

Cooperation to Combat Cross Border Trafficking: India-Nepal-Bangladesh

Sarasu Esther Thomas



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The idea for this research came from earlier work on trafficking and the feeling that unless procedures and laws in all three countries were looked at, it would not be possible to make meaningful recommendations for effectively tackling trafficking. The idea emerged from the learnings of two separate researches at the National Law School that I had the privilege of coordinating- the preparation of a judicial training manual on combating trafficking for commercial sexual exploitation, analyzing trends across ten States in India sponsored by the Department of Women and Child Development and the National Human Rights Commission and funded by UNICEF and the Legal Framework Analysis on Human Trafficking funded by UNODC. The failings of the law in India were frustrating particularly where cross border trafficking was concerned. Cross border trafficking seemed fairly invisible in the legal system. While both these researches and indeed many other research studies focus on local law, it was felt that a study of India-Nepal- Bangladesh together would be useful, keeping in mind the diversity and the wide breadth of laws across these three countries which made control of cross border trafficking difficult. The need for such a study also emerged from the fact that research on trafficking between the three countries in the past had dealt with each country individually and was therefore fragmentary in nature.

A sample of the work done on the ground, factors which impact trafficking and procedures followed and available in the law beg the question- can regional cooperation to tackle cross border trafficking between India-Nepal-Bangladesh be achieved?

Sarasu E Thomas

Preface

The Scholar of Peace Fellowships awarded by WISCOMP for academic research, media projects and special projects are designed to encourage original and innovative work by academics, policy makers, defense, and foreign policy practitioners, NGO workers and others. The fellowships are seen as an important step to encourage work at the interface of gender and security; conflict resolution and peace. These studies are expected to provide new insight into problems pertaining to security, promote understanding of structural causes of conflict, suggest alternatives and encourage peace initiatives and interventions. The series WISCOMP Perspectives in conjunction with WISCOMP Discussion Papers brings the work of some of these scholars to a wider readership.

Thirty first in the Perspectives series, *Cooperation to Combat Cross Border Trafficking: India-Nepal-Bangladesh* is the outcome of a fellowship awarded to Sarasu Esther Thomas under the academic projects category in 2008. Thomas analyzes the current legal approaches and strategies India, Nepal and Bangladesh employ for countering human trafficking. She seeks to answer two questions. One, what is the impact of existing laws on the victims of trafficking, especially on those trafficked across borders? And secondly, given that elimination of root causes of trafficking requires long term engagement and results are slow to achieve, what can states do to minimize harm in the interim?

Thomas has been working on the issue of trafficking and this study builds on her earlier work which involved the preparation of a training manual for judicial officers and conducting a Legal Framework Analysis on Human Trafficking within India. In this study she expands the geographical focus to three countries of South Asia and reveals several shortcomings in existing laws and strategies. At the most fundamental level, she identifies a glaring gap – the absence of a specific legislation that addresses trafficking in all its forms. Furthermore, she notes that there exists no clear definition of ‘trafficking’ or ‘trafficked person’, which leaves space for misuse of authority by law enforcement agencies.

At the level of implementation, Thomas also finds that trafficking and prostitution are often conflated which results in the neglect of trafficking carried out for purposes other than sexual exploitation and creates conditions whereby women suffer discrimination and mistreatment.

Laws in India, Nepal and Bangladesh are riddled with almost identical problems in this respect. While Thomas's study did not intend to primarily engage with the gendered nature of trafficking as it pertained to the trafficking of women for sex trade, it acknowledges that the negative impact is felt most strongly by women when laws are framed with a narrow focus on "curbing crime". The gendered impact is especially pronounced on women who are trafficked under the garb of traditional cultural practices, as is the case in India and Nepal.

A problem that afflicts almost all discussions on prostitution is how to draw the line between those who are trafficked and those who are voluntarily engaged in the profession. Law is ambiguous towards rights of women engaged in prostitution voluntarily. This study avoids that normative debate deliberately and moves beyond documentation of the negative impact on women. It highlights instead the general apathy towards *all* victims of trafficking. Thomas argues that because trafficked persons are often perceived as engaged in illegal and/immoral behavior there is little pressure on the state to cater to their needs. This apathy is even more pronounced when it involves crossing of international borders. In such situations, *victims* are often seen as encroachers from a foreign land; competitors in a constricted employment market. As a consequence, the state is pushed more towards apprehension and prosecution of offenders.

The overarching problem, therefore in South Asian states, is the almost exclusive emphasis on "crime centered approach" to trafficking. On several counts of non-discrimination, safety and fair treatment, access to justice and to reparations, these states perform poorly. However, Thomas finds that in recent years there is a move towards using the human rights approach. Even though skepticism about the effectiveness of the international human rights regime in general prevails, as there is a huge gap in the rhetorical commitments states make and their actual performance, there is increasing support for using the international conventions as they enjoy legitimacy. Thomas suggests that if it is used in combination with national case law, the human rights approach can be used for framing policies that help victims of trafficking.

While the study is critical of the existing approach of the states, it is not oblivious to the underlying socio-economic and political reality. It recognizes that any assessment of legal instruments divorced from national and regional politics is futile and therefore Thomas devotes

considerable attention to the unique concerns of each state and the problems of reconciling these divergent interests. She concludes with suggestions for devising a regional plan of action that addresses the concerns of all three states and increases cooperation.

Research on trafficking has revolved around various aspects of the problem: its scale, its impact on the individual victims and states, factors that create the pull and push effects, mapping of popular routes and stock taking of state mechanisms for prevention. However, legal analysis of trafficking often concentrates on one specific area – either labor market regulation or immigration or prostitution. There are few studies that look at trafficking and its complex linkages to local, national and regional politics in all these issue areas. This research is unique precisely because it moves beyond the watertight compartments. It focuses on three states with porous borders and provides a holistic view of the problem. It is a valuable addition to the existing work and helps unpack human trafficking in the South Asian region, especially for lawyers, policymakers, NGO workers and researchers who are interested in the protection and rehabilitation of the victims of trafficking.

The WISCOMP Research Team

Introduction

Global Concerns on Trafficking

Trafficking in human beings is an extremely lucrative business, with profits estimated at \$7 billion per year¹ and a seemingly endless supply of persons to traffic, estimated at between 700,000 and four million new victims per year.² There are both push factors and pull factors that influence this. Push factors include poverty, disappearing sources of livelihoods and escalating living costs paralleled with unemployment. The social vulnerability of women and children as well as persons from marginalized groups adds to this. Pull factors include the demand for cheap labor, the lowering age of sex workers due to the twin effects of the demand for youthful beauty and the threat of HIV, demand for desirable children which has led to trafficking for adoption, the demographic changes in certain parts of the world which has led to shortage of brides, the list could go on. The fact remains that trafficking occurs because of both push and pull factors and unless there are serious efforts to prevent it, the problem could only escalate.

There is consensus on the fact that trafficking should be prevented and that those who are engaged in trafficking must be appropriately dealt with. However, there is no clear understanding on the *approach* to be used while dealing with trafficking. This is especially so in terms of cross border trafficking as variables of national security, border controls and inter-state relations enter the already complex equation.

In the recent past, among the different legal approaches to trafficking, the organized crime approach has been gaining headway. Post 9/11, in the so called war against terrorism, links of organized crime and various other kinds of activities carried out by terrorists have come under the global scanner. Thus, human trafficking is increasingly in the limelight.

While India-Nepal-Bangladesh all have concerns regarding cross border trafficking, by no means are these concerns the same. There are

¹ United Nations Children's Fund *et. al.*, *Trafficking in Human Beings in South Eastern Europe*, xii (2002) as cited in Dina Francesca Haynes, "Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers", *Human Rights Quarterly* 26 (2004) pp. 221-272.

² U S Dept of State Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 1* (2002).

crosscutting themes of crime and punishment, victim protection and respect for international conventions. The three countries are however, vastly different from each other in composition, development and other factors. Their concerns about trafficking also vary.

Countries are usually classified as –

- Origin/ source countries – These are countries from where persons are trafficked, usually to be taken to other countries besides being trafficked locally.
- Transit countries – These are countries through which trafficked persons are taken from the country of origin to a third country which is their final destination. They may be in a transit country only on a temporary basis.
- Destination countries – These are the countries to which the trafficked persons are ‘supplied’.

Concerns of a country would vary according to its status as country of origin, transit or destination. Its approach to border control would also be affected by the category it fits into. Another factor that impacts the concerns of a country is its perception about the problem. For instance, if a country following the traditional criminal justice system model were to treat it simply as a violation of law without considering the human rights angle, their concerns would be limited to jurisdiction and apprehension of criminals on their territory. The remedies and the political gain that countries seek are also important. Perceived exploitation can become a contentious point to negotiate who bears the burden of rehabilitation of victims.

Nepal’s Concerns

Nepal is primarily considered a country of origin- a source for the trafficking of men, women and children, particularly the latter two. It is to a lesser extent a transit country from where Bhutanese refugees may be trafficked to India. Nepal also sees some trafficking within the country, but that is a fraction compared to the cross border trafficking which takes place.

The primary destination country for Nepalese women and children is India, but victims are also trafficked to the Middle East, other parts of Asia, and Europe. An estimated 12,000 women and children are

trafficked from Nepal every year.³ Some nongovernmental organizations (NGOs) claim that the number could be as high as 30,000.⁴ According to yet another estimate, 100,000 Nepali 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.⁵

Due to the nature of the crime, accurate data on trafficked persons is not available. Also increased Nepali migration to cities in India and beyond, using India as a transit is common due to the poverty and conflict in Nepal. Internal displacement in Nepal due to both these reasons (especially after the Maoist insurgency began) led to about two million Nepalese seeking employment abroad.

Nepal's concerns are largely that persons go to India without papers quite legitimately and it is difficult to differentiate between a legitimate reason and non legitimate ones. Nepalese authorities have no way of keeping tabs on the citizens wherever they may be. There are also concerns that from India, there are no checks if they are trafficked and forced to leave and travel to the Middle East or Europe.

Nepal's concern therefore is to make it less economically lucrative to go to India, by providing alternative opportunities for its citizens within Nepal. Considering the fact that poverty, lack of educational opportunities and work available are the primary reasons behind trafficking, there is a need to address these in order to prevent families from trafficking their children, and to minimize vulnerability to trafficking in general.

On the supply side, there is concern in Nepal that with the falling age of sex workers with the modern obsession with youth, the threat of HIV and the requirement of cheap labor in parts of India, the Indian government does not seem interested in preventing the trafficking of Nepalese as the trafficked persons fulfill the demand in India.

³ Bal Kumar KC, Govind Subedi, Yogendra Bahadur Gurung and Keshab Prasad Adhikari, *Nepal: Trafficking in Girls with Special Reference to Prostitution: A Rapid Assessment* (Geneva: International Labor Organization, International Program on the Elimination of Child Labor, November 2001). As cited in http://www.protectionproject.org/human_rights_reports/report_documents/nepal.doc

⁴ Sanjaya Dhakal, "Nepal's Victims of Trafficking Shy away from Justice," *Oneworld.net*, 8 January 2004.

⁵ "When Victims Become Accused," *Times of India*, 13 October 2003.

When it comes to cooperation to address issues of trafficking, Nepal's concerns largely are:

1. To have laws which punish trafficking
2. To be able to punish trafficking outside Nepal's borders, including extradition
3. To improve border checks to ensure legitimacy of migration between India and Nepal.
4. To ensure that steps are taken to protect rights of victims of trafficking of Nepali origin wherever they may be
5. To maintain good relations to allow for easy repatriation
6. To make destination countries share the responsibilities for rehabilitation of victims
7. To be part of regional and international processes which may combat trafficking

Bangladesh's Concerns

Bangladesh is a major country of origin. There is internal trafficking as well, but a large proportion of trafficking is cross border. Being an under developed country with a growing population, Bangladesh has very few employment opportunities consequently labor migration, internal as well as attempted illegal migration to India, is common. Due to their abject poverty young people in villages and their families are lured into believing that better job prospects are available outside the villages and sometimes outside the country.

While it is difficult to determine how many persons who migrate are trafficked, studies have thrown up probable statistics.

According to reports, more than 200,000 Bangladeshi women were trafficked between 1990 to 1997, with 6,000 children trafficked, abducted or reported missing. On an average, 4500 women and children from Bangladesh are being trafficked to Pakistan each year and at least 200,000 women have been trafficked to Pakistan over the last 10 years.⁶ A recent report of the Centre for Women and Children Studies, presents an estimate of about 14,000 women from Bangladesh working in the

⁶ "Factbook on Global Sexual Exploitation, Bangladesh", available at <http://www.uri.edu/artsci/wms/hughes.banglad.htm>

brothels of Calcutta⁷. Another report says that about 1% of the total number of prostitutes in India, and 2.7% of prostitutes in Calcutta are from Bangladesh.⁸

In fact, not only are Bangladeshi women trafficked to South Asia, they are also trafficked to countries in the Middle East as well. It is claimed that about 200,000 women have been smuggled to the Middle East over the past twenty years.⁹

Such illegal transactions are ever on the rise between persons in India and Bangladesh, so as to meet the demand and supply situation. Often, such transactions are carried out with little difficulty. After India's partition in 1947, there were many 'enclaves' between the borders of India and East Pakistan (now Bangladesh). These enclaves are pockets of land belonging to a nation other than that which surrounds them. There are 111 Indian enclaves in Bangladesh and 51 enclaves of Bangladesh in India. Research carried out by the Bangladesh National Women Lawyers association (BNWLA) has shown that these enclaves have been used as recruitment and collection sites by traffickers. Many border areas¹⁰ are frequently used as land routes for trafficking. Corruption among officials in border areas facilitates the process.

Cooperation to combat trafficking becomes meaningful to Bangladesh and its concerns are:

1. The porosity of the border and maintaining effective checks
2. Domestic laws to deal with trafficking
3. Cooperating with India to handle extradition and allied matters
4. Improve conditions to make crossing the border less attractive
5. Compel India to assist with rescue and rehabilitation.

⁷ Bimal Kanti Paul and Syed Abu Hasnath, "Trafficking in Bangladeshi women and girls", *Geographical Review*, Vol.90 (2), 268 (2000).

⁸ "Factbook on Global Sexual Exploitation, Bangladesh", available at <http://www.uri.edu/artsci/wms/hughes.banglad.htm>
Paul and Hasnath, op.cit.

⁹ Tasneem Siddiqui, "An anatomy of forced and voluntary migration from Bangladesh", in Mirjana Morokvasic *et. al.* *Crossing Borders and Shifting Boundaries: Gender on the Move* (New York: V S Verlag) 2003, p. 166.

¹⁰ Among these are Khulna, Jessore, Satkhira, Rajshahi, Dinajpur, Rangpur, Mymensingh, Comilla, Brahmanbaria and Sylhet.

India's Concerns

Cross border trafficking is of special concern to India where many men, women and children are trafficked across the borders from Nepal and Bangladesh into India. The borders are porous and very long. There are about twenty check posts across the length of the Bangladeshi border which is 4,156 kms long. Crossing the border is not a cumbersome process and money often changes hands. With Nepal there are fourteen legal entry points, but illegal cross border movement takes place easily. Under treaty, Nepalese have free access to India and therefore trafficking and illegal entry become difficult to pin.¹¹

The United Nations estimates that trafficking is a highly profitable industry, generating \$7-10 billion annually.¹² India has also been victim to this menace, acting as a hub not only for Bangladeshi and Nepali refugees, but also as a transit point for victims being taken to the Middle East. While there is no official record of the number of trafficking victims in India, it does not boast of a very healthy track record. Aid agencies estimate that around 5,000-7,000 women and girls are trafficked from Nepal every year and around 10,000 to 20,000 come from Bangladesh.¹³

The Trafficking Victims Protection Act of 2000 [*hereinafter* TVPA] and the Trafficking Victims Protection Reauthorization Act of 2003, acts passed by the US Senate (and elucidated upon later), mandate constant monitoring of the efforts of various foreign governments to eliminate trafficking. Consequently, the Department of State (of the United States of America) published 'The Trafficking in Persons Report 2004', identifying and demarcating governments according to their level of compliance with the standards set out in the TVPA, 2000. The bands for this purpose include governments in full compliance with TVPA (Tier I), governments in compliance with minimum standards of TVPA (Tier II), governments that have shown positive efforts toward minimum compliance (Tier II Watch List), and those countries that have not taken serious action to stop trafficking (Tier III).¹⁴

¹¹ Adapted from *Trafficking in Women and Children in India*, New Delhi, Orient Longman, 2005, pp. 10-12.

¹² Sara L. Gottovi, "Sex Trafficking of Minors: International Crisis, Federal Response," 52(2) Child Protection, Exploitation, and Obscenity, March 2004.

¹³ Jyotsna Singh, "India defends trafficking record", *BBC News*, 14 June 2007 available at <http://news.bbc.co.uk/2/hi/south_asia/6749983.stm

¹⁴ "The Refugee Influx – Victims Of Trafficking And Violence" available at <<http://www.libraryindex.com/pages/2439/Refugee-Influx-VICTIMS-TRAFFICKING-VIOLENCE.html#ixzz0OigHJHJN>>

*“The world’s largest democracy has the world’s largest problem of human trafficking”*¹⁵ according to US State Department’s specialist on trafficking issue, Mark Lagon. The basis for this statement is India’s rating in the ‘Tier II Watch List’ countries, an unenviable position it has held for the past four years (since 2005), with the possibility of being downgraded to Tier III. Not only would this affect India’s status internationally, it would also entail the withholding of all non-humanitarian and non-trade related US foreign aid. Nevertheless, India’s response has been lackadaisical to say the least. Women’s groups have argued that it was unfair that India was being put on the US watch list over the issue, and not Bangladesh or Nepal.¹⁶ P. Chidambaram, Home Minister of India, had in fact shot down suggestions during question hour in the Parliament, to frame a comprehensive law, covering *all* aspects of human trafficking, stating that the Ministry of Women and Child Development was piloting amendments to the law against trafficking.¹⁷

Human Trafficking Legally Defined: Problems of Definition

It is unfortunate that we do not have a comprehensive legislation dealing with trafficking in India. The only law in India which defines trafficking is the Goa Children’s Act¹⁸ which talks about trafficking of children. The other alternative is to rely on definitions laid down in international instruments, which is what is often done in manuals and articles and meetings of civil society. This is not an ideal way to go about it as access to such materials are rare, they are not available in the vernacular and there is a reluctance to look beyond domestic law within the criminal justice system.

Not defining a crime does not mean that the law does not engage with the problem of trafficking. A number of legislations abound which deal with different aspects of trafficking in one way or the other. This research

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ “India unconcerned over human smuggling: US Report”, *Breaking News* 24/7, 8th July, 2009 available at <<http://blog.taragana.com/n/india-unconcerned-over-us-report-on-human-smuggling-chidambaram-102693/>>

¹⁸ sec. 2(z) “child trafficking” means the procurement, recruitment, transportation, transfer, harbouring or receipt of persons, legally or illegally, within or across border, 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.

does not deal with each one of them, though a list has been appended to give a broad overview of various legislations available. (See bibliography)

The legal definition of human trafficking puts it into the bracket of a cognizable offence, punishable fairly severely. This definition clearly situates the act of trafficking and all its consequences largely within the ambit of the criminal justice system.

International standards do give a definition of trafficking. The Immoral Traffic Prevention Act, The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000¹⁹, supplementing the UN Convention against Transnational Organized Crime of the same year, defines it thus – *“Trafficking in persons” shall mean 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 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.*²⁰

The Immoral Traffic Prevention Act, 1956 was enacted pursuant to India’s signing the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949. The Act infamously reads ‘trafficking’ to mean ‘prostitution for commercial purposes’.²¹ Nowhere is cross border trafficking defined, the Goa Children’s Act, 2003 in its definition of trafficking includes trafficking within or across borders.

