. For example, Sweden views prostitution as an aspect of male violence against women and children and penalises the act of purchasing sexual services. [3] There is a view that this provision has moved the trade underground. [4]

Trafficking Limited to Prostitution: India is a signatory to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime. This Protocol defines 'trafficking in persons' as 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force'. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other

forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs." [5]

While the UN Protocol covers trafficking for situations other than prostitution, the Bill only penalises the offence of trafficking if the victim is used for the purpose of prostitution. Trafficking in persons for other purposes such as domestic labour, bonded labour, begging, camel jockeying, and organ trade do not fall under the purview of the Bill. While there are a number of laws [6] that penalise certain offences such as slavery, unlawful compulsory labour, and begging, it does not cover every situation where trafficked victims can be exploited. There could be a case for a comprehensive law on trafficking in persons rather than one linked only to prostitution.

Enforcement: The Bill lowers the minimum rank of the special police officer, authorised to enforce the provisions of this Act, from Inspector to Sub-Inspector. A shortage in the number of Inspectors in an area to deal with a case of prostitution might necessitate the need to broaden the pool of trained officers. However, power to search premises suspected of serving as brothels or remove persons from such premises without warrants in the hands of a junior officer could lead to greater harassment of prostitutes. Indeed, cases of police harassment have been reported earlier.

Establishment of authority: The central government and each state government may establish an authority to combat the offence of trafficking in persons. The Bill leaves it to the rules to specify the role, function and composition of the authority.

Definitions: The phrases 'sexual exploitation' and 'commercial purposes' have not been defined in the Bill leaving them open to interpretation.