The SAARC Convention²² which is also relevant for cross border trafficking has a limited definition that only covers some aspects of trafficking. Since it covers women and children and excludes men, and since it only covers trafficking for prostitution, its scope is further limited.

¹⁹ http://www.unicri.it/wwd/trafficking/minors/docs_ilr/1949_Convention_Suppression_traffic.pdf

²⁰ Article 3.

²¹ 2(f) “prostitution” means the sexual exploitation or abuse of persons for commercial purposes, and the expression “prostitute” shall be construed accordingly.

²² South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002 adopted unanimously by Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

For the above reasons, it is preferable to use the definition under the Protocol when theorizing on the different approaches to trafficking. It would include everyone, and all forms and means of trafficking, but would also emphasize the need to protect women and children who are the most vulnerable. And that is the definition used for the purposes of this paper.

Research Design & Methodology

The idea for this research came from earlier research on trafficking and the finding that procedures and laws in all three countries need to be analyzed simultaneously and policy recommended accordingly, to devise an effective strategy for tackling cross border trafficking. The Primary Objective was to explore ways in which regional cooperation between India, Nepal and Bangladesh could be strengthened to combat trafficking and protect victims whether they be citizens, refugees or illegal immigrants.

Other objectives were –

Generate a document that provides broad outlines for Regional Cooperation to Combat Trafficking

Generate standard operating procedures and flag best practices

Explore alternatives at the legal, administrative and civil society levels to further regional cooperation

List vulnerabilities of trafficked victims and analyze remedies for the same using a rights framework

The Project was divided into several stages –

Stage 1 Collecting information in India on procedures (formal and informal) followed in the event of trafficking from across the borders.

Stage 2 Pinpointing gaps and flagging best practices by critical analysis from a human rights perspective.

Stage 3 Collecting information from Nepal and Bangladesh on procedures (formal and informal) followed in the countries of origin on trafficking prevention as well as procedures after the person has been repatriated.

Stage 4 Collating information on cooperation mechanisms and procedures used and analyzing them.

Stage 5 Putting together learnings from *Stage 1* to *Stage 4* to generate recommendations which would be useful to further Regional Cooperation against Trafficking.

The theses on which the Project was based were –

- a) The plethora of laws and procedures across India-Nepal-Bangladesh have not been able to adequately tackle the cross border trafficking problem.
- b) Different approaches to trafficking have been inconsistently followed.
- c) There is a marked difference in the treatment of citizens and aliens.

Legal Approaches to Human Trafficking

It is important to study the different approaches to cross border human trafficking in the Indian context as this determines what the desirable outcomes would be in terms of prosecution, rescue, rehabilitation and so on. It is equally important in the context of Nepal and Bangladesh as countries of origin to determine approaches that would prevent cross border trafficking from their territories into India. Law problematizes and tackles trafficking on the basis of what are considered desirable outcomes and the prioritization of those outcomes. Approaches of the law towards trafficking have for this reason been varied and sometimes contradictory. In the Indian scenario, it is not unusual for various strategies being used to prevent trafficking to be at cross purposes with each other. In some cases, approaches to trafficking move beyond the law to measures more akin to alternate dispute resolution or truth and reconciliation proceedings. Broadly, approaches to cross border human trafficking in India could be categorized into the following –

1. *Criminal Justice Approach* – Views trafficking as a crime and emphasizes that the way to tackle it is by prosecution and stringent sentencing of offenders. It uses local laws dealing with crime along with other mechanisms such as border control and immigration regulations.
2. *Organized Crime Approach* – Recognizes that trafficking is an organized crime and cannot happen without connivance of official quarters, or at least existence of wide networks, it seeks to use legislation to combat organized crimes in cases of trafficking as well.
3. *Victim Centric Approach/ Rights approach*²³ – Increasingly, the victim centric approach is used where the focus is more on the rehabilitation of the ‘innocent’ victim and ensuring her safety than on actually apprehending the criminal. Also, the victims’ wishes are complied with. She is at the centre of the process, not the criminal. Human rights standards are used here as well as laws dealing with rescue and rehabilitation. However, many studies especially those dealing with sex work tend to use a rights approach to protect those

²³ The terminology depends on who is using it.

whose rights have been violated, but may not fit the stereotypical model of a victim. Exploitation can happen at any stage with or without trafficking. *Best Interest Approach* is very similar to the victim centric approach and indeed a part of it, but is used specifically in the context of children. It is based upon the ‘best interest principle’ in the UN Convention on the Rights of the Child. In addition to other laws and mechanisms, the Juvenile Justice Act or other special laws available for children or minors are relied upon and the special mechanisms created under those laws are used.

4. *Refugee Law/ Humanitarian Approach* – This approach looks at trafficking beyond the human rights perspective and examines obligations of States towards victims of trafficking. The trafficker is not the focus at all. Migration whether it is legitimate or illegitimate and distinction between them also becomes an issue. At the core is the well established bedrock of refugee law. For trafficked persons, it includes a determination of one’s status as a refugee and the rights that one may have akin to that of any refugee. This approach also looks at the vulnerabilities of existing refugees in refugee camps and the dangers of trafficking when they are in this position.
5. *Cooperation Approach* – Includes any or all of the above and also includes regional mechanisms, anti trafficking squads, involving civil society organizations (NGOs), Interpol etc. Use is also made of community participation in prevention and combating trafficking which would not fit into a formal legal framework.

Studies often taking one of these approaches tend to label themselves as using the ‘Rights Approach’ as legal rights, entitlements and procedures are looked at.

The Criminal Justice Approach

The criminal justice system in India criminalizes trafficking in its many forms. The purpose of the justice system is to apprehend the traffickers, ensure prosecution and have a heavy sentence imposed which may serve as a deterrent to would be traffickers.

This approach primarily views traffickers as criminals and posits that governmental efforts should focus on apprehending them, carry out effective investigations to gather evidence of the crime and ensure punitive sentencing that would serve as an example to deter potential traffickers. The effectiveness of this approach is measured in terms of

sheer statistics of guilty versus not guilty. And of course records from the crimes control bureau or equivalent government departments would indicate whether trafficking as a crime has reduced over time in order to show the effectiveness of the criminal justice system. Victims are often only ‘witnesses’, the State is represented in the crime and the victim only has a role as a prosecution witness to provide the necessary evidence to put the trafficker behind bars. The victim has no role and no rights beyond this. What the victims’ wishes are, is immaterial to the case. What happens to the victim after the case comes to an end and the trafficker is judged guilty is not seen as something the justice system should be concerned with.

Globally, several countries are finally adopting domestic legislation to criminalize trafficking in human beings, although many continue to punish the victims of trafficking, charging them with prostitution, possession of fraudulent documents, or working without authorization.²⁴ This is a peculiar characteristic of the criminal justice system approach—*all* those who are guilty of *any* offence are prosecuted. Sometimes, they are all prosecuted under the umbrella of a single criminal case, though some may be pimps, buyers and sellers and others may be guilty of trivial violations like soliciting in a public place.

This approach is typified in provisions to the Protocol²⁵ which includes prohibitions to include border controls to prevent and detect trafficking in persons. International standards to combat transnational organized crime also state that smuggling of migrants must be prevented, States must cooperate to ensure this and in the process, rights of smuggled migrants must be protected.²⁶ Thus, some governments pretend to care about trafficking when the real objective is controlling unwanted migration. This has happened on the borders of India and Bangladesh. Authorities continue to treat trafficked people as aliens or illegal immigrants.

Arresting and deporting the victim is an easy way out than prosecuting a trafficker. Violations of immigration laws become an easy excuse.

²⁴ Dina Francesca Haynes, “Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers”, *Human Rights Quarterly* 26 (2004) pp.221-272 at p. 224.

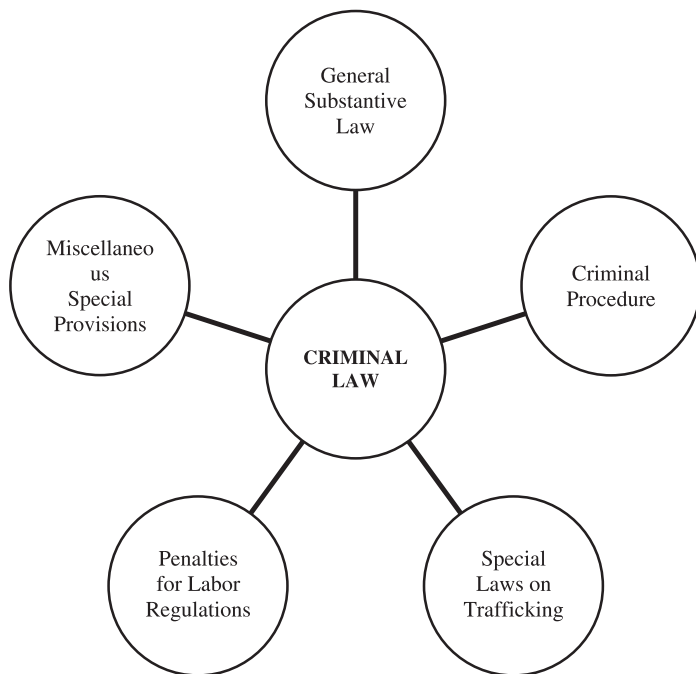
²⁵ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000 Article 11

²⁶ UN Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organised Crime, 2001

Prosecution for minor offences is far more rewarding in terms of number of cases won, than more difficult cases. Women often are afraid to testify for fear of consequences and also for fear that without adequate protection, they may be damning themselves.

India, Nepal and Bangladesh predominantly follow the criminal law approach. Criminal law has been the traditional basis for tackling issues of violence towards persons and trafficking is no exception. The framework of criminal law can also be found in other approaches including the organized crime approach and the cooperation approach to some extent.

Criminal law in the context of trafficking may deal with the following elements



General Substantive Law

This includes a range of offences that many criminal codes deal with. Prior to the emergence of special laws governing trafficking, these provisions may have been used to charge traffickers and prosecute them.

These could include provisions touching upon, but not limited to –

- Using criminal force, assault or battery
- Kidnapping or abduction
- Wrongful confinement or detention
- Criminal conspiracy
- Causing hurt of varying degrees
- Sexual offences of varying degrees
- Slavery and bondage
- Blackmail, extortion and exploitation
- Smuggling
- Entering borders illegally
- Fraud, misrepresentation or cheating

One or more of these elements of crime may be involved in cross border trafficking. For example, if a man was trafficked for labor, promised a job, smuggled across the border and sold to an employer to work without pay and subsequently subjected to physical abuse to force him to comply, a number of provisions for fraud, slavery, smuggling, hurt etc could be used in order to convict all those involved in the trafficking process. Right from the seller and buyer, to anyone who by committing acts, abetted the trafficking in any way.

Criminal law may impose special penalties to protect vulnerable sections like women and children. Or even higher penalties if offences cut across countries in the interest of national security.

General Criminal Procedural Law

Having a law penalizing an act as criminal is one thing, ensuring that the perpetrator is brought to justice is another. Procedural law deals with operationalizing substantive law; without it, no law is worth the paper it is written upon.

In the context of trafficking, procedural law may determine –

- The process of determination of a particular act or omission as trafficking

- Identification of persons who will make the initial determination
- Processes for receipt of information by way of complaint or first information report of the commission of an offence; or *suo moto* recognizing it
- Processes of identifying possible perpetrators
- Process of investigation
- Determination of charges and filing them
- Identification of courts/ tribunals to determine the matter
- Role of police, judges, lawyers, counselors, voluntary organizations
- Appellate structures and processes
- Arrest
- Trial
- Procedures post trial
- Evidentiary aspects- relevance, presumptions and burdens of proof
- Identification of prosecutors and defenders – public or private
- Examinations, Cross examinations
- Recording of evidence
- Weighing evidence and reaching a conclusion
- The decision and remedies available
- Executing the decision/ judgment/ order
- Sentencing
- Enforcing penalties- prison, fines, attachment of property etc
- Witness protection, prevention of revictimization
- Special procedures for identified offences (like rape or trafficking) or certain groups (like children)

Special Laws on Trafficking

As mentioned earlier, there was no need felt for special laws of trafficking under the assumption that general substantive criminal law was more than adequate to deal with trafficking. However, the spurt in trafficking cases and the unsatisfactory working of the general law led countries to often make separate laws dealing with trafficking. Usually such laws on trafficking fall within certain categories –

- Prostitution/ Sex Work and Trafficking
- Smuggling into or out of the country and trafficking
- Illegal immigration and trafficking
- Trafficking of vulnerable groups like women and children
- Slavery or slavery like practices and trafficking

Criminal Penalties Governing Violations of Labor Standards

Human Trafficking is often carried out for labor and services, i.e., for compulsory labor, debt, or bonded labor. It is also common for men, women, and children to be trafficked through fraud, i.e., through promises made by an agent who promises work in domestic labor or other ‘lucrative’ work. After luring the victims to a place distant from home, the victims suddenly find themselves in an exploitative situation where the work is often very different from what had been described originally to them. Very often the work conditions are poor and the remuneration far below prescribed laws.

Labor may be forced not only owing to physical force, but also on account of a legal provision such as imprisonment or fine in case the employee fails to provide the service, and also owing to hunger and poverty which compels him to accept employment for remuneration which is less than the statutory minimum wage²⁷.

Aspects of labour laws which are relevant in cases of human trafficking include –

- Acts or omissions which are penalized
- Role of anti trafficking machinery like police and courts
- Matter of jurisdiction – courts and appropriate labor authorities
- Procedures for prosecution (if they vary from criminal procedural law)
- Roles if permitted for voluntary groups and unions of workers
- Enforcement of International Labor Organization standards especially its Conventions and Recommendations which have a bearing on trafficking

²⁷ *PUDR v. Union of India* AIR 1982 SC 1473 Paras 6,11, 15,16 1982 3 SCC 235.

The Organised Crime Approach

Now this war will not be like the war against Iraq a decade ago, with a decisive liberation of territory and a swift conclusion. It will not look like the air war above Kosovo two years ago, where no ground troops were used and not a single American was lost in combat. Our response involves far more than instant retaliation and isolated strikes. Americans should not expect one battle, but a lengthy campaign, unlike any other we have ever seen. It may include dramatic strikes, visible on TV, and covert operations, secret even in success. We will starve terrorists of funding, turn them one against another, drive them from place to place, until there is no refuge or no rest. And we will pursue nations that provide aid or safe haven to terrorism. Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists. From this day forward, any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime.

*– George Bush, President of the United States
Address to a Joint Session of Parliament post 9/11*

Post 9/11, the campaign against organized crime has seen a frenzied growth. Reviewing different forms of criminal activity from the viewpoint of organized crime has narrowed down a set of crimes which are often carried out in an organized manner and which need to be curbed. The question is- is trafficking an organized crime?

A number of international conventions in the recent past, particularly after 9/11 have indicated a definite shift towards the organized crime approach. A campaign against organized crime is a global rallying cry and in addition to terrorism, other forms of organized crime are also being given serious attention on the basis that these crimes – drugs, arms and human trafficking, generate huge sources of profit which may be used for illegal and violent activities. The focus in these conventions is really to stop arms, drugs and human trafficking, particularly across borders. The conventions primarily lay down broad suggestions on cooperation between states to prevent trafficking of various kinds. The focus is on similar lines as criminal justice systems worldwide – to stop crimes, to apprehend the guilty. Rights of those who have been trafficked do not figure in these conventions.

According to the United Nations Convention against Transnational Organised Crime²⁸ ‘Organised criminal group’ means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

The United Nations Convention against Transnational Organized Crime²⁹ is the main international instrument in the fight against transnational organized crime. The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. Countries must become parties to the Convention itself before they can become parties to any of the Protocols.³⁰

The Convention represents a major step forward in the fight against transnational organized crime and signifies the recognition by Member States of the seriousness of the problems posed by it, as well as the need to foster and enhance close international cooperation in order to tackle those problems. States that ratify this instrument commit themselves to taking a series of measures against transnational organized crime, including the creation of domestic criminal offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice); the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities.³¹

Two of the Protocols under the Convention deal with Trafficking in Persons and with smuggling of Migrants and therefore have a bearing on cross border trafficking.

²⁸ Article 2 (a) United Nations Convention against Transnational Organised Crime.

²⁹ Adopted by General Assembly Resolution 55/25 of 15 November 2000. It opened for signature by Member States at a High-level Political Conference convened for that purpose in Palermo, Italy, on 12-15 December 2000 and entered into force on 29 September 2003.

³⁰ http://www.unodc.org/unodc/en/crime_cicp_convention.html

³¹ Ibid.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children³² is the first global legally binding instrument with an agreed definition on trafficking in persons. “The intention behind this definition is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking cases. An additional objective of the Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights.”³³

The Protocol against the Smuggling of Migrants by Land, Sea and Air,³⁴ deals with the problem of risky migration. While some migration happens along the legal routes by applying for and procuring proper papers, many persons illegally migrate seeking better jobs or a better life in a different country. There are a number of criminal groups which smuggle migrants either for a fee from the migrant, or from the prospective employer. Trafficking of those who enter the migration circuit is not uncommon during the smuggling of migrants across borders. The Protocol defines what smuggling of migrants is and exhorts States to prevent by action as well as cooperation with other countries to prevent such unsafe migration. The importance of this Protocol can be attributed to the fact that when borders are porous many States have no objection to their citizens leaving the country, they are only concerned about those illegally coming in and since the Protocol imposes a duty on States on both sides of the border, it becomes meaningful for prevention of trafficking. Protecting the migrant from exploitation is also a major concern.

The Protocol also fits clearly into the criminal justice model and was created at the UN Commission on Crime Prevention and Criminal Justice in Vienna. It therefore looks more at prevention and prosecution, than at protection and rehabilitation, though it may also incidentally deal with victim protection.

The Special Rapporteur on Violence Against Women, Radhika Coomaraswamy has pointed out that the rings of traffickers are often vast, extremely well connected to police and government officials,

³² Adopted by General Assembly Resolution 55/25. It entered into force on 25 December 2003.

³³ http://www.unodc.org/unodc/en/crime_cicp_convention.html

³⁴ Adopted by General Assembly resolution 55/25, entered into force on 28 January 2004.

well hidden, and reach across borders and continents.³⁵ Trafficking is thus an organized crime as it usually witnesses the involvement of several people working in tandem or across the chain from the point of first contact.

This is amply borne out in the manner in which trafficking happens between India-Nepal and India-Bangladesh. There are networks which scour rural areas especially for labor or for trafficking women and children into the sex trade. They have well established methods of transport including 'safe houses' where they harbor victims, networks of transporters to move persons to India and also very often, border officials and police who may be bribed and corrupted to assist them to ferry persons across borders without papers. They have regular persons, employers, brothels etc that they supply trafficked persons to.

The Human Rights Caucus tried to ensure that the definition of trafficking should also recognize that women, men and children are trafficked for labor as well and not only for sexual exploitation. Therefore, forced labor, slavery and servitude are also covered by the definition. However, efforts to ensure that the document should be set in a human rights framework were not successful.³⁶ It thus remains firmly rooted in the criminal justice approach or organized crime approach. Victims need to look at other standards and procedures to have their rights protected.

Thus, victims of sexual exploitation are still liable to be re-victimized as the Protocol does not encompass protection. It also does not lay down any way of distinguishing treatment in law of forced sex work and voluntary sex work, which is a bone of contention for many who work with men and women engaged in sex work.

The *Travaux preparatoires*³⁷ to the Protocol reads – The terms 'exploitation of the prostitution of others' or 'other forms of sexual exploitation' are not defined in the Protocol, which is therefore without

³⁵ *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences Ms Radhika Coomaraswamy*, UN ESCOR, Commission on Human Rights, 53rd Sess., UN Doc. E/CN.4/1991/47 (1997) Ss. IV (expressing concern about government complicity in trafficking) as cited in Haynes, op.cit, p. 226.

³⁶ Ann D Jordan, "Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings", *Gender and Development*, Vol. 10, No. 1, Trafficking and Slavery (Mar., 2002), pp. 28-37.

³⁷ Interpretative Notes to the Protocol.

prejudice to how States Parties address prostitution in their respective domestic laws.

Despite its many failings, the organized crime approach is a useful tool for India-Nepal-Bangladesh to tackle a wide range of modern criminal activities which have allowed offenders to carry on trafficking with impunity.

States have a duty under the Convention and Protocols to tackle cross border trafficking and smuggling of persons by criminalizing³⁸ the following.

- Participation in an organized criminal group
- Money laundering of proceeds of trafficking
- Corruption among public officials

This would play an important role in tackling cross border cases if there is harmony in the national legislations which would ensure prosecutions for the above on either side of the border.

Corruption plays an important role in ensuring that trafficking goes on smoothly. Cross border trafficking is very difficult without the connivance and corruption of those who are in a position to facilitate it. Thus, criminal activities in many countries are organized by, or with the cooperation of officials. Corruption is so extensive in some countries that victims who escape and report to the police risk being sent back to the traffickers. When this happens, or if victims fear this is about to happen, the motivation to escape and report such action vanishes.³⁹

Corruption is a huge problem in India-Nepal-Bangladesh and research has repeatedly shown that trafficking at the rate at which it goes on at present, is not possible without the connivance of certain key personnel who have the task of preventing it in the first place. Corruption has been alleged among police personnel, border patrols and other authorities.

If corruption is controlled and there is genuine cooperation, agencies from different State Parties could be in a position to take better action

³⁸ Adapted from Anne Gallagher, "Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis", *Human Rights Quarterly* 23 (2001) 975-1004, p. 979.

³⁹ Jordan, *op.cit.*, p. 29.

on their own, including collecting evidence, prosecuting, arresting, spreading awareness etc. It will be possible for state parties to request mutual legal assistance for a range of purposes. Already within all three countries, there are instances of trainings conducted for different officials involved in combating trafficking including the police, judiciary and public prosecutors.

Cross border cooperation on similar lines would go a long way in convicting traffickers. Joint investigative bodies could be established, criminal proceedings can be transferred, and extradition procedures for applicable offences can be initiated.⁴⁰ Being better equipped technically and having the funds to combat cross border trafficking will go a long way in breaking organized trafficking rings.

Where does the trafficked person figure in the Protocol? Part Two of the protocol deals with what happens to a trafficked person and the language is far less clear and demanding than in earlier cases. The guidelines seem more like moral exhortation rather than legally binding obligations. Assistance and protection of trafficked persons are mentioned, but nothing concrete is imposed upon States. It is left open to domestic law to devise solutions for the same.⁴¹

There is no obligation on States to let victims of trafficking know what remedies are available to them. In fact, very little is actually known even at many of the points of contact where the trafficker comes in touch with the State.

Ann Jordan critiques the Protocol thus –

“The Protocol was created at the UN Commission on Crime Prevention and Criminal Justice in Vienna rather than at one of the human rights bodies located in Geneva. The NGO community was represented by the Human Rights Caucus, which had two goals: to ensure that the first international definition of trafficking recognizes that women, men, and children are trafficked into forced labor, slavery and servitude; and to incorporate a human rights framework into the final document”.⁴² As she illustrates subsequently, the first goal seems to have been met and not the second one.

⁴⁰ Gallagher, op.cit., p. 980.

⁴¹ Trafficking Protocol. Art. 6(4).

⁴² Jordan, op.cit., p.31.

Slavery, forced labor or services, and servitude are all defined in other international instruments and cover all forms of trafficking. The terms ‘exploitation of the prostitution of others’ and ‘sexual exploitation’ are not defined in the Protocol or anywhere else in international law. They are undefined and included in the definition as a means to end an unnecessary year long debate over whether or not voluntary adult prostitution should be defined as trafficking.⁴³

The Human Rights Caucus was less successful in achieving its second goal. Delegates insisted that the Protocol is a ‘law enforcement’ instrument, and that protections must be linked to law enforcement goals, such as witness protection. Despite the best efforts of the Human Rights Caucus and a few delegations to raise the human rights issues, there was no time to discuss protections because so much time was wasted on the year long debate over prostitution.⁴⁴

Despite its many limitations, the organized crime approach seems to be the approach which will be largely followed by governments all over the world in order to combat trafficking and it is unlikely that India-Nepal- Bangladesh are going to be any different. In a world post 9/11 and in the context of the commitment of nations of the world to tackle terror, tackling trafficking as an organized crime might receive more attention.

The Victim Centric Approach

In an era of human rights, it was increasingly felt that the criminal justice system did not really do justice to the victims of trafficking and that a different approach needed to be taken in order to ensure that rights of those who were most intimately affected by the crime were protected. The basis of criminal law, that serious crimes were crimes against the State was appropriate for placing the burden of prosecution on the State, but did not change the fact that individuals suffered in a way the State did not.

The term ‘victim of trafficking’ refers to someone who has suffered harm as a result of trafficking. In some of the more recent writings and symposia, the term ‘survivor’ has been used instead of victim. One could however argue that the term ‘victim’ is much wider and includes

⁴³ Ibid p.32.

⁴⁴ Ibid.

even persons who may not directly have been trafficked and hence is a more appropriate term while looking at issues of cross border trafficking.

‘Victims’ have been defined as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within States, including those laws proscribing criminal abuse of power.⁴⁵ A victim continues to be one regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power provides that the term “victim” also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.⁴⁶

The Declaration envisages the prevalence of the following rights that may be exercised by a victim of crime:⁴⁷

1. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress.
2. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible.
3. Offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

⁴⁵ The United Nations Commission on Prevention of Crime at the 7th UN Congress at Milan in 1985 adopted a Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power.

⁴⁶ *Handbook on Human Rights for Judicial Officers*, National Law School of India University, Bangalore (2000) p.161.

⁴⁷ *Ibid.* pp. 161-162.

4. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.
5. When compensation is not fully available from the offender or other sources, States should endeavor to provide financial compensation to:
 - (1) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes.
 - (2) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.
6. Victims should be informed of the availability of health and social services and other relevant assistance, and be readily afforded access to them.

Many of these guidelines are extremely relevant in the case of human trafficking. In *Prajwala v Union of India*⁴⁸ the implementation of a victim protection protocol was the demand.

The threshold of satisfaction in the treatment meted out to victims of trafficking is very low. The victim is supposed to be satisfied once she has an opportunity to complain to the appropriate forum. Pursuant to this, whether the forum takes action, whether the perpetrator of the wrongdoing is punished and whether the victim receives compensation is not something the criminal justice system traditionally deals with.

The emphasis on compensation to the victims began to emerge in the 1960s in the West. In India, the jurisprudence of victim's rights is only now gradually taking root. There are a number of rights that victims should have if one goes by the victim centric approach and compensation is only one of them. The United Nations Commission on Prevention of Crime at the 7th UN Congress at Milan in 1985 adopted a Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power⁴⁹ which envisions a greater role for victims in proceedings to which they

⁴⁸ 2006(9) SCALE 531.

⁴⁹ G.A.Res. 40/34, annex, 40 UN GAOR Supp. (No. 53) , UN Doc. A/40/53 (1985).

are complainants. It recognizes their right to be a party in criminal proceedings against the accused.

Some activists, in the context of trafficking in India, point out the discrimination meted out by the police and prosecutors in cases where victims are not from the same State. In cases of cross border trafficking too, the same applies. Unfortunately, besides giving the initial complaint and being a witness, at no stage of the proceedings or in the hearings relating to bail, sentencing, appeal against sentencing or acquittal is the victim's voice heard.

Very few provisions of the Indian procedural law adopt a victim centric approach when being applied to counter human trafficking. In *Bodhisattwa Gautam v Subhra Chakraborty*,⁵⁰ where a person had a sexual relationship with a woman on false assurances of marriage and went through a fake marriage ceremony with her, but ultimately deserted her, the Supreme Court ordered compensation. The Supreme Court has also held that courts trying offences of rape have the jurisdiction to award compensation at the final stage as well as interim compensation.⁵¹ In *PUCL v Union of India*⁵² compensation was ordered to children who were trafficked for labor and also to the family members of a child trafficked for labor who subsequently was killed.

Other than a provision for the victim to claim compensation⁵³, the Criminal Procedure Code also allows a private person to appoint his/her own pleader to prosecute any person, but such a pleader can only act under the directions of the State Public Prosecutor or the Assistant Public Prosecutor.⁵⁴

While there is a right to appeal against the inadequacy of a sentence to the State which under the victim centric approach is prosecuting the accused on behalf of the victim, the complainant/ victim has no say in the matter⁵⁵, unless the case was instituted upon complaint and special leave by the High Court is obtained. This is not possible for proceedings initiated on a police report.⁵⁶ On conviction, the opportunity to be heard

⁵⁰ (1996) 1 SCC 490.

⁵¹ *Delhi Domestic Working Women's Forum* (1995) 1 SCC 14.

⁵² 1998(8) SCC 485.

⁵³ Section 357 Criminal Procedure Code, 1973.

⁵⁴ Section 301(2).

⁵⁵ Section 377, Criminal Procedure Code.

⁵⁶ Section 378, Criminal Procedure Code.

on the sentencing issue is a right given to the accused and not to the victim.⁵⁷

Revictimisation or secondary victimization is common in the Indian legal system. The system of holding hearings in open court, asking the victim embarrassing questions and often having to hear insults and slurs on her character make the criminal justice system a painful process. In cases of child witnesses, the lack of support system or a guardian *ad litem* present, the legal process in the presence of overbearing and often intimidating adults is a traumatic experience.

Racism and communalism rear their ugly heads in cross border trafficking cases. In cases of victims from Nepal, women are considered to be promiscuous and many have complained about the way they have been treated by the Indian law enforcement agencies. However, many who work on cross border trafficking feel that Nepalese are treated better than Bangladeshis who being Muslims are treated more as infiltrators rather than as victims of trafficking.

This is of course once proceedings have begun, but often, families are in cahoots with traffickers and the police refuse to register cases. Families are asked to take care of the matter themselves. This discourages victims from approaching formal mechanisms. This is especially true of cross border trafficking where victims are made to feel like outsiders and insulted on that account as well.

How many women actually go to a police station and file a complaint of trafficking? Not many cases of trafficking are registered by those trafficked as they are in a situation of powerlessness. Even when they do manage to get out of the clutches of traffickers, there is a great reluctance to complain, even when they have support from families, the voluntary sector and State machinery. The trafficking complaints therefore primarily come from NGOs or police raids or action taken by the labor department in rescuing bonded labor or a similar voluntary sector and/or government initiative. The more disturbing fact is that trafficked women often do not complain on their own. The two most likely reasons for this could be-lack of access to an appropriate forum, and corrupt machinery and fear of police.

⁵⁷ Sections 235(2) and 248(2) Criminal Procedure Code.

In order to secure their silence and compliance, traffickers threaten, beat, rape, drug and deprive their victims of legitimate immigration or work documents. Women are forced to sell themselves, they rarely see any wages for their work, in fact, most victims are kept in indentured servitude and told that they owe their traffickers or the brothel owners for their own purchase price and for the price of procuring working papers and travel documents.⁵⁸

The Global Alliance Against Traffic in Women (GAATW) was frustrated with the way prosecution affects victims and developed the Human Rights Standards for the Treatment of Trafficked Persons (Human Rights Standards) in 1999.⁵⁹

The Human Rights Standards for the Treatment of Trafficked Persons were developed by organizations worldwide that work with, or advocate on behalf of, trafficked persons. They are based on existing international human rights norms. The documents contain specific recommendations on measures that governments should adopt in order to avoid re-victimizing trafficked persons.⁶⁰ Principles and more importantly, the rights approach enshrined in them must be followed in order to render full justice to a victim/ survivor of trafficking.

However, such controls should be without prejudice to international commitments in relation to the free movement of people. While internal controls to ensure justice for the victims are easier to establish, the challenge lies in inter state cooperation in this regard. Cooperation among border control agencies by inter alia, establishing and maintaining direct channels of communication are seen as essential to move towards this goal.⁶¹

The Humanitarian/ Refugee Law Approach

Refugees find themselves in a country where they are not citizens and where they seek certain rights which will enable them to claim asylum or gain reparations for the harm done to them. Victims of cross border trafficking find themselves in a position similar to that of refugees- they are in a country where they are outsiders, with none of the

⁵⁸ Haynes, op.cit., p.226.

⁵⁹ Global Alliance Against Traffic in Women (GAATW), *Human Rights Standards for the Treatment of Trafficked Persons* (Jan 1999), www.thai.net/gaatw/GAATW_BODY_HRS_ENGLISH

⁶⁰ Jordan, op.cit., p.33.

⁶¹ Haynes, op.cit.

protections that citizens can claim. They are there not out of choice or willingly, but by the force of circumstances or pressures or because they were physically brought there by agents.

In an alien environment, they have no access to the sources of support they were used to – family, community or State. Unfamiliar territory brings with it unfamiliar challenges of trying to access justice. Approaching the legal system and the help required to do that is much needed in the case of such victims. Safe places to stay out of the reach of exploiters, locating their families including minor children who may have also been trafficked are similar to refugees searching for their kin. Often, their own State disowns them and ignores their plight.

The refugee approach seeks to apply certain protections available to refugees to the victims of cross border trafficking. In certain cases, it enables the victims of trafficking to apply for asylum or residence permits in the countries of destination and also compels state machinery to shoulder the burden of rescuing and rehabilitating them.

While this approach to cross border trafficking has not been used in many cases, there are clear indications that it may become popular in the foreseeable future. In this approach, like the victim centric approach, the focus is on the trafficked person. It recognizes the grave rights violations and the situation of powerlessness faced by trafficked persons. However, unlike the victim centric approach which relies on the human rights framework, this approach relies mainly on refugee and humanitarian law.

This idea is not new, it has been talked about by the European Union as well as brought into a legislation in the United States. It has also been talked about in non governmental organizations' conferences in the SAARC area, although not in a formal manner.

The Protocol in place amongst the SAARC countries is the Additional Terrorism Protocol of the South Asian Association for Regional Cooperation⁶². Article 17 of this Protocol permits SAARC nations not to extradite and to protect those being prosecuted or punished on account of their race, religion, nationality, ethnic origin or political opinion.⁶³ It does not mention trafficking and thus would cover victims of

⁶² January 2004.

⁶³ Rajeev Dhavan, "India's Refugee Law and Policy" *available at* <http://www.refugeelawreader.org/1184/Refugee_Law_and_Policy_in_India.pdf>

trafficking only if they already qualified to seek non extradition and protection under other heads.

The European Parliament has recommended to European Union Member States that victims of trafficking should receive eligibility to claim asylum. While this has not been disputed officially, no states in the European Union have so far explicitly offered asylum as one of the relief in their trafficking legislation. The possibility for victims to argue that they qualify for asylum is there though they will have to use the grounds which are well recognized. Trafficking by itself does not yet qualify as a ground to seek asylum. The fact that the European Parliament made this recommendation shows that there may be legislation in the not too distant future.⁶⁴

The United States has enacted the Trafficking Victims Protection Act of 2000, which in addition to identifying and prosecuting traffickers makes victims of severe forms of trafficking eligible for benefits and services to the same extent as refugees. Even the family members of victims of a severe form of trafficking are eligible for federally funded or administered benefits and services to the same extent as refugees.⁶⁵ These benefits permit the victims, who meet the requirements, specified by the Act, to reside in the United States on a temporary basis for three years by applying for a T Visa. The Trafficking Victims Protection Reauthorization Act, 2003, which supplements the Trafficking Victims Protection Act, 2000 provides for informational awareness campaigns and new civil action provisions that authorize victims to sue their traffickers in the federal district courts. The government is also responsible for publishing the annual report, to be distributed in the Congress, on the results of U.S. government activities to combat trafficking.⁶⁶

The Act stops short of granting refugee status or asylum, but by providing temporary residence, also promotes better prosecution of the traffickers. Similar benefits and services including the right to legal representation are provided which help victims of trafficking to better access their rights. Although the Trafficking Victims Protection Act,

⁶⁴ See Haynes, *op.cit.*, p. 221.

⁶⁵ Office of Refugee Settlement, *U.S Department of Health and Human Services*, available at <<http://www.acf.hhs.gov/programs/orr/policy/sl04-12.htm>>

⁶⁶ <http://www.libraryindex.com/pages/2439/Refugee-Influx-VICTIMS-TRAFFICKING-VIOLENCE.html#ixzz0OigHJHJN>>

2000 has come under heavy criticism from the voluntary sector on many counts, it is a novel approach to the problem of cross border trafficking.

Nevertheless, the possibility of recognition of trafficking victims being recognized as refugees can be evidenced by Article 14 of the Trafficking Protocol which states:

“Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein”⁶⁷.

Furthermore, another international treaty, although not binding is the Agenda for Protection,⁶⁸ whose Goal 2, Objective 2, exhorts States to ensure that their asylum systems are open to receiving claims from individual victims of trafficking. The involvement of the UN can also be evidenced by the guidelines released by the Office of the High Commissioner for Human Rights⁶⁹ in which it states *vide* Guideline 2.7 that the principle of *non-refoulement* should be respected and upheld at all times and the procedures and processes for the consideration of asylum claims from trafficked persons and smuggled asylum-seekers should be in place.

The principle of *non-refoulement* provided in Article 33 of the Refugee Convention has acquired the status of custom, and is non derogable.⁷⁰ It has been designed to ensure that no person with a legitimate claim can be sent back to his country, where he fears a threat to his life and it is the responsibility and duty of the host country to provide for the safety of such persons.

⁶⁷ UNHCR, “Guidelines On International Protection: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked”, HCR/GIP/06/07, 7 April, 2006, at 4.

⁶⁸ UNGAOR 53rd Session, “ Agenda For Protection”, A/AC.96/965/Add.1, 2002 , 26 June 2002

⁶⁹ Office of the High Commissioner for Human Rights, “Recommended Principles and Guidelines on Human Rights and Human Trafficking”, presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights, E/2002/68/Add. 1, 20th May 2002, available at <<http://www.ohchr.org/english/about/publications/docs/trafficking.doc>>

⁷⁰ Gill and Mcadam, at 97-100; <http://untreaty.un.org/cod/avl/ha/prsr/prsr.html>, General Assembly, Question of Refugees, G.A. Reso.8 (I) (Feb. 12, 1946); Ray Wilkinson, *The Refugee Convention* at 50, 2(123) REFUGEES 2,2 (2001); UNHCR, Refugees Q&A, at 13.

In practical terms however, the role of the UNHCR usually is restricted to asylum seekers who have been victims of trafficking. This is because asylum seekers have been recognized as persons claiming to be in the situation of persecution but where the facts and circumstances of their cases have not yet been established nor an evaluation undertaken to determine the veracity of their claims.⁷¹

The UNHCR Recommended Principles attempt to place victim protection squarely at the foundation of all anti trafficking measures. The first paragraph states that “The human rights of trafficked persons shall be at the center of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.”⁷² States are also not to detain victims for illegal entry or unlawful activity. Temporary residence and protection must be provided during legal proceedings, legal alternatives to repatriation must be made available where repatriation would pose a serious risk to their safety and/or to the safety of their families.

The refugee approach from the India-Nepal-Bangladesh perspective is rather complex. Individuals have migrated illegally or agreed to be smuggled into the country for economic and social reasons. Both situations are fraught with dangers for the person since migrating increases vulnerability to a range of human rights abuses including trafficking. Nonetheless, migration is often a voluntary act entitling the smuggler to a fee or involving a bribe to border patrols.

States do detain victims for illegal entry or unlawful activity. There are no provisions for allowing temporary residence during legal proceedings and victims are housed in one of the shelters or protection homes set up by the government. Legal representation is rarely provided. There don't seem to be viable alternatives to repatriation especially in the case of Bangladeshi victims. Families are often split in the process and reunion is not always possible.

There seems to be no move in India so far to try this approach. The immigrants as also those seeking refugee status who have been trafficked do not receive a humanitarian response.

⁷¹ “Information on UNHCR’s role and concerns regarding Victims of Trafficking” *available at* <www.unhcr.ie/pdf/Traffickingconcerns.pdf>

⁷² “Recommended Principles and Guidelines on Human Rights and Human Trafficking” Report of the UN High Commissioner for Human Rights to the Economic and Social Council. E/2002/68/Add.1 (2002).

Cooperation Approach

The Cooperation Approach may follow the elements of any or all of the above approaches, but what stands out is that the focus of this approach is to ensure that cross border trafficking is tackled in a cooperative manner.

Cooperation could mean the involvement of stakeholders at the domestic level as well as the international level. It could be both by formal as well as informal mechanisms. It does not only refer to cooperation between States, but also between police, activists, NGOs, victim groups etc of different States. A crime across borders also demands action across borders. Tackling cross border trafficking without using the cooperation approach is a meaningless exercise.

Since trafficking is a common problem between India-Nepal-Bangladesh, it is usually taken for granted that there is cooperation among these States in order to tackle trafficking effectively. How far this is true is debatable. What is definite is that there are a number of international standards that bind some or all three countries and that there is an obligation to protect the human rights of victims of trafficking. There are also mechanisms, both intergovernmental, international NGOs and at the local levels to combat cross border trafficking. These initiatives are looked at in subsequent chapters.

The Constitutions of all three countries include provisions that commit them to respect the treaties entered into. All three States however seem to be dualist States and require explicit measures in the form of legislation to make these safeguards as effective as those in domestic law.⁷³ International standards which talk about rights of all people and duties of all States reflect the cooperation approach as they do not make distinctions between citizens and non citizens. Rights setting standards may also be considered to be part of the victim approach, but they certainly try to bring about a single standard and concerted action and thus have a bearing upon cooperation between States.

⁷³ The nature and scope of obligations of a State under international human rights law depend on the type of legal system a State belongs to. Under a 'monist' regime, obligations under international human rights law are as binding as, if not superior to, the national constitutional obligations. Under a 'dualist' regime, as in India, obligations are not directly binding unless there is an explicit measure, through enactment of a statute, to internalize these obligations. *Handbook on Human Rights for Judicial Officers*, NIHR, National Law School of India University, Bangalore (2000) at 4.

Many State Parties to international treaties report to Committees and other bodies which provide a forum to discuss common problems and to take concerted action. International conferences and seminars also provide an opportunity to brainstorm on particular treaties. In the context of India-Nepal-Bangladesh, it is not difficult to draw a common standard of protection as far as trafficking is concerned. Also, as will be demonstrated in subsequent chapters, courts in the three countries have been open to applying these standards which displays a fast changing trend, moving from domestic to international minimum standards.

The intent of such measures is accurately captured in the words of the General Assembly in the context of the Universal Declaration of Human Rights⁷⁴ – a common standard of achievement for all peoples and all nations towards which individuals and societies should strive by progressive measures, national and international, to secure their universal and effective recognition and observance.

The International Bill of Rights which includes the Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966 have clear prohibitions on slavery and slave trade which buying and selling persons really entails. There is consensus that very often trafficked persons are kept in conditions of slavery. They earn nothing and have to repay to their employer, the purchase price for which he/she was purchased from others. Freedom from economic and social exploitation is an important theme and so is protection of high risk groups like children. Several other provisions related to protection from unsuitable work, engagement in dangerous tasks or acts harmful to their morals or health, are especially relevant in this regard.

The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1957⁷⁵ aims at condemning new forms of slavery and servitude similar to slavery (not foreseen in the 1026 Slavery Convention), such as abuses arising from the adoption of children and the marriage of women without their consent, and provides for penal sanctions against slave trade.

⁷⁴ Adopted on 10 December 1948.

⁷⁵ 30 April 1957.

Any disputes relating to the convention are to be referred to the International Court of Justice. Under Article 1(d) parties to the Convention are required to adopt measures to bring about the complete abolition of any institution or practice whereby a person under the age of 18 years is handed over by the natural parents or the guardian to another person, whether for reward or not, with the purpose of exploitation.⁷⁶

Special protections to vulnerable groups in the context of trafficking are reiterated in the Convention on the Elimination of all forms of Discrimination Against Women, 1981 (CEDAW) and the Convention on the Rights of the Child, 1990. Under the CEDAW, state parties agree to take appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of the prostitution of women.⁷⁷

In addition to the UN Convention on Transnational Organised Crime and its Protocols which were discussed under the organized crime approach, there are other standards which deal with trafficking and can be used. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1951⁷⁸ was responsible for new legislations all over the world on commercial sexual exploitation, including the current Indian law on the issue.⁷⁹ Member States should cooperate in the identification of international networks of procurers and, if they are members of the International Criminal Police Organization, to cooperate with that organization to make the suppression of the traffic in persons one of its priorities.⁸⁰ The Convention on the Rights of the Child goes one step further and states in Article 11 –

1. States parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Other provisions buttress this directive. Article 34 speaks specifically

⁷⁶ *Resource Book on the Legal Framework on Anti Human Trafficking*, UNODC and Government of India (2008) at 140.

⁷⁷ Article 6.

⁷⁸ 25 July 1952.

⁷⁹ The Immoral Traffic Prevention Act, 1956.

⁸⁰ *Resource Book on the Legal Framework on Anti Human Trafficking*, p. 138.

of sexual exploitation and Article 35 places an obligation on State Parties to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Since India-Nepal-Bangladesh are parties to this Convention, there is an obligation in international law to promote cooperation to tackle child trafficking in particular.

Turbulent Times: Impact Upon Cooperation and Trafficking

During the period of the present research, both Nepal and Bangladesh were going through turbulent times. This has an impact both upon cooperation on trafficking prevention and control as well as the factors responsible for the problem in the first place. Very little has been written about the impact this turbulence might have upon trafficking, but it has resulted in a lot of speculation at the ground level.

Bhutan: Its Refugees and Vulnerabilities

While the focus of this research is three countries in the region- India, Nepal and Bangladesh, the turbulence in these countries has affected the entire region, including neighboring areas like Bhutan. Nepal has seen its own share of troubles and Bhutanese refugees in Nepal are liable to a number of hardships⁸¹ including being vulnerable to trafficking. In studies on trafficking, this aspect is seldom looked at. Writings on refugees also tend to miss the issue of immigrants from Bhutan into Nepal. The focus is mainly on the movement from Nepal to India. Apathy to the plight of Bhutanese refugees is sometimes alleged⁸² and the fact that persons who are trafficked from Nepal to India are sometimes of Bhutanese origin is overlooked.

While Bhutan shares boundaries with China to the North and India to the South, it is separated from Nepal by the Indian State of Sikkim. In 1910, a treaty was entered into with Britain to let the British govern Bhutan's foreign affairs. This treaty in a similar form was signed with India in 1949 and again in 2007 to clarify that Bhutan had control over its own foreign affairs. India has an open border policy with Bhutan and Bhutanese can freely seek employment in India. No passport or visa is required and to this extent, they have the same rights as the Nepalese. It is because of this free movement of people that trafficking from Bhutan is very difficult to identify.

In the 1980s, after the first census showed that many ethnic Nepalese were in Bhutan, the Nepalese were declared to be illegal immigrants

⁸¹ See Rajesh S Kharat, "Bhutanese Refugees in Nepal: Survival and Prospects", *Economic and Political Weekly*, 38(04), 285 (2003).

⁸² Sunilam, "Bhutanese Refugees Battle Worlds Apathy", *Economic and Political Weekly*, 42(30), 3087 (2007).

and forced to leave. In the backlash which followed, many Bhutanese fled to refugee camps in Nepal. The poverty and difficulties in these refugee camps increase vulnerabilities to trafficking.

Nepal: Civil War and After – Is Cross Border Trafficking Now a Non issue?

Due to the open border with India, trafficking of persons to India, especially of women and children has been an issue raised by both government and civil society for a long time. With SAARC initiatives on paper and NGO initiatives on the ground, many success stories of prevention and rehabilitation in trafficking cases have been documented.

Of late, the stories have been fewer and far between. This was compounded by the fact that increasingly, since 1996, Nepal plunged into civil war and large portions of the country were under the control of the Maoists. The government ceased to be able to exert effective control over these areas which were rural areas. The Maoists also forcibly recruited child soldiers⁸³ and although there was a comprehensive peace agreement committing *inter alia* to avoid recruiting anyone younger than age eighteen for military purposes, this was not followed.⁸⁴ In many cases missing children were found to be trafficked and in many other cases in Nepal, they had become child soldiers. In the last few years with attempts at restoring democracy and the Constitution-drafting process, it was presumed that things would improve. But fresh controversies keep arising between various political parties and the peace process seems to be moving at a very slow pace causing delay in much desired legislations and the termination of trafficking fueled by the civil war.

The Constitution drafting is happening without the settlement of a number of other issues which many fear will be swept under the carpet. Something on the lines of the Truth and Reconciliation Committee in South Africa was proposed, and a Draft Bill exists, but has been much critiqued both by organizations such as Amnesty International⁸⁵ and by local media.⁸⁶ The Bill seeks to set up an independent and impartial

⁸³ *Children in the Ranks: The Maoists' Use of Child Soldiers in Nepal* Human Rights Watch, February 2007.

⁸⁴ *Ibid.*

⁸⁵ *Nepal's Draft Truth and Reconciliation Bill Risks Undermining Justice*
<http://www.amnesty.org/en/library/info/ASA31/007/2007/en>

⁸⁶ Bhimarjun Acharya, "Nepal: Truth and Reconciliation Commission",
http://www.telegraphnepal.com/news_det.php?news_id=2667

commission to bring the actual facts to the public by investigating the truth on persons involved in gross violation of human rights end crimes against humanity committed by both the government and Maoists during the course of the armed conflict from February 1996 to November 2007.⁸⁷ In the face of so much internal strife, a lot of governmental energy is taken up in handling cases of human rights violations both by the government and Maoists. Many organizations, including civil society groups and voluntary organizations which have among other things also focused on anti trafficking initiatives are now busy with the Constitution Drafting process. No doubt the process is important for this will determine governmental policy towards trafficking, but measures against trafficking and law reforms to push for recognizing other forms of trafficking and building up procedures for combating trafficking do not seem to be as urgent a concern as Constitution Drafting.

There is also a question mark over what Nepal's relationship with India will be. There have been tensions which crop up time and again including on the issues of border demarcation.⁸⁸ Interstate river water disputes have been another bone of contention over several years. India's comments on the sacking of the chief of the Nepal Army, General Katawal in April 2009 has also soured relations. The relations that India and Nepal have currently are not the best and cooperation to tackle trafficking today is perhaps not as easy as it was a few years back. The immediate future of the Indo-Nepal relations is unclear and is shaky at best.⁸⁹

Bangladesh: The Revolt of the Bangladesh Rifles

The Bangladeshi Rifles (BDR) is entrusted with the task of protecting the borders of Bangladesh. The long border of Bangladesh with India, is under their control from the Bangladeshi side, whereas on the Indian side, the Border Security Force (BSF) does the same task.

The BDR was set up in the days of the East India Company as a battalion⁹⁰ and went through several *avatars*. It saw many operations including the two World Wars and the liberation of Bangladesh in 1971

⁸⁷ Ibid.

⁸⁸ Anil Kamboj, "Border management- Bangladesh, Nepal and Bhutan", 27(08) *World Focus* 22 (2006).

⁸⁹ Priyanka Singh, "India-Nepal relations Ricketty Roadmap", 27(05) *World Focus* 23 (2006).

⁹⁰ In 1795 as Ramgarh Local Battalion.

in which this force played a role fighting the Pakistan army. After Partition, it also absorbed some police forces and soldiers from the regular army.

On 25 February 2009, around four thousand Bangladesh Rifles soldiers mutinied demanding higher pay on par with other army wings. They also demanded the removal of Army officials from the Bangladesh Rifles Command and demanded equal rights for Bangladesh Rifles soldiers. Other demands included introduction of Bangladesh Rifles soldiers in peacekeeping missions which paid well and better education and centralized selection of officials.

The mutiny saw the killing of a number of officers including the Director General of the Bangladesh Rifles, Shakil Ahmed, most of the sector Commanders and many other high ranking officers.

While the mutiny started in Dhaka, revolts grew in about twelve other places in Bangladesh including at several places on the border with India. Many soldiers from the Bangladesh Rifles left their posts and Army Officers who were in-charge according to news reports felt insecure because of the past violence against army officers. Instead of staying at their posts in the border, they moved to circuit houses or cantonments. Since the border is really long with reduced manpower, it became difficult to control and cross border illegal activities shot up.

The prices of commodities smuggled into Bangladesh went down which was seen by some as an indication of increased smuggling. There have been unconfirmed reports of greater illegal migration into India as well as trafficking as there were no checks in place. The new Bangladesh Rifles Director General Major General Mohammed Mainul Islam denies that reports of increased cross border illegal activity are true and insists that greater precautions are being taken.

On the Indian side, this has generated concern as illegal immigration could not be effectively controlled without an effective Bangladesh Rifles. Skirmishes between the Indian Border Security Force and the Bangladesh Rifles have sometimes resulted from perceived illegal immigration. India's methods of determining status of illegal immigrants and its policy to push them back to Bangladesh has also resulted in tensions between the two countries.⁹¹ In addition, border disputes

⁹¹ Satadru Sen , "Border of insanity: Deporting Bangladeshi Migrants" 38(07) *Economic and Political Weekly* 611 (2003).

between the two countries that arise periodically lead to perception of illegal immigration on both sides.⁹² This, compounded with the fact that Bangladesh is low lying and has a recurring problem with flooding increases illegal immigration. The hope of resolving this problem is affected by other conflicts that India and Bangladesh have. Among these conflicts is the persistent dispute over the sharing of the water in the Ganga-Brahmaputra basin and India's building of dams and controlling the water flow without consulting Bangladesh.

The Eastern and the North Eastern states of India adjoining Bangladesh have had troubles of their own and the influx of Bangladeshi refugees has exacerbated their problems.⁹³

In the context of cross border trafficking, it is too early to say if the incidents of trafficking have increased after the Mutiny, though many grassroots activists feel it is so. Trafficking into Bengal as well as the nearby North East makes it difficult to detect as language and physical features of the population across the borders are similar.

The mutiny has also caused cooperation to be paused until there are institutional safeguards within the Bangladesh Rifles. There are also reports that Bangladesh Rifles personnel, unsure of their job security or whether their demands would be met, often try to make money by facilitating trafficking or smuggling.

It is unfortunate that cooperation has been so badly affected by turbulence within these territories, but until things settle to some extent, it will be difficult to make an exact prediction on what these turbulent times have in store for regional cooperation to combat trafficking.

⁹² Sumanta Banerjee, "Indo-Bangladesh border: Radcliffe's ghost" 36(18) *Economic and Political Weekly*, (2001), p.1506.

⁹³ Bimal Pramanik, "Demographic shifts in Bangladesh and its impact in the East and North East India", 27(02) *World Focus* 3 (2006).

Meshing National Laws to Promote Cross Border Cooperation

Criminalization of trafficking is one legal reform which is slowly but surely coming into force all over the world. The concern for preventing trafficking range from social order and morality to human rights and the control of the growth of organized crime syndicates.

Several countries are finally adopting domestic legislation to criminalize trafficking in human beings, although many continue to punish the victims of trafficking, charging them with prostitution, possession of fraudulent documents, or working without authorization. Many international organizations and consortiums of grassroots anti trafficking organizations have also put forward models for combating trafficking.⁹⁴

None of these models is yet terribly effective, for a variety of reasons. At the forefront of these reasons is the fact that several countries have yet to adopt anti trafficking laws. Second, of those that have, many completely fail to implement those laws even after undertaking domestic and international obligations. A third major reason is that some governments have failed to incorporate the advice of grassroots and international anti-trafficking organizations that have worked for years made recommendations on the basis of observations in the field.⁹⁵

Most South Asian countries have in the recent past shown dynamic shifts in domestic laws in order to promote cross border cooperation in cases of trafficking. Nepal and Bangladesh are notable as many of the instances of trafficking which they deal with are cases of cross border trafficking. Nepal and Bangladesh are primarily source states or countries of origin from where men, women and children are trafficked, primarily to India, but also to other parts of the world. The bulk of cases on trafficking in India do not deal with cross border trafficking, but trafficking within India. Indian domestic laws therefore cater to in-country or intra-country trafficking, but courts have used the same law to effectively decide issues of cross border trafficking as well.

There are a significant number of cross border cases in India as well. India is a source, destination as well as transit country. Men, women and children are trafficked from different parts of India to other states

⁹⁴ Haynes, *op.cit.*, p. 224.

⁹⁵ *Ibid.*

within the country and also to the Gulf and other places. It is an important destination for victims of trafficking from Bangladesh and Nepal and also acts as a transit point for victims who are taken from Bangladesh and Nepal to other countries through India.

The legal frameworks in all three countries have viewed trafficking for a long time as a crime. Often it has been confused with prostitution and thus seen popularly as an anti-vice law⁹⁶, to curb anti social acts.⁹⁷ That trafficking could be done for a variety of other purposes was not recognized by the legal systems. The need for a separate law on trafficking was not felt necessary as there were provisions in the Indian Penal Code, 1860 which specifically deal with trafficking. Having been under the British regime, Bangladesh has a similar Code. Nepal does not have a similar law, but the *Muluki Ain* of 1964 which translates to the Law of the Land has provisions dealing with purchasing persons or taking persons out of the country.

Laws on trafficking when they did arrive were strongly informed by the legalization of prostitution debate and often ended up both penalizing legitimate sex work and restricting in the imagination of various levels of State machinery, trafficking to commercial sexual exploitation. While it is true that the bulk of trafficking is for commercial sexual exploitation, trafficking for labor is growing phenomenally. It is common to find instances of minors from these two countries working in exploitative conditions in India.

The confusion is apparent in the lack of a comprehensive definition of trafficking which is today present in their laws. The SAARC definition does provide a basis for cooperation, but for the successful prosecution of traffickers and for protecting the rights of those whose rights have been violated, a common definition of trafficking as agreed to by SAARC must be incorporated into domestic laws. There have been recent attempts within countries⁹⁸ to create a comprehensive definition, but this has not yet been incorporated in a Central statute.

⁹⁶ In some States in India, the Anti-Trafficking Squads used to be called the Anti-Vice Squads in the vernacular.

⁹⁷ The Constitution of Bangladesh.

⁹⁸ For instance the Goa Children's Act, 2003 in India defines child trafficking comprehensively, but it is applicable only to the State of Goa and not to the rest of the country. Since Goa is an important destination point, it potentially benefits children who may have been trafficked from other countries. Many studies on trafficking in these three countries have pointed out the difficulties on a lack of a comprehensive definition.

This contrasts with Constitutional provisions of all three countries. The highest law of the land does make a statement against trafficking. While the Constituent Assembly of Nepal has not yet finalized a new Draft Constitution, the Interim Constitution of 2007 specifically prohibits trafficking.⁹⁹ The words are similar in the case of the Constitution of India¹⁰⁰ and Bangladesh¹⁰¹ and both couch trafficking in the language of exploitation and forced labor. The Constitution of Bangladesh also provides that the State shall adopt effective measures to prevent prostitution and gambling, somewhat detracting from the earlier language used.¹⁰²

Anti trafficking provisions in the Constitutions of the three countries show, there is a mandate to tackle trafficking in each of them. When it comes to the next level of the law, namely, legislation, this mandate undergoes a mutation, shifting its focus to one form of trafficking and dealing with the issue of trafficking in a fractured manner through a plethora of piecemeal legislations.

The States cannot be blamed for this entirely as newer forms of trafficking for different purposes keep arising. General provisions of laws dealing with trafficking sometimes need to be used along with specific laws where available for effective prosecution. This is not often done. The Information Technology Act, 2000 of India penalizes pornography in electronic form for instance. Similarly, when there were cases of exploitation for kidney harvesting, the Transplantation of Human Organs Act, 1994 was passed to regulate organ transplant.¹⁰³ There have been no reported cases of cross border trafficking for organ harvesting, but the potential threat is there.

Choice of law leads to problematic situations of charging, procedure and sentencing. For instance, in India, both the Indian Penal Code, 1860 as well as the Immoral Traffic (Prevention) Act, 1956 have provisions penalizing trafficking for commercial sexual exploitation.

⁹⁹ 29. Right Against Exploitation: (1) Every person shall have the right against exploitation, (2) Exploitation on the basis of custom, tradition and convention or in any manner is prohibited, (3) Traffic in human beings, slavery or serfdom is prohibited, (4) Force labour in any form is prohibited.

¹⁰⁰ Article 23.

¹⁰¹ Article 34.

¹⁰² Article 18.

¹⁰³ This continues to be a paper tiger as many of the provisions of the Act have not been effected.

However, in some States, offenders are charged under the Penal Code, in others under the Trafficking Act and rarely under both. Punishments for similar offences vary and also the courts which have jurisdiction and procedures would vary depending on what is used. This problem is not seen so much in Nepal where the new Trafficking in Persons (Control and Punishment) Act, 1986 would override the older *Muluki Ain*, but it would be a similar problem in Bangladesh which has a Penal Code as well as the Prevention of Repression against Women and Children Act, 2000. The subject of laws is similar and what would constitute trafficking in one country at least for commercial sexual exploitation is also trafficking in the other.

Bangladesh and Nepal both have interesting aspects in their laws which impact procedure. Nepal courts have the right to exercise jurisdiction even if the crime of trafficking happened outside their jurisdiction and also there is a presumption of guilt of the accused and the burden is shifted to the accused to show that he/she has not been involved in trafficking¹⁰⁴. There are no similar provisions in India and Bangladesh and Indian nationals cannot be prosecuted in India for trafficking offences in Nepal or Bangladesh.

Extradition of offenders is a method which is not used much, but can be used to get over the problems of court jurisdiction in order to prosecute traffickers. India has an extradition treaty with Nepal, so it is possible to extradite an Indian national who has committed an offence in Nepal in order to facilitate his/her trial in Nepal. No such treaty exists with Bangladesh, but there have been extradition agreements in the past for individual cases with a number of countries and this can be used to extradite Indian nationals to Bangladesh where they can be tried by courts having the requisite jurisdiction. Bangladesh has a separate law on extradition which makes provisions to extradite persons who have committed offences of trafficking in different forms.¹⁰⁵

There is a burden cast specifically on the accused to show that the person who was taken across the border was indeed a relative and was taken for bona fide purposes. Other than the fact that people do indeed traffic their relatives, the provision has come under attack for its potential

¹⁰⁴ This has been critiqued as violating human rights of the trafficker in order to be judged innocent until proven guilty (International Covenant on Civil and Political Rights, 1966, Article 14 for instance). Activists are not comfortable with this provision in the law.

¹⁰⁵ The Extradition Act, 1974.

for misuse as well as its violation of set principles of international law on fair trials. The provision is also paternalistic in its approach. It prevents women from moving around freely across borders except under certain circumstances and requires her to be under the protection of her guardian or close relative. Migration of single women in search of work in India, despite the open borders, is thus severely restricted.

In Bangladesh, the law makes trafficking trials *in camera* shielded from the public gaze and with people present only on a need basis. This instills confidence among victims of trafficking to come forward with their testimonies. There is also magisterial discretion provided where recording of depositions is concerned even if the victim cannot appear. It also introduces a ‘safe custody’ provision for witnesses, however, there is no clarity on how this is to be worked.

However, trafficked girls and women in Nepal are mostly illiterate and poor, and are therefore very unlikely to be able to fight against trafficking in a court of law. If someone decides to file a case, the slow pace of investigative and judicial processes and constant political intervention discourage her from fighting to the end. Another discouraging fact is that the State does not provide protection for witnesses.¹⁰⁶

All three countries have very strong legal protection standards for children. Both Nepal and Bangladesh have Children Acts¹⁰⁷ and India has recently revamped the Juvenile Justice Act.¹⁰⁸ None of them seem to be influenced by each others laws or even the laws from other SAARC countries. International instruments, pressures from activist groups and cultural values seem to influence drafting of legislation.

Protecting the best interests of children is an important theme for the three countries which have ratified the Convention on the Rights of the Child, 1989. Though the provisions of the Acts are different, they have overt or covert anti trafficking provisions. In Nepal engaging or using a child in an immoral profession is prohibited¹⁰⁹. This covers both pornography and commercial sexual exploitation and prosecutions may be done under the Trafficking of Persons Act.

¹⁰⁶ Pratima Poudel and Jennya Cryer, “Girl-Trafficking, HIV/AIDS, and the Position of Women in Nepal”, *Gender and Development*, Vol. 8, No. 2, [Aging] (Jul., 2000), pp. 74-79 at 74.

¹⁰⁷ Nepal in 1991 and Bangladesh in 1974.

¹⁰⁸ This revamping was done in 2000.

¹⁰⁹ Section 16.

Recognizing the fact that a large number of children are also trafficked for labor, all three countries have child labor laws which lay down standards such as minimum age, kinds of employment and punishments. The Bangladesh Labour Code, 2006 regulates matters relating to labor including regulating child labor. The Child Labour (Prohibition and Control) Act, 2000 of Nepal places the minimum age for a child to work as fourteen.¹¹⁰ The position is similar in India. The Nepal Act also prohibits fraudulent or coercive use of child labor and the emphasis in all three legislations seems to be the child labor must be light, non exploitative, suitable to the child's age and completely voluntary.

Besides the specific legislations on child labor, there are a number of labor legislations which prescribe conditions of labor. These have to do with a variety of areas such as apprenticeship, plantations, domestic work and so on. In plantations, one finds whole families working side by side and in domestic work in all three countries there are children involved. Definitions of a child (sometimes the term minor is used) vary. That there is no uniform definition of a child is a critique of labor legislations in general, even though all three countries are parties to the Convention on the Rights of the Child, 1989 which prescribes age eighteen as a uniform standard of childhood.

There are several organizations which today work with labor. Many of them are focused on the slavery like conditions of bonded labor and remedies are often restricted to those in labor law. The labor department has often the responsibility of rescuing and rehabilitating the labor and ensuring the prosecution of the employer. The trafficking angle is seldom looked at. Also, since most of the trafficking is to India, Indian labor laws identify different appropriate authorities to whom the complaint must be made. Some legislations have not even identified or notified appropriate authorities, thus compounding the problem.

Organized labor is the focus of most labor legislations, which is not surprising as many legislations and amendments resulted from the demands of trade unions in the organized sector. Although there are non governmental organizations working with unorganized labor, legislations have not focused on this group. Considering the fact that the unorganized sector is growing rapidly; that there is an increasing feminization of labor; that globalization has seen increased migration and violation of labor norms within the unorganized sector, it is essential

¹¹⁰ Section 3.

to have laws governing unorganized labor. A new legislation in India in 2008 seeks to deal with the unorganized sector, but rules under the law are yet to be drafted. Until the law comes into force, men, but more particularly women and children, continue to suffer from violation of rights and trafficking into the unorganized sector.

All laws are firmly in the Criminal Justice mode. Once in a while, provisions pay lip service to the Victim Approach. Justice to the victim is synonymous with convictions and retributive justice is the primary goal. Compensation is not granted in criminal cases and does not form part of the legal framework on trafficking. Most cases on trafficking are considered crimes against society and prosecuted by the State. The individual is largely invisible except as a victim. The Trafficking of Persons (Control and Punishment) Act, 1986 of Nepal has provisions for pecuniary penalties ¹¹¹ along with imprisonment which varies from five to ten years for the crime of trafficking. A trafficker who sells a person and is convicted is liable to pay a fine equivalent to what he/she has made in the transaction. However, this money does not go to the survivor, but to the State.

Also, unlike in India and Bangladesh, the victim filing the FIR¹¹² is required to be produced before the trial judge immediately after having her statement heard by the government attorney. The trial judge at the level of the district court which has jurisdiction interrogates the victim and records her statement. Once it is attested by the judge further investigation is done by the police on the orders of the judge.¹¹³

Witness protection and privacy are also not the subject matter of the law, although courts try to enforce it by directions to the parties or the media and the media too has of late been sensitive to portraying anything that could identify the person. Self regulation is no substitute for legal provisions on the point and legislation to this effect is a must.

Perhaps the most ironic way the anti trafficking legislations have worked is to punish the victim along with the trafficker. Since anti trafficking legislations in all three countries deal specifically only with trafficking for sexual exploitation, sex workers and traffickers are routinely rounded up and accused in the same case. Since all three countries see sex work as

¹¹¹ Section 8(5).

¹¹² First Information Report of the crime.

¹¹³ Section 6.

‘immoral’, law enforcers make no distinction between traffickers, survivors/victims and sex workers who are voluntarily engaged in the profession.

In both India and Nepal, there are traditions of dedicating girls and women to deities and thereafter to be engaged in prostitution. Both States have laws to deal with this. While Nepal deals with it in the *Muluki Ain*, in India, there is no Central statute to deal with it, but States which do have the practice of *devadasis* (as such women are referred to), have passed laws to prevent dedications of women and children. These laws do not punish trafficking, but deal with the question of dedication of the child.

*Vishal Jeet v Union of India and Others*¹¹⁴ saw the Supreme Court give directives which also included setting up separate zonal advisory committees to rehabilitate, set up homes and effectively deal with systems of dedications such as *devadasis* and *jogins*. Several programs were initiated at the Central and State levels to tackle this issue. While these programs deal with a customary practice that affects Indian girls, many Nepali girls who are dedicated find themselves in brothels in India and therefore this should be a common issue for both countries.

A common feature of many girls dedicated in such customary practices is that they come from marginalized groups both in India and Nepal.

In *Neerja Chaudhary v State of Madhya Pradesh*¹¹⁵ the judiciary took a serious note of the indifferent and callous attitude of the State Administration in identifying, releasing and rehabilitating the bonded laborers in the country. It observed that whenever it is shown that a laborer is made to provide forced labor, the court would raise a presumption that he is required to do so in consideration of an advance received by him and is, therefore, a bonded laborer. Unless the employer or the government rebuts this presumption, the court shall presume that the laborer is a bonded laborer entitled to the benefit of a provision of the Bonded Labour System (Abolition) Act, 1976.

The Organized Crime Convention has encouraged countries to focus on coercion and use of force in identifying whether a woman is a victim of trafficking.

There is also a difference between trafficking and smuggling, but often, the decision on how to bracket it falls unfairly upon the trafficked persons.

¹¹⁴ (1990) 3 SCC 318.

¹¹⁵ AIR 1984 SC 1099.

Role of Courts in Combating Trafficking

The letter of the law is in its working. Court decisions across the three countries have pointed to a changing judicial perception on trafficking and indicate that the judiciary is moving towards cooperation in tackling human trafficking across borders. Standards set for citizens can be used as effectively for aliens (non citizens) as fundamental protections are recognized for all. Pointing to a change in viewing sex work, the Supreme Court in *Gaurav Jain v Union of India*¹¹⁶ remarked that women found in flesh trade should be viewed more as victims of adverse circumstances rather than as offenders.¹¹⁷ The Court also cast the duty upon the State and voluntary organizations and activists to rescue, rehabilitate and enable women to lead a life of dignity. While the burden upon the voluntary sector is uncalled for; an indicator of abdication of the States responsibility, placing the burden of rescue on the State and not allowing the State to wash its hands off the matter is a positive step. Groups working with sex workers as well as collectives of sex workers however also claim the right to lead a dignified life, following the profession of their choice – sex work. Alternatives may be made available, but a person’s freedom to choose must also be respected. Many women who have been rescued and rehabilitated go back to sex work finding alternatives insufficient, or not wanting to accept the meager charity of a paternalistic State. Acceptance by society is also a huge stumbling block that no rehabilitation program has yet been able to overcome.

Gaurav Jain decision is also important on several other counts. It said that children of sex workers should not be allowed to live in their homes as their surroundings were undesirable. This has met with mixed reactions. The court also directed the CBI to investigate and prevent such crimes. The use of inter State mechanisms and Interpol was also mentioned, though details were not spelt out.

In a quasi federal system like India, trafficking even across borders of States within the country can pose difficulties at the stage of prosecution, especially where victim witnesses have been repatriated to their homes and are reluctant to make long journeys to testify. Videoconferencing

¹¹⁶ AIR 1997 SC 3021.

¹¹⁷ At 3036.

has been resorted to in some cases successfully and courts have held that such evidence would be admissible.¹¹⁸ This could be a useful tool in cases of cross border trafficking at least in cases where victims are able to come to offices in the capital cities or other large towns where a videoconferencing facility is available.

There is however no controversy when the rescue of children is concerned. *Prerana v State of Maharashtra*¹¹⁹ clearly held that in the case of a child who is involved in sex work, the child is clearly in need of care and protection within the meaning of the Juvenile Justice Act, 2000 and not a child in conflict with the law. While *Prerana* is a High Court decision, it has been quoted and used in several training manuals and guidelines for the judiciary, police and public prosecutors all over the country. Guidelines for rescue too have been formulated at different levels especially after *Prajwala v Union of India & Others*¹²⁰ where the Supreme Court gave directions to the Ministry to formulate guidelines for rescue and rehabilitation of victims of trafficking.

While the guidelines from courts in India deal generally with trafficking, there is not much of a difference in treatment of trafficking within India and across the borders. The bulk of cases of trafficking which come before courts in India are of in-country trafficking. However, a significant percentage is cross border and there are no separate laws or procedures to deal with this. Trafficking into India should give joint jurisdiction to both parties – India along with Bangladesh/ Nepal as the offence of trafficking happens not just at the time of procuring the victim, but also when she/he is sold and forced into labor/ sex work etc.

There have been a few cases in courts of Nepal and Bangladesh on the issue of trafficking where the trafficking has happened into India or through India to another country. A few cases were selected for study, but because of the few numbers available, no effective comparisons can be made.

In *Permanent Resident v HMG on the FIR of Tara Devi Dahal*,¹²¹ Tara Devi was allured by a man who promised to marry her with the help

¹¹⁸ *State of Maharashtra v Dr Praful Desai* (2003) 4 SCC 601.

¹¹⁹ *Prerana v State of Maharashtra* (2003) 2 MLJ 105.
¹²⁰ (2005) 12 SCC 136.

¹²¹ Criminal Case No. 1042 of 2051 BS.

of his partner. She was taken across the Nepal border into India where she stayed for some time in a hotel with him. He had sexual intercourse with her on the pretext of marrying her and then took her to Patna where she was sold to a brothel owner for sixteen thousand Indian rupees. On the girl shouting and screaming the police intervened and she was rescued. This was the case of a girl. The question was whether a crime had been committed under the Human Trafficking Activities (Control) Act for sale of the woman abroad. The court also mentioned,¹²² “In a case like human trafficking, the statement of the victim-complainant needs to be considered trustworthy until otherwise proved by the defendant.” The court thus upheld the sentencing which had been pronounced by the lower court.

Usually, in cases of trafficking, it is very difficult to find witnesses, or even if witnesses are found, they many a time turn hostile. Accepting the statements of the victim and placing the burden on the defence to prove otherwise would go a long way in ensuring effective prosecution of perpetrators of human trafficking.

*Bangladesh Society for the Enforcement of Human Rights (BSEHR) vs Government of Bangladesh and Others*¹²³ saw certain specific rights of sex workers being recognized. The case was in response to a ‘raid and rescue’ operation carried out by the police. Specifically, it was a brothel raid in the night when police barged into rooms and dragged residents away. Adult women and children were physically assaulted, loaded into vehicles and kept against their will at government homes. They were subjected to indignities there and despite their objections were kept there. A Public Interest Litigation was filed on behalf of the women and children by a group of organizations working with sex workers. While there was no allegation of trafficking in this case, it is an important case from the point of view of women who are victims of trafficking and continue in prostitution as it recognizes first and foremost that they have the same rights of life and personal liberty as did any other citizen of the country. The court pointed out the ‘prostitution’ by itself was not immoral and though there was a Constitutional mandate to take effective measures to prevent prostitution, it was not to be done by violating rights. The court also upheld the right to privacy and dignity of all people.

¹²² Para 28.

¹²³ *Bangladesh Society for the Enforcement of Human Rights (BSEHR) vs Government of Bangladesh and Others.*

While this was a decision which was from the point of view of the marginalized in the case, it was by no means the only one to look at facts through that lens. In *Abdul Gafur v Secretary, Ministry of Foreign Affairs, Govt of Bangladesh*¹²⁴, a fifteen year old Bangladeshi girl had disappeared from her village. After four years, the family found out that she had been abducted by child traffickers and had been sold in India, was subsequently rescued and was now residing at a state run women's home in West Bengal. Her father wrote to the government of Bangladesh asking authorities to take steps for her repatriation, but the government remained unmoved. Finally, he filed a writ petition in court requesting the court to direct the concerned government department to act.

This is an important test case as in cases of cross border trafficking, it is very difficult for victims or their kin from Bangladesh/ Nepal to access the criminal justice system in India, or even to approach the Indian government to make a request for repatriation etc. The appropriate mechanism should be the domestic one, which will then get in touch with the Indian counterpart.

The father of Hasina, the girl in this case had done exactly that, but received no response. He claimed that Hasina, as a Bangladeshi citizen was entitled to all protections as a citizen despite the fact that she was in a different country as she had not left of her own volition, but had been forcibly taken. It is suggested that even if a person had left of their own volition, being allured by promises of work or seduced by marriage, the duty of Bangladesh would in no way diminish. The court here directed the government department to follow up the matter and work towards the repatriation of Hasina.

Another common question arises- is the matter of the trafficking of such a nature to be treated as a child trafficking case or not? Since the incident happened when she was a child, it should be child trafficking. However, if she continued to be trafficked several times during the course of her stay in India, there would be separate offences of child/ adult trafficking as the case may be. Prosecution of offenders has been pathetic in terms of sheer statistics.

Historically, under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA which was replaced by the ITPA), single acts of

¹²⁴ *Abdul Gafur v Secretary, Ministry of Foreign Affairs, Govt of Bangladesh* 17 (1997) BLD (HCD) 560.

prostitution were not deemed illegal except when carried out in prohibited areas. In *re Ratnamala and Anr v Respondent*¹²⁵ and *T Jacob v State of Kerala*¹²⁶, the Courts held that a female sex worker cannot be convicted for a solitary instance of prostitution and that to make out a case of carrying on prostitution, the prosecution must show ‘promiscuous’ conduct on hire, that is, indiscriminate sexual activity with more than one customer, which may be proved evidentially or inferred from surrounding circumstances.¹²⁷

In *Urmila Thapa Magar*¹²⁸ a woman who claimed to be trafficked had agreed to go with an acquaintance to another part of Nepal. However, when tickets were bought for the bus, tickets were bought to cross the border. A timely police check at the moment prevented cross border trafficking. When the case came before the courts in Nepal which had jurisdiction over the matter, the question was whether there was cross border trafficking or not. This was an important issue as the woman continued to remain within the territory of Nepal and had not crossed into India. The court held that the crime of cross border trafficking which had a higher penalty in the laws in Nepal would be considered proved if- one, trafficking is proved and two, if it can be shown that the trafficking was for the purposes of taking the person to another country. This was sufficient and there was no need for the person to actually be taken across the borders of Nepal.

Cases of timely intervention by police or border patrols and apprehension of traffickers thereto would provide for cases of thwarted attempts of cross border trafficking within Nepal to be tried by Nepali courts as cross border trafficking. Rings of individuals involved on both sides of the border, if apprehended could also be tried in Nepal, assuming of course that they are apprehended in Nepal.

¹²⁵ AIR 1962 Mad 31.

¹²⁶ AIR 1971 Ker 166.

¹²⁷ Anand Grover and Tripti Tandon, “Proposed amendments to the Immoral Trafficking Prevention Act: more disaster for Prostitutes, not Traffickers”, 21(03) *Lawyers* (2006) 7 at 9.

¹²⁸ *Urmila Thapa Magar v Krishna Prasad Pudasaini* Criminal Appeal no 1610 of the Year 2051 BS.

Initiatives Taken to Tackle Cross Border Trafficking

All three countries have been concerned about both the plight of people who have been trafficked across borders, as well as of their repatriation. Many initiatives have been local rather than cross border, though undoubtedly, they have had an effect across the border. Many initiatives which have been portrayed as anti trafficking initiatives have been initiatives which sought to counter trafficking on a long term basis through education, poverty alleviation etc. Nevertheless, these have been included as the government personnel as well as some of those who work on the ground do see them as anti trafficking measures.¹²⁹ Each country follows a different track and though there are some similarities, it is difficult to draw comparisons. They are therefore examined separately with one preliminary observation- Nepal's concern is mainly with cross border trafficking, Bangladesh's concerns with both domestic and cross border and India's primarily with domestic trafficking.

NEPAL

In Nepal, a lot of changes happened during the time the research was ongoing. The Interim Constitution does emphasize protection of women and children and one of the government departments deals exclusively with this.

Many of the government's plans and policies are detailed in the official website and queries at the ground level usually directed one to the website – <http://www.mowcsw.gov.np> which is that of the Ministry of Women, Children and Social Welfare clubbed into one. The major initiatives listed there and also on other sites of the Nepal Government which are summarized over the next few pages can be broadly divided into three areas from the point of view of tackling trafficking –

1. Poverty alleviation – essentially dealing with push factors influencing trafficking
2. Gender equality
3. Protection of children

¹²⁹ Measures sometimes listed as anti trafficking by some officials, which are really not accepted as such by everyone, have been included here. Pushing back is one example. Restricting migration by other forceful means is yet another. Many especially border guards however, do consider them anti trafficking measures. There is a lot of work to be done to understand what trafficking is.

Much of the activities falling under trafficking overlap between the Ministry of Women, Children and Social Welfare and the Ministry for Labour and Transport Management.

The Ministry of Women, Children and Social Welfare has as its main goal the empowerment of women on the basis of gender equality. Gender mainstreaming in development is also listed as part of the main goal.

The Ministry plays a key role as a nodal body in the formulation of plans and policies concerning women and children. It also works with marginalized groups in its social welfare mandate. It participates in international forums and domestic forums in matters pertaining to women and children, including on issues of trafficking. It also has the mandate of conducting studies and research into areas relevant for gender issues. The women's development policy is created here and it is the Ministry's task to dovetail it with the national development policy. It also plays a role in budgeting its activities and working with other departments involved with the national budget and trying to raise funds from development agencies.

This is the nodal body which coordinates activities and tries to cooperate with other government bodies,¹³⁰ and through its own implementation structures engages with problems women face at the grassroots level. Many non governmental organizations and international non governmental organizations work in cooperation with this department.

Special categories of women and children needing protection are covered under different policies and institutions run under this Ministry. These include destitute women, which is an important category in the context of those who were formerly trafficked and are now abandoned, some even with HIV. Women and children with disabilities are a special concern too.

Nepal has also had long standing allegations of trafficking of children for adoption, like India¹³¹. Reports of domestic non governmental institutions as well as international organizations like UNICEF and

¹³⁰ E.g. Police, other government departments etc.

¹³¹ St. Theresa's Tender Loving Care Home (TLCH), Erragadda, Andhra Pradesh, *Deccan Chronicle* October 28, 2005, Parul Malik, October 21, 2007, CNN-IBN Investigative Report covered the Preet Mandir case in Maharashtra.

Terra de Hommes¹³² have pointed to a significant number of instances of trafficking for adoption. With the political turmoil in the country, clamping down trafficking for adoption seemed difficult. Nepal has evolved laws/ policy for inter-country adoptions which seek to ensure that such adoptions are transparent and in the best interests of children. Adoptions are made usually by families from European countries. While there is no evidence yet that the adoption route moves through India, keeping in mind the permeable borders, it is yet another issue to keep in mind when evolving policy on trafficking.

The Ministry of Women, Children and Social Welfare is also the highest agency for most matters relating to child welfare and by implication, most anti trafficking work should begin here. As of now NGO initiatives are better projected and publicized than government schemes.

Government schemes are largely in the nature of rehabilitation. There are shelter homes run for women and children as also skill development centers for the rehabilitation of women and Bal Mandirs which are children's welfare centers.

Sensitization and awareness programs at national, regional and local level is also a mandate which is achieved through many programs, conferences, talks etc, sometimes with the help of civil society or international organizations.

Meeting the mandate of the State under the CEDAW is something that is a long term goal. Many meetings and conferences make references to the CEDAW and the standards in the CEDAW are used to evaluate government and other initiatives. The Ministry was also involved in the Human Trafficking Control Act detailed elsewhere in this monograph with a focus on trafficking of women and children and voicing concerns of cross border trafficking into India as well.

Another Ministry which has an important role to play in taking initiatives to end cross border trafficking is The Ministry of Labour and Transport Management. The activities of this Ministry are summarized hereinafter¹³³. The Ministry of Labour and Transport Management seems an odd combination at first. Indeed the Ministry transitioned from being

¹³² UN News Service, *International adoption in Nepal creates conditions for child abuse – UN agency*, 29 August 2008, available at: <http://www.unhcr.org/refworld/docid/48cfa3091e.html>

¹³³ <http://www.moltm.gov.np>

the Ministry of Labour and Social Welfare to just a Ministry of Labour. Social Welfare as seen earlier was moved to the Ministry of Women and Children. The Ministry of Labour currently includes Transport Management as well. This is significant as issues of labor and migration are very important in Nepal's context. Transport Management deals with some of the issues raised by migration, among other things.

Ending unemployment and the development of productive and qualitative employment systems are important objectives of the Ministry. Child labor alleviation and the development of safely managed and help based transportation system is also listed as an objective and part of the long term vision. The department also focuses on foreign employment. With the open border with India and many Nepalese crossing over, this is specially relevant with regard to the potential of trafficking of persons.

The Labour and Employment Policy of the department¹³⁴ recognizes income generation as necessary for life and considers the right to work one of the fundamental rights and a means of poverty alleviation. It states –

“ In this context, it becomes the State's duty to build an environment that enables a life that is full of dignity, exploitation-free and just with at least the minimum social and professional security by ensuring access to income-generating employment opportunities for all citizens of the country without discrimination.”¹³⁵

This is significant as it is the lack of income generating opportunities and poverty which often causes parents to traffic their children or for adults to put themselves in positions of unsafe employment and hence trafficking. At the same time, Nepal is a member of the World Trade Organisation (WTO) and the policy recognises that changes may come about as a result of that. How the forces of globalisation will affect Nepal's labour and consequently trafficking, is yet to be seen.

Nepal's child labour problem is also an acute one and though estimates vary, at least 30-40%¹³⁶ of children are said to be involved in some kind of work. As a result, a Master Plan for child labour has also been

¹³⁴ Labour and Employment Policy, 2062.

¹³⁵ Background to Labour and Employment Policy, 2062.

¹³⁶ An estimate of a Labour Force Survey cited in the Master Plan on Child Labour 2004 puts it at 41%.

developed.¹³⁷ At the same time, it is acknowledged that with widespread poverty and lack of alternatives, it is not easy to provide a solution for child labour.

Nepal has ratified both ILO Conventions Nos. 138 & 182¹³⁸ and the Convention on the Rights of the Child. Education is seen as one of the major ways of reducing child labour as also poverty reduction. The National Master Plan envisages tackling the problem in two phases – to identify and eliminate the worst forms of child labour by 2009 and to elimination all forms of child labour by 2014. 2009 is over and yet the problem of children who are trafficked for various reasons continues.

The worst forms of labour according to ILO Convention 182 include

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Two important social realities have been recognised in a Report to the UN Commission on Human Rights. The first is that of gender inequality and the stereotyped notions of roles of women. The fact that this has led to the devaluation of daughters, considering education for them useless and putting them to jobs or trafficking them for commercial gain of the family has been recognised- ‘Female members in the society are often deprived of many social and economic opportunities and are more vulnerable to exploitation. These circumstances are the root causes of some of the social injustices such as girls trafficking, sexual abuse, and worst forms of child labour such as child prostitution’.¹³⁹

¹³⁷ Master Plan for Child Labour 2004-2014.

¹³⁸ Convention Concerning The Prohibition and Immediate Action for the Elimination Of the Worst Forms of Child Labour 1999.

¹³⁹ *Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda*, UNESCO, E/CN.4/2006/62.

The second social reality recognized is of the hierarchical caste structure. The dominance of upper caste Hindus and the marginalization of the lower castes and ethnic groups which are in a political minority are mentioned and it is recognized that they form a large bulk of child labor.

Health of children who have been trafficked is a serious concern. HIV/AIDS cases are going up affecting children in sex work and street children who are vulnerable to abuse.

Nepal is signatory to a number of international conventions,¹⁴⁰ which include standards against child trafficking directly or indirectly. The Convention on the Rights of the Child¹⁴¹ carries with it the commitment to protect the rights of the child from economic exploitation and from performing any work likely to be hazardous which includes sex work. The Convention on the Elimination of All Forms of Discrimination Against Women¹⁴² has also been signed as have many of the resolutions generated by SAARC including the Colombo Resolution on Children.¹⁴³

Strategies for eliminating child labor must also go along with rehabilitation. Creating enabling conditions for family reunion has been identified as one of the factors to be taken into account.¹⁴⁴ This seems to presume that being back in the family is the best bet for men, women and children who have been rehabilitated. For women and children at least, this has not always been the best alternative as far as trafficking is concerned. There have been instances of trafficked women and children being resold to traffickers and finding themselves in India again. The Tenth Plan which is also the country's Poverty Reduction Strategy Paper identifies different categories that children primarily work in. Child sexual exploitation and drug peddling are looked at as a distinct category.

Nepal has a number of legislations dealing with trafficking. These include provisions in the Country Code (*Muluki Ain*), 1963, Begging Prohibition Act, 1962, Traffic in Human Beings (Control) Act, 1986,

¹⁴⁰ Para 2.1.

¹⁴¹ Acceded to in 1990.

¹⁴² Signed in 1991.

¹⁴³ 1992, stressing access to schools for children.

¹⁴⁴ Para 2.2.2.

Some Public (Offence and Punishment) Act, 1970, Local Self-Governance Act, 1998, Military Act – 1959 and Narcotic Drugs (Control), Children Act – 1992 and Labour Act, 1992 Child Labour (Prohibition and Regularisation) [*sic*] Act – 1999.

In the last decade or so, there have been a number of agencies which have arisen to protect and provide for the child in Nepal. The Children Act provides for District level Child Welfare Committees which can take action if child rights are violated. Women Development Officers are also given the additional responsibility of being Child Welfare Officers. NGO representatives feel that this was not a good idea even at that time as handling too many additional responsibilities is simply not practical and thus no justice can be done on specific issues like trafficking.

Many initiatives still seem to be purely from non governmental side or mostly NGO-Government partnerships. NGOs under condition of anonymity have said that there is an interest in trafficking as funds are available from different international funding agencies to handle matters of trafficking, particularly rehabilitation.

The role in anti trafficking initiatives is shared by a wide cross section of NGOs and civil society including media which has created much awareness on the potential of, and dangers of inter country trafficking. The media has also highlighted cases of trafficking as well as of rescue operations from India, particularly of those who have been trafficked for sex work. NGOs have been involved with programs on cross border trafficking right from trainings and sensitizations to coordinating rescues and rehabilitation programs.

There are a number of NGOs working directly or indirectly on trafficking, many of them forming part of ATSEC (Alliance against Trafficking in Women and Children). One criticism often raised is that most of them are based in the Kathmandu valley whereas much trafficking takes place from remote or rural areas. Some groups like Maiti Nepal have set up anti trafficking initiatives working on the India-Nepal border to prevent trafficking. The focus has been mainly women and children. The model used has been the cooperation approach and assistance from NGOs as well as government agencies like border guards and police from both sides have been approached for assistance. The focus has been on prevention, rescue and rehabilitation, rather than prosecution of offenders.

There have been regional initiatives as well by UNODC, UNICEF, ADB etc which have held tripartite conferences between India-Nepal-Bangladesh and workshops for NGOs and government. Interpol officers from the three States have also been in contact and have informal agreements to check trafficking.

Recently,¹⁴⁵ at a program organized by the UNODC, Mr. Govind Prasad Kusum, Secretary, Ministry of Home Affairs, Government of Nepal, presented the situation of trafficking in Nepal, and Government's initiatives to combat the same¹⁴⁶. He spoke with a special emphasis on cross border trafficking to India and admitted- "due to the clandestine nature of the crime and lack of effective institutional reporting system, the updated situation of trafficking and impact in combating trafficking from policy, program and judicial efforts have been difficult to monitor and report."¹⁴⁷

Focusing on the government's response to trafficking, he said that these could be broadly clubbed under three heads¹⁴⁸:

- i. National policies on trafficking
- ii. Institutional arrangements for combating trafficking
- iii. Government's programs directly or indirectly related to anti – trafficking initiatives.

"Anti trafficking policies, he stressed, have found a mention in the Development Plans and the National Plan of Actions for the years 1998, revised in 2001 and plans including women and children made in the year 2004. Further, under the Institutional Arrangements to deal with trafficking, Task Forces have been set up against trafficking of women and children including the National Task Force, the District Task Force and the Municipality Task Force. Regarding government programs, he pointed out that the Ministry of Home Affairs has a program of cross border security and organizes annual cross border meetings with Indian security officers on border issues including trafficking in women and children. Also, under the Ministry of Home Affairs, WCSCs (Women and Child Service Centers) have been formed in 26 districts

¹⁴⁵ March 2009.

¹⁴⁶ <http://www.ungift.org/ungift/en/stories/nepal-joins-the-fight-against-human-trafficking.html>

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

to protect children and women from violence specially related to trafficking”.¹⁴⁹

Bindra Hada Bhattarai, Secretary, Ministry of Women, Children and Social Welfare claims that the Human Trafficking Act, 2007 is victim friendly and has the following features-

- Compensation to the victim
- Rehabilitation
- In camera court proceedings
- Protection of privacy of the victim
- Protection to the victim and
- Onus of proof on the perpetrator

A report states “The implementation of district task forces is seen by some experts quite critical. The Ministry of Women and Social Welfare has begun to organize committees at the district and village levels. The committees in the districts include the Chief District Officer (CDO) and other government employees such as the land reform officer, the education officer, the tax officer, etc. They hold meetings at district level. The meetings are prompted by the allowances they receive, but not by sensitivity to the seriousness of the trafficking problem. These officers frequently get transferred from district to district and, as such, are unaware of the problems of any given district in particular. Taking into account the nature of the problem, the mechanism developed to combat the problem is inconsistent and inefficient”.¹⁵⁰

It is well acknowledged now that it is not the lack of laws or provisions in the criminal justice system which has led to trafficking not being adequately dealt with, it is the lack of administrative and judicial enforcement of the same and also a habit of treating the victim as a criminal.

BANGLADESH

Much information about the broad policies contained in this subchapter is from the official website <http://www.mowca.gov.bd/> which gives an

¹⁴⁹ Ibid.

¹⁵⁰ Terre de homes, *Child Trafficking in Nepal*, available at www.reliefweb.int/library/documents/2003/tdh-nep-2jun.pdf

overview of the initiatives in Bangladesh. Unlike Nepal, the problem of cross border trafficking is not the main focus of many initiatives.

Like in Nepal, the matters are largely handled by the Ministry of Women and Children Affairs. The focus areas make use of Millennium Development Goals and poverty reduction as benchmarks for prioritizing goals. Like Nepal, the Child Rights Convention and Bangladesh's commitment to it is mentioned along with commitments under SAARC.

As mentioned elsewhere in this document, the Constitution of Bangladesh also has clear provisions against exploitation in general, and of women and children in particular. On children, Bangladesh has a National Children Policy, 1994 as well as a National Action Plan for Children 2005-2010 which is ongoing at the time of the study. The Children's Act, 1974 supplemented by the Rules also constitute important legislative milestones for children.

The National Action Plan¹⁵¹ for children has a component for the protection of children from abuse, exploitation and violence. This covers a wide range of trafficking activities for different reasons such as labor, sex work and adoption. A Counter Trafficking Framework Report was generated to provide guidelines to combat all forms of trafficking including cross border trafficking.¹⁵² A Children's Commission is already being contemplated to deal with children's issues more broadly. A major problem in trafficking is to determine that the person trafficked was a child. With absence of proper birth records and registration of births, this becomes difficult. The Birth and Death Registration Act, 2004 tries to address this issue as well, though it is primarily aimed at ensuring that underage marriages do not take place.

Some of the specific legislations dealing with child rights include the Children's Act, 1974, along with the Rules and the National Children's Policy. There are also laws like the Orphanages and Widows Home Act, 1944 which enables setting up of homes for women and children. Apparently, these homes can also be used to house victims of trafficking. There are both private and public institutions providing stay facilities.

¹⁵¹ The National Action Plan arose after the World Summit for Children, 1990 and the UNGA Special Session on Children, 2002. There is also a National Plan of Action (NPA) Against the Sexual Abuse and Exploitation of Children including Trafficking.

¹⁵² National Action Plan, 2005-2010 pp 17-18.

In cases of children who are abandoned, which is the case where parents have themselves trafficked children, there is also a special Order¹⁵³ which places a duty upon the Department of Social Services to take care of the children.

Other laws include the Suppression of Violence against Women and Children (Amendment) Act, 2003, the Disability Welfare Act, 2001, the Acid Control Act, 2002, the Law and Order Disruption Crimes (Speedy Trial) Act, 2002 and the Birth and Registration Act, 2004.¹⁵⁴ While these laws don't have a direct bearing on trafficking, they have a bearing on issues of violence and equality or on control of crimes and thus are also used in materials and trainings on trafficking.

Like Nepal, education is seen as playing an important role in bringing about a change in the position of children, especially the girl child. While in primary education, gender parity seems to have been attained, that is not true of secondary education. Recruitment of female teachers and a stipend to girls towards their education are seen as measures to strengthen education of girls.

The National Plan of Action for Children recognizes that all children must be protected from abuse, exploitation and violence especially those who are vulnerable. Vulnerable children include those who are poor, or from families which are disintegrating or where they have to support themselves and their siblings.¹⁵⁵ It is recognized in the document that trafficking exists both within and outside Bangladesh. Methods for trafficking are seen as including allurements using marriage or job opportunities or simply abduction.

Several initiatives to specifically counter cross border trafficking are also mentioned in the National Plan. These include the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution at the SAARC level and also two initiatives at the domestic level- the Counter Trafficking Framework Report and the Bangladesh Perspective. To quote the document – “*Bangladesh Perspective* has provided a guideline to fight against the heinous crime through multi-sectoral and multi-ministerial approach.”

¹⁵³ Bangladesh Abandoned Children (Special Provision) Order, 1972.

¹⁵⁴ Para 6.2.

¹⁵⁵ Para 6.2.

Recognizing that children and women face additional discrimination including on trafficking, there is a professed move to look at issues of women and children in the national planning process.¹⁵⁶ Specifically on trafficking, there is the National Plan of Action Against Sexual Abuse and Exploitation of Children Including Trafficking, 2002 under which an implementation and monitoring committee has been set up. There is a stress on promoting the participation of poor persons with disabilities in poverty reduction and development programs in order to reduce risk of trafficking.

The document identifies some of the major gaps in the existing strategies, which includes lack of awareness about the rights of children and also lack of a separate department of children's affairs. Right now, there is a department for women and children together but the document is not clear how a separate department would be useful.¹⁵⁷

Strategies for protection seem to involve children and community participation as well as strengthening existing measures and taking new measures.¹⁵⁸ Documenting of and following up cases of violence or trafficking are seen as new interventions. Prosecution of perpetrators brings in a criminal justice element into what was until that point is a document following a victim centric approach. The document lists the following¹⁵⁹ –

- “1. Prosecute and penalise all perpetrators inflicting torture and other cruel, inhuman, degrading, or damaging acts.
2. Prosecute and penalise, all perpetrators of sexual abuse and exploitation for sex work, trafficking, and forced labour.
3. Coordinate with national, regional and international bodies to track and interdict trafficking and sexual exploitation criminal networks.
4. In parallel to the prosecution, endorse exemplary behaviours and activities that prevent child abuse, violence, exploitation and discrimination.”

It is maintained that all these measures if implemented, would lead to reduction in cross border trafficking and at the same time protection of those who have been wrongfully injured during the process.

¹⁵⁶ Para 6.3.1.

¹⁵⁷ Para 6.3.2.

¹⁵⁸ Para 6.5.2.

¹⁵⁹ Para 6.5.4.

INDIA

India has to play an important role in combating cross border trafficking in the region as it is here that the bulk of victims of trafficking are put into exploitative situations of sex work, employment, marriage etc. There is also considerable trafficking happening intra country as well, and laws in India try to address both forms of trafficking.

There are a number of initiatives from the government which embody two distinct approaches – the criminal justice approach as well as the victim centric approach. Like Nepal and Bangladesh, the Ministry of Women and Child Development has the task of handling anti trafficking strategies as well as rehabilitation. It works also with the Ministry of Human Resource Development as well as the Home Ministry in cases of cross border trafficking.

Trafficking is seen as one of the major thrust areas of the Ministry and a separate link on the Ministry's website details anti trafficking initiatives taken and this is primarily covered in the next few pages along with brief comments on the same.

One of the major developments on the victim centric approach is the *Swadhar* scheme which has been developed as a scheme for women in difficult circumstances. The *Swadhar* scheme is a victim/ rehabilitation centric scheme which takes into account the realities that women in difficult circumstances face. Women in difficult circumstances as enumerated also include destitute and deserted women (victims of trafficking who are not accepted by their families or who have been married in fake/ fraudulent marriages and then abandoned), women ex prisoners (including those who have been found guilty in sex work for soliciting in a public place or peddling drugs), victims of sexual abuse (women and children forced into prostitution, pornography etc), victims of crime (including abduction, forced employment, disfigurement for begging and so on), migrant women (including those who have illegally migrated and have been trafficked consequently), refugee women who have been rendered homeless due to natural calamities (women in situations of economic hardship who have been further marginalized by being trafficked), mentally challenged women (who are exploited in many ways), women living with HIV/AIDS (many sex workers who were initially trafficked and finally abandoned are often found to be HIV positive), women victims of terrorist violence (including those who have been trafficking by rings of organized criminals) and

importantly those who have been trafficked and rescued from brothels.¹⁶⁰

While the family is looked at as the best support for women and children as also adult men who have been trafficked, it is also recognized that there are many reasons for which a family is not able to provide support and shelter to trafficked persons, especially to trafficked women and children. Many times, it is the family itself which is the first trafficker, selling the child/ woman to the procurer for a sum of money. In many parts of Nepal, Bangladesh and India, due to extreme poverty, the family is not willing to welcome back another mouth to feed especially if that individual is not capable of earning on his or her own, and cannot contribute to the family's income. This is especially true of the way some families treat their daughters who are looked at as the less desirable or even undesirable.

Existing initiatives prior to *Swadhar* continue in the form of a range of women's shelter homes. Many of them are working beyond capacity, and simply inadequate to cater to the special needs that trafficked women have. *Swadhar* lays claim to being more flexible and innovative in this regard.

The major objectives¹⁶¹ of the *Swadhar* scheme are –

- i To provide primary need of shelter, food, clothing and care to the marginalized women/girls living in difficult circumstances who are without any social and economic support;
- ii To provide emotional support and counseling to such women;
- iii To rehabilitate them socially and economically through education, awareness, skill upgradation and personality development through behavioral training etc.;
- iv To arrange for specific clinical, legal and other support for women/girls in need of those intervention by linking and networking with other organizations in both Govt. & Non-Govt. sector on case to case basis;
- v To provide for help line or other facilities to such women in distress; and
- vi To provide such other services as will be required for the support and rehabilitation of such women in distress.

¹⁶⁰ Emphasis in parentheses added.

¹⁶¹ Quoted from <http://wcd.nic.in/INITITrafficking.doc>

The scheme also envisages a public-private partnership and recognizes a multitude of agencies which can implement it. These include government agencies such as the government departments of social welfare and women and child welfare at the level of the State Government, Women's Development Corporations, Urban Local Bodies, reputed Public/Private Trust or Voluntary Organizations who are willing to take up the responsibility of rehabilitating such women. The only requirement is that the organization must have adequate experience and expertise of taking up such rehabilitation.¹⁶²

In addition to the present scheme, there have also been a number of initiatives taken by the Ministry of Women and Child Development. The focus has been to combat trafficking of women and children as these are numerically the biggest number of those trafficked and the most vulnerable. As early as 1998, a National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children in 1998 was developed which used primarily the victim/rehabilitation approach. Under the Plan of Action, guidelines were issued to States for implementation.

A Central Advisory Committee which has a cross section of members from different Ministries was also created with the Secretary of the Department of Women and Child Development as the Chair. Other members included persons from the Ministry of Home Affairs, important for investigation and also the handling of police; the Ministry of External Affairs to deal with issues of border control and immigration; Ministry of Tourism as 'sex tourism' and pedophilia need to be tackled; Ministry of Health regarding HIV/AIDS issues; Ministry of Social Justice and Empowerment since many victims of trafficking come from marginalized social groups from within and without the country; and the Ministry of Information Technology to deal with cyber pornography and other crimes. In addition to this State Governments were represented as were also NGOs and nodal bodies working with women and children as well as Directors/ Directors General of the Border Security Force, CBI, police etc.

Several documents generated by the Ministry have been useful both in terms of prosecution of traffickers as well as in the rescue and rehabilitation of victims. These include –

¹⁶² Ibid.

1. Protocol for Pre-rescue, Rescue and Post-rescue operations of child victims of trafficking for the purpose of Commercial Sexual Exploitation.
2. Judicial Handbook on combating Trafficking of women and Children for Commercial Sexual Exploitation.¹⁶³
3. Manual for Medical Officers for Dealing with Child Victims of Trafficking and Commercial Sexual Exploitation.¹⁶⁴
4. Manual of Counseling services for Child survivors of trafficking.

Cooperative ventures have also extended through agencies such as UNICEF and UNODC for generating training manuals for police, prosecutors etc. A setting on a nodal agency to coordinate with different agencies, share data inputs, best practices etc has also been discussed and though such nodal cells did exist for a while in the National Human Rights Commission, it does not seem to be working now.

National and international conferences and consultations have been organized by the Ministry on trafficking and the Ministry has often given suggestions to other Ministries on positive steps for the betterment of women in general and on anti trafficking in particular.¹⁶⁵ Sensitization programs for different functionaries such as police, public prosecutors, superintendents of homes, *anganwadi* workers, child rights specialists etc have been organized by or supported by the Department. Some of these have been exclusively on trafficking and some discussing violence against women and children generally also discuss trafficking.

One of the most significant contributions of the Department is a long standing demand to amend the Immoral Traffic Prevention Act, 1956. The Act as mentioned elsewhere in this document has penalized both the offender and the victim at times. The amendments would go a long way in avoiding revictimization of persons, especially those who have contravened the black letter of other laws such as illegal entry. The amendments would put the focus back on punishing the trafficker. The amendments would also enable a trafficking definition at par with international definitions and be thus a step forward to meeting India's

¹⁶³ With UNICEF and NHRC and created by the National Law School under a Project coordinated by the author.

¹⁶⁴ With NIPCCD & UNICEF.

¹⁶⁵ Reservations for women at different levels- administration, police etc has been a long standing advise of the Department.

international obligations. The Immoral Traffic (Prevention) Bill 2006 was introduced in Lok Sabha on 22 May 2006. The Bill is now under examination of the Parliamentary Standing Committee.

For better reporting of complaints, new mechanisms are being tried out – women’s police stations which are expected to be more approachable by women who are victims of crimes is one example. Many States have exclusive trial courts dealing with crimes against women of which trafficking is a part. There is no data however which shows whether these courts are more efficacious than the regular courts. However, it helps judges develop expertise in these areas and may have a sustained impact over time. Women’s helplines which again cater to victims and potential victims are useful too. The limitations of these helplines are many- they are not working 24/7 and are not available in all parts of the country, nevertheless, they are a useful tool. Most of these services are available to all women, regardless of nationality.

Like Nepal and Bangladesh, an improvement in the general social and economic conditions of women in particular, and below poverty level families in general, is seen as an important aspect of trafficking prevention. The concern of the Government of India is for the trafficking of women from India to other countries like the Middle East where they are in demand for domestic labor or even within the country. Education and employment schemes try to make it less lucrative to leave the country¹⁶⁶.

Border checks are increasingly being used to counter trafficking from Nepal and Bangladesh, but these checks are insufficient.

An entire segment of the Department website deals with cross border trafficking, listing out proposed initiatives and those already in place. Several of the challenges pertain to dealing with traffickers as well as in repatriation of the victims of trafficking, because it becomes difficult to prove the nationality of the parties involved. There was a request pending with the Ministry of External Affairs to set up a Task Force in order to create mechanisms and procedures to implement India’s commitments under the SAARC Protocol.

A general improvement in the social and economic position of women

¹⁶⁶ Examples cited on the website include Swaran Jayanti Rojgar Yojana, Employment Guarantee Scheme, Food for Work Programme and Self Employment through Training & Micro-Credit for Setting up Micro Enterprises.

is seen to be important in combating trafficking in women and girls. A thrust on literacy, schemes for a single girl child, educational benefits, monetary benefits¹⁶⁷ and affirmative action in terms of education opportunities and jobs are seen as going a long way to decrease the vulnerability of young women. The downward spiraling sex ratio is also seen as a possible reason for trafficking of women particularly from Bangladesh for purposes of marriage.

For children, the ICDS¹⁶⁸ is seen as a tool to promote the holistic welfare and development of the child. Though not specifically aimed at anti trafficking, it improves the situation of the child – a similar track taken by Nepal and Bangladesh. The girl child as well as the adolescent girls are special groups for whom programs are being developed by different agencies like NIPCCD recognizing the vulnerable position of both these groups. Recognizing the extreme vulnerability of girl children at birth, Cradle Baby Schemes to receive unwanted baby girls are there in many places. However, this scheme increases the vulnerability to trafficking, especially if no proper records are maintained. Also, it conveys the impression that unwanted girls are a burden and parents can easily get rid of the burden. An alternative to the scheme, despite its many limitations is not available, and thus it continues to be implemented in many parts of the country.

On initiatives

In all three countries, it is quite clear that there is a concern which is emerging both from State, NGOs/ civil society to stop trafficking of women and children, but the initiatives actually taken to prevent trafficking suffer from various limitations. Importantly, there have been no evaluations of the initiatives and thus it is difficult to ascertain the impact they have had on trafficking. It is also debatable¹⁶⁹ whether there has been a dent on trafficking.

¹⁶⁷ Which are usually spread across different phases in a girls life e.g. birth, immunization, primary school, secondary school, marriage beyond the age of eighteen etc. Special benefits to families with a single girl child and no boys is also given to try and dispel the social mindset of striving to have a boy child by any means.

¹⁶⁸ Integrated Child Development Services.

¹⁶⁹ Based on views solicited from people across different stakeholder groups.

Conclusion

Cross border trafficking continues to be a major human rights concern in India-Nepal-Bangladesh. There is of course the difficulty of punishing those who traffic humans under criminal law, however, the problem of the treatment of victims of trafficking is also an important one, deserving attention. While there are several good practices which are followed in the treatment of both traffickers and their victims, it is also clear that standard procedures have not been formulated. The main difficulty with having standard procedures is that of determining who sets the standard.

While there have been many international initiatives and instruments calling for cooperation, they do not adequately address the questions – what exactly is the State’s responsibility and which State has such a responsibility.

At a glance, it seems that all three countries have a common minimum platform on the treatment of trafficking. Victims of trafficking are often subject to the twins of poverty and exploitation. The feeling that trafficking, especially trafficking for commercial sexual exploitation, is wrong also spans across all three countries. There are however huge differences on the tackling of trafficking. Even what each of the states considers regional cooperation to tackle trafficking varies. There are also differences in treatment meted out to citizens, refugees and illegal immigrants. One State’s citizen may be another State’s illegal immigrant and this fact is not completely accepted by States.

Alternatives are few, though States have made attempts to curb trafficking within their domestic jurisdictions, there is very little done to promote anti trafficking measures at the international level. NGOs have been working on trafficking and the work that some of them have done are detailed in the paper. However, these initiatives are again largely local. In rescue operations in India, Nepali and Bangladeshi girls may also be rescued in the process and sent to homes in India awaiting repatriation. Beyond this, there is no engagement with rights of illegal immigrants or non citizens. In rare circumstances, NGOs in India have worked with Nepali women’s groups to repatriate directly.

In such conditions, victims of cross border trafficking are especially vulnerable as they have no access to the networks they traditionally turn to for support. They are often in a place where they don’t know the

local language and are unable to communicate. They also don't know which authority they must apply to for assistance. The feeling of helplessness that pervades leads to a meek acceptance of their position without challenging and fighting it. Taking victims out of their countries and placing them in strange places makes them especially vulnerable to exploitation.

A striking feature across all legal systems is the treatment of trafficking, particularly trafficking for commercial sexual exploitation. Very often in symposia and documents, trafficking and commercial sexual exploitation are treated as synonymous terms.¹⁷⁰ There is also confusion regarding trafficking and prostitution over which of the two is punishable. Stakeholders disagree whether prostitution should be legalized, particularly in the Indian context. The issue has not been discussed in this monograph except where unavoidable, but this debate has colored many anti trafficking initiatives as well as the demands made for 'victims' of trafficking. In cases where the initiation into the situation was coerced and later on the work was carried on voluntarily, a person (usually a woman) is stripped of the 'victim' identity. However, this problem is not limited to the Indian subcontinent, it is something that has been witnessed across Europe and the United States.

While it seems natural to assume that international standards including standards on cooperation would be made use of in cases of cross border trafficking, this has not materialized, though there have been conferences in all the countries across different stakeholder groups.

The SAARC Convention is the most important document at the sub-regional level and an indicator of the way in which the issue of trafficking is being perceived and pursued in South Asia. The SAARC Convention directs states to use criminal law to deal with the problem of trafficking and places trafficking as a crime against the state and a law and order problem. Parties to the Convention are required to provide for the punishment of any person who "keeps, maintains, manages or knowingly finances or takes part in the financing of a place used for the purpose of trafficking and knowingly lets or rents a building or other place for the purpose of trafficking"(Article III (2)).

¹⁷⁰This is also a limitation of the current research as literature as well as legal instruments largely focused on trafficking for the purposes of commercial sexual exploitation. The media has also highlighted this issue alone.

Hence, countries which have ratified this Convention have to provide for a proper legal framework for action to be taken against such trafficking. In India, a number of steps can be taken and sometimes are. An aggrieved person can approach any authority like the Police, a NGO or the NCW etc. The particular NGO may then approach the Home Ministry or write a letter to the CMO asking for the necessary legal assistance or may file a suit on behalf of the victim and use the authority vested under this Convention for strict action to be taken and necessary steps taken to provide relief to the victims.

At the ground level, trafficked persons are usually discovered or caught by the police or other authorities and are hardly treated as the victims of a heinous crime. Anti-trafficking initiatives in South Asia at the regional and national levels tend to focus more on the *process* of trafficking, rather than the harm to the victim that occurs during the course of trafficking. As a result, most of the initiatives focus on strengthening law enforcement and border interception rather than victim's protection.

In South Asian countries, national legislation on trafficking is primarily focused on the criminalization of trafficking or related activities such as kidnapping, wrongful confinement, slavery or forced labour, rape and sexual assault. Laws are primarily linked with combating trafficking for the purposes of prostitution like the Convention itself.

Prevention mechanisms tend to be restricted to information and awareness about trafficking, while the broader issues of safeguarding socioeconomic rights, women's rights and children's rights are rarely considered. Protection mechanisms tend to be focused on short-term relief and, with respect to children, insufficient attention is given to their particular needs, vulnerabilities and to the protection of their rights.

Once a formal complaint against trafficking is made to the national authorities, they have a responsibility to provide for at least the basic legal framework suggested in the Convention.

It is unclear as to how the SAARC Convention addresses some of the fundamental problems that have characterized rescue and rehabilitation programs in most other states. The rescue and 'detention' in homes has by and large, proven not to be an empowering option for the trafficked person. Once a woman or minor has been detained, the right to privacy or bodily integrity may be at risk, including with invasive medical

examinations and inquiries about the individual's personal life. These institutions provide few options for self-employment and alternative, viable and sustainable livelihoods.

Recognizing some of these limitations in the implementation mechanism and the fundamental procedures, the Centre for Social Research has formed the South Asia Network against Trafficking (SANAT). The network is working on developing an action plan and a road map for implementation of the SAARC Convention. It has been felt that there is an urgent need to implement the SAARC Convention by the member nations by strengthening the national laws in line with the Convention. The first step towards implementation of the convention is to form a SAARC task force which has representation from the women organizations and civil society members to make it more effective. SAARC and member nations should have proper budget allocation to implement the SAARC Convention, especially in terms of care and support for the victim. As part of the project, CSR organized three National level Consultations in Nepal (22nd November, 2005), Bangladesh (30th November, 2005) and Sri Lanka (9th December, 2005). It suggested that the focus areas are- prepare Country Level Action Plan for implementation of the SAARC Convention, to actively lobby with the National Governments and state governments for effective implementation of the SAARC Convention and to prepare Inter Regional (SAARC Level) Action Plan & Lobbying Document for implementation and monitoring. It is hoped that by focusing on these areas the countries in the South Asian region will not only be able to minimize the number of incidents of cross border trafficking but will also be able to evolve procedures that empower victims and work in their best interest.

Bibliography

I. Table of Cases

- Apparel Export Promotion Council v. A.K. Chopra* (1999) SCC 759.
- B.N Srikantaiah v. State of Mysore*, AIR 1958 SC 672.
- Bai Radha v. State of Gujrat* AIR 1970 SC 1396.
- Bandhua Mukti Morcha v. Union of India* (1997) 10 SCC 549.
- Bhageerathan N V. State, High Court of Madras*, 1999 I LLJ.
- Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* AIR 1983 SC 753.
- Bodhisattwa Gautam v. Subhra Chakraborty* AIR 1966 SC 922.
- C. K. Moidood and Others v. Vayyaprath Kunnath Mayan* 1984 CrLJ 322.
- C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Mudaliar Thirukoil* (1996) 8 SCC 525.
- Chajju v. State* AIR 1968 P&H 429.
- Dalchand v. State of U.P* AIR 1969 All 216.
- Delhi Domestic Working Woman's Forum v. Union of India* (1995) 1 SCC 14.
- G. SivaKumar v. State of A.P* (Cri App No 1805 of 2001).
- Gaurav Jain v. Union of India and Others* (AIR 1990 SC 292).
- Gita Hariharan(Ms.) v. R.B.I* (1999) 10 SCC 228.
- H.N. Rishbud and Inder Singh v. State of Delhi* AIR 1955 SC 196.
- Harahan Chakraborty v. Union of India* AIR 1990 SC 1210.
- Harbhajan Kaur and Others v. State*, Cri. Rev. no. 528 of 1963.
- Harnam Singh v. Emperor* AIR 1939 Lah 295.
- Joseph v. State of Kerala* AIR 1994 SC 34.
- Kamil v. State of Uttar Pradesh* 1994 CriLJ 1491.
- Karnel Singh v. State of Madhya Pradesh* AIR 1995 SC 2475.
- Kumari Sangeeta v. State and Another* (Cri Rev App NO 37 of 1990).

Lakshmi Kant Pandey v. Union of India (Cri. Mis Pet. No 5704, 8842 of 1990).

Lakshmi Kant Pandey v. Union of India (Cri. Misc Pet No 6693 of 1986 & Cri Misc Per Nos 3141-42 of 1986 & Cri Misc Pet No 4455 of 1986 with Cri Misc Mos. 3868 & 4065/86 and Cri. Mis Pet No 4064/86).

Lakshmi Kant Pandey v. Union of India (Cri. Ori Jurisdiction Pet No 3357 of 1989).

Lakshmi Kant Pandey v. Union of India (W.P CrI. No. 1171/1982) (SC).

Lal Singh v. State (Cri Rev No 42 of 1953).

M. Rajeshwari v. State of PSI (L & O) Kengeri P.S, Bangalore (Cri Pet. No 6839 1999).

M.C. Mehta v. State of Tamil Nadu (1996) 6 SCC 756.

Madhu Kishwar v. State of Bihar (1996) 5 SCC 125.

Meena and Others v. State of Delhi Administration (Cri Rev App 37 of 1990).

Moaiduddin and Others v. State of A.P (Cri Mis P NO 2626 of 1985).

Mr. Rajagam, Secretary, District Beedi Workers's Union and K. Chandra Sararam v. State of Tamil Nadu and Others AIR 1993 SC 404.

Mumtaz @ Behri v. The State (Government of NCT of Delhi), Cri App. No. 88/2002.

Muzaffer Ali Sjjad, and Others v. State of Andhra Pradesh and Another 2002 (108) CrLJ 1068.

Prerana v. State of Maharashtra, 2003 (2) Mh.L.J. 105

PUCI v. State of Tamil Nadu and Others WP (Civil) No.3922 of 1985

PUDR v. Union of India AIR 1982 SC 1473

R. Rathinam v. Kamala Vaiduriam and others (W, P No 2487 of 1991 Madras)

Radha and Others v. State of U.P (Cri Mis W. P NO 49583 of 2000)

Raghubir Singh Mal Singh v. Superintendent, Protective Home (Cri Mis No 74 of 1963).

Raj Homes Pvt Ltd v. State of M.P and Another (W.P NO 6380/2002).

Rajan and Others v. State of Rajasthan, S.B Cri. App. No. 955 of 2001.

Ram Kumar v. State 1998 Cr LJ 952 (MP)

Rao Harnarain Singh, Sheoji Singh and other v. The State AIR 1958 Punj 123.

Ratan Mandal v. State of Jharkhand (Cri Mis Petition No 173 of 2005).

Robert Toppo v. State of Jharkhand and Others, LLJ 2003.

Re: Ratnamala AIR 1962 Mad. 31.

Sakshi v. Union of India AIR 2004 SC 3566.

Sanjit Roy v. State of Rajasthan AIR 1983 SC 328.

Shaik Nawab v. State of Maharashtra AIR 1993 SC 169.

Shaik Ramjan v. State of A.P (Cri. App NO 1695 of 1997).

Shatabai Bavi Benoor v. State (Cri App NO 1120 of 1950 Bombay).

Shila Bhalla v. Thakur Bhagwan Das and Others (Cri Rev NO 159/D 1964 (P&H).

Sindhu Krishna Thakur v. State of Maharashtra, 1993(2) Crimes 383(Bom).

Sinu Sainudheen v. SubInspector of Police (Cri Misc. No 623 of 2002).

Sita Ram Sah v. State of Jaharkhand and Another (Cri App No 127 of 2003).

Smt. Ram Devi v. State and Ors 1963 All L.J. 894.

Sohan Singh v. State of Rajasthan 1997 Ind Law Raj 23.

Sovi Bachu Lakuman v. State of Gujrat (Cri Rev App No 90 of 1960).

State (Delhi Admn.) v. V.C. Shukla and another, 1980 CrLJ 965 : 1980 AIR (SC) 1382.

State (Delhi Admn.) v. V.C. Shukla and another, 1980 CrLJ 965:
1980 AIR (SC) 1382.

State of Haryana v. Raja Ram, 1973 CrLJ 651 : 1973 AIR (SC) 819.

State of Kerala v. Pathumma, Cr.L.J. 697 (Ker).

State of Maharashtra v. Premchand Khub Chand (AIR 1964
Bom155)

State of Maharashtra v. Sarooja Nagappa Mudaliar and Others
(Cri Rev App No 464 of 1983).

State of Punjab v. Gurmeet Singh AIR 1996 SC 1393.

State of Uttar Pradesh v. Bhagwati Kishore Joshi AIR 1964 SC 221.

State v. Mainabai AIR 1962 Bom 202.

State v. Naroshbhai Haribhai Tandel 1997 CrLJ 2783 (Guj).

State v. Premchand (Cri app No 1721 of 1962, Bombay).

*Subetha @ Sumathi, Ashok @ Surathi@ Ashok Kumar, Papathi,
Chithammal and Laksmi@ Amravathi v. State by Inspector of Police*
(Cri App No 178 and 8123 of 1999).

*Superintendent and Remembrancer of legal v. Sardar Bahadur Singh
and Others* (Cri Revs Case NO 729 of 1968).

Surendra Chauhan v. State of M.P., 2000 Cri.L.J. 1789 (S.C.): AIR
2000 SC 1436.

T. Jacob v. State of Kerala, AIR 1971 Ker. 16.

Topandas v. State of Bombay AIR 1956 SC 33.

*Vijayalakshmi, Ravichandran, Mumoorthy, Gopala Karishnan,
Sridevi, Meena, Dhanalakshmi, Jayalakshmi v. State through
The Sub inspector of Police, Thiruparankundram Police Station*
Cri O. P. No. 8503 of 2002 and Cri. M.P Nos. 3955 and 3956 of
2002.

Vishaal Jeet v. Union of India and Others (1996 (96) CrLJ 1469
(SC).

Vishakha and Others v. State of Rajasthan and Others AIR 1997 SC
3011.

Yoginder v. State of Bihar 1984 CriLJ 386 (SC).

II. Table of Statutes, Conventions and Protocols

Apprentices Act, 1961.

Beedi And Cigar Workers (Conditions Of Employment) Act, 1966.

Bonded Labour System (Abolition) Act, 1976.

Child Labour (Prohibition And Regulation) Act, 1986.

Children (Pledging of Labour) Act, 1933.

Citizenship Act, 1955.

Guardians and Wards Act, 1890.

Hindu Minority and Guardianship Act, 1956.

Immigration (Carrier's Liability) Act, 2000.

Immoral Traffic (Prevention) Act, 1956.

Indecent Representation of Women (Prohibition) Act, 1986.

Indian Passport Act, 1920.

Indian Penal Code, 1860.

Information Technology Act, 2000.

Juvenile Justice (Care and Protection of Children) Act, 2000.

Merchant Shipping Act, 1958.

Minimum Wages Act, 1948.

Motor Transport Workers Act, 1961.

Narcotic Drugs and Psychotropic Substances Act, 1985.

National Security Act, 1980.

Plantation Labour Act, 1951.

Prevention of Terrorism and Disruptive Activities Act, 2002.

Religious Institutions (Prevention of Misuse) Act, 1988.

Sales Promotion Employee (Conditions of Service) Act, 1976.

Terrorist and Disruptive Activities (Prevention) Act, 1987.

The Arms Act, 1959.

The Child Marriage Restraint Act, 1929.

The Employees' State Insurance Act, 1948.

The Factories Act, 1948.

The Foreigners Act, 1946.

The Hindu Adoption and Maintenance Act, 1956.

The Mines Act, 1952.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Transplantation of Human Organs Act, 1994.

Young Persons (Harmful Publications) Act, 1956.

1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others (the 1949 Convention).

Abolition of Forced Labour Convention (No.105) 1957.

Additional Protocol to the Geneva Conventions of 12 August 1949 Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

ASEM Action Plan to Combat Trafficking in Women.

Asian Regional Initiative Against Trafficking in Persons, Especially Women and Children (ARIAT) Regional Action Plan Bangkok Accord and Plan of Action to Combat Trafficking in Women.

Child Rights Convention (CRC).

Co-Chair's statement from the Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime.

Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

Convention Concerning Forced Labour No. 29,1930.

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Discrimination (Employment Occupation) Convention
(No.111),1958.

Equal Remuneration Convention (No.100),1951.

Freedom of Association and Protection of Right to Organised
Convention (No.87).

International Convention on the Protection of the Rights of All
Migrant Workers and Members of their Families.

International Covenant on Civil and Political Rights (ICCPR), 1976.

International Covenant on Economic Social and Cultural Rights
(ICESCR), 1976.

Minimum Age Convention (No.138).

Optional Protocol to the Convention on the Rights of the Child on
the sale of children, child prostitution and child pornography.

Protocol to Prevent, Suppress and Punish Trafficking in Persons,
Especially Women and Children, Supplementing the United Nations
Convention against Transnational Organized Crime.

Recommended Principles and Guidelines on Human Rights and
Human Trafficking (the Recommended Principles and Guidelines).

Right to Organise and Collective Bargaining Convention (No.98).

Rome Statute of the International Criminal Court.

Slavery Convention.

Smuggling of Migrants Protocol, 2000.

South Asian Association for Regional Cooperation (SAARC)
Convention on Preventing and Combating Trafficking in Women and
Children for Prostitution.

South Asian Association for Regional Cooperation (SAARC)
Convention on Regional Arrangements for the Promotion of Child
Welfare in South Asia.

Supplementary Convention on the Abolition of Slavery, the Slave
Trade and Institutions and Practices Similar to Slavery.

Trafficking in Persons Protocol 2004.

United Nations Charter.

United Nations Convention against Transnational Organized Crime.

Universal Declaration of Human Rights 1948.

UNHCR, “Guidelines on International Protection: The application of Article 1A (2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked”, HCR/GIP/06/07, 7 April, 2006.

Worst Forms of Child Labour Convention (C182).

Developing Human Rights Jurisprudence, Eighth Judicial Colloquium on the Domestic Application of International Human Rights Norms (London Interights, 2001).

Handbook on Human Rights for Judicial Officers, National Institute of Human Rights, National Law School of India University, 2000.

India Country Report, (Ministry of Women and Child Development, 2005).

Report of the Committee on Prostitution, Child Prostitutes and Children of Prostitutes and Plan of Action to Combat Trafficking and Commercial Exploitation of Women and Children (Department of Women and Child Development, Ministry of Human Resources Development, Government of India, 1999).

The Counter Trafficking Framework Report: Bangladesh Perspective (Dhaka, 2004).

III. Books

Ashworth, Andrew Q.C, *Human rights, Serious Crime and Criminal Procedure* (London: Sweet & Maxwell, 2002).

Awasthi, S.K.L. & Sarkar, S.C, *Supreme Court on Criminal Major Acts* (Allahabad: Dwivedi Law Agency, 2000).

Bajpai, Asha, *Child Rights in India- Laws, Policy and Practice* (Oxford University Press, 2003).

Bal Kumar KC, Gurung, Govind Subedi Yogendra Bahadur, and Adhikari, Keshab Prasad, *Nepal: Trafficking in Girls with Special Reference to Prostitution: A Rapid Assessment* (Geneva: International Labor Organization, International Program on the Elimination of Child Labor, November 2001).

Basu, N.D., *Criminal Major Acts* (New Delhi: Orient Publishing Company, 1997).

Baxi, Upendra, *Liberty and Corruption- The Antulay case and Beyond* (Lucknow: Eastern Book Company, 1989).

Beotra, B.R., *Immoral Traffic (Prevention) Act 1956 (With State Rules)* (5th Edn., Allahabad: The Law Book Company, 1996).

Bhat, Aparna, *Supreme Court on Rape Trials* (New Delhi: Combat Law Publications, 2003).

Bromley, P.M., *Family Law* (London: Butterworths, 1996).

Centre For the Women and Law, *Understanding Trafficking, Manual on Human Trafficking* (Unpublished, Bangalore: National law School of India University)

Chitkara, M.G, *Corruption 'N' Cure* (New Delhi: A.P.H Publishing Corporation, 1997).

Dewan, V.K., *Law Relating To Offences Against Women* (2nd Edn., Delhi: Orient Law house, 2000).

Encyclopedia of Terrorist Law (Law Publishers (India) Pvt Ltd, 1990).

Gaur, K.D., *Criminal Law, Cases and Materials* (3rd Edn., New Delhi: Butterworths and Tripathi, 1999).

Goswami, Arnab, *Combating Terrorism -Military Affairs Series* (Har-Anand Publications Pvt Ltd, 2002).

Harris & Teitelbaum, *Family Law* (New York: Aspen and Business Publishers, 2000).

Hoggett, Brenda, *Parents and Children* (London: Sweet & Maxwell, 1981).

Joshi, K., *International and Human Rights* (Lucknow: Eastern Book Company, 2006)

Kataria, K.P. & Naqvi, S.K.A., *Laws on Prevention of Terrorism and unlawful Activities along with International Terrorism* (Orient Publishing Company, 2003).

KrishnaMurthy, S., *A Hand Book of Criminal Law* (Chennai: C. Subbiah Chetty & Company, 1997).

Labour Law Journal Digest 1982-1999 Vol I and II, (Wadhwa and Company, Law Publishers, 1999)

Malik, P.L., *Industrial Law* (Delhi: Eastern Book House, 1992).

Mallick, M.R., *Criminal Manual*, (New Delhi: Professional Book Publishers, 2005).

McHale, Jean & Fox, Marie with Murphy, John, *Health Care Law* (London: Sweet and Maxwell, 1996).

Montgomery, Jonathan, *Health care Law* (Oxford: Oxford University Press, 2003).

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

Nair, P.M., *Trafficking Women and Children for Sexual Exploitation: Handbook for Law Enforcement Agencies In India*, (New Delhi: UNIFEM, 2005).

Pant, Prafulla C., *The Law of Marriage Divorce and Other Matrimonial Disputes* (New Delhi: Orient Publishing Company, 1995).

Pillai, K.N Chandrasekharan, *General Principles of Criminal Law* (Lucknow: Eastern Book Company, 2003).

Pillai, P.S.A., *Criminal Law* (India: Butterworths, 2000).

Pozgar, George D., *Legal Aspects of Health Care Administration* (New York: Aspen, 1993).

Ratanlal and Dhirajlal, *Indian Penal Code* (30th Edn., Nagpur: Wadhwa and Co., 2004).

Ratanlal and Dhirajlal, *Law of Crimes* (25th Edn., New Delhi: Bharat Law House, 2002).

Saha, A.N., *Marriage & Divorce* (Calcutta: Eastern Law House, 1996).

SariQ, *Landmark Judgements on Violence Against Women and Children from South Asia* (New Delhi: SariQ)

- Scott, Russell, *The Body as Property* (Allen Lane Penguin Books Ltd, 1981).
- Siddharth, P.K., *Anti-Corruption Agencies of the Government of India – Their Mandate and Charter of Duties Vol. I, II, III* (New Delhi: Bureau of Police research and Development, 2002).
- Siddiqui, Tasneem, *Crossing Borders and Shifting Boundaries: Gender on the Move* (New York: VS Verlag, 2003).
- Singh, Jagdish, Bhusan, Vishwa, *Medical Negligence and Compensation* (New Delhi: Bharat Law Publications, 2004).
- Singh, N.K., *The Politics of Crime and Corruption- A Former CBI Officer Speaks* (India: Harper Collins Publishers, 1999).
- Singh, Surat & Singh, Hem Rai, *Law relating to Prevention of Terrorism* (Universal Publishing Co Pvt Ltd, 2002).
- Stanch, Marc & Kay Wheat, Joh Tingle, *Source book on Medical Law* (London: Cavendish Publishing Limited, 1998).
- Standley, Kate, *Cases & Materials on Family Law* (Blackstone Press Ltd, International ISE Student Edition, 1997).
- Steiner, H.J., Alston, P., *International Human Rights in Context: Law, Politics, Morals, Text and Materials* (Oxford: Oxford University Press, 2000).
- Tandon, M.P, *Indian Penal Code* (20th Edn., Faridabad: Allahabad Law Agency, 1999).
- Thomas, K.V., *Human Rights Terrorism and Policing in India* (New Delhi: Indian Social Institute, 1999).
- Verma, Preeti, *The Terror of POTA and other Security Legislation – A Report on the people’s Tribunal on the Prevention of Terrorism Act and other security legislation* (New Delhi, 2002).
- Walker, Clive, *Blackstone’s Guide of the Anti-Terrorism Legislation* (Oxford: Oxford University Press, 2002).
- Wille, C., *Trafficking in Children into the Worst Forms of Child Labour: A Rapid Assessment* (Geneva: International Labour Organization, 2001).

Wilson, Richard Ashby, *Human Rights in the 'War on Terror'* (Cambridge: Cambridge University Press, 2005).

IV. Journals

"Nepal to India: Ending the Trafficker's Paradise," 24 *Human Rights Features* (2001).

B. Srinivas, "India's reservations to Human Rights Treaties", 44(1-4) *Indian Journal of International Law* (2004).

Bimal Kanti Paul & Syed Abu Hasnath, "Trafficking in Bangladeshi women and girls", 90 (02) *Geographical Review* (2000).

David A. Feingold, "Human Trafficking", 150 *Foreign Policy* (2005).

Firdous Azim, "Feminist Struggles in Bangladesh", 80 *Feminist Review* (2005).

Firdous Azim, "Women's Movements in Bangladesh", 64 (Feminism 2000: One Step Beyond?), *Feminist Review* (2000).

Glenn E. Curtis Et al., "Nations hospitable to organized crime and terrorism", 8(1) *Trends in Organized Crime* (2003).

S. Jana et al., "A Tale of Two Cities: Shifting the Paradigm of Anti-Trafficking Programmes", 10(1) *Gender and Development* (2002).

Sara L. Gottovi, "Sex Trafficking of Minors: International Crisis, Federal Response," 52(2) *Child Protection, Exploitation, and Obscenity* (2004).

T. Obokata, "Trafficking of Human Beings as A Crime against Humanity: Some Implications for the International Legal System", 54 *International Comparative Law Quarterly* (2005).

Thanh Dam Truong and Marianne Tweit, "Human Trafficking and New Patterns of Migration", 12(1) *Gender, Technology and Development* (2008).

V. Miscellaneous

1000 Central Legislations (CD-ROM) (Shimla: Shubh Tele Electro Pvt. ltd. 1998).

Supreme Court on Criminal Law (CD- ROM) (Allied InfoTech. Pvt. ltd., 2000).

www.manupatra.com

www.indlaw.com

www.indiacode.nic.in (accessed on 5-09-2006)

http://www.unicri.it/wwd/trafficking/minors/docs_ilr/universal_declaration_of_human_rights.pdf (as on 24-09-06)

http://www.unicri.it/wwd/trafficking/minors/docs_ilr/1949_Convention_Suppression_traffic.pdf (as on 17-09-06)

http://www.unicri.it/wwd/trafficking/minors/docs_ilr/supplementary_convention_on_the_abolition_of_slavery.pdf (as on 22-09-06)

http://www.unicri.it/wwd/trafficking/minors/docs_ilr/international_covenant_on_economic.pdf (as on 15-09-06)

http://www.unicri.it/wwd/trafficking/minors/docs_ilr/international_covenant_on_civil_and_political_rights.pdf (as on 22-09-06)

http://www.unicri.it/wwd/trafficking/minors/docs_ilr/1979_cedaw.pdf (as on 28-09-06)

http://www.unicri.it/wwd/trafficking/minors/docs_ilr/convention_on_the_rights_of_the_child.pdf (as on 20-09-06)

http://www.unicri.it/wwd/trafficking/minors/docs_ilr/saarc_convention_on_regional_arrangements.pdf (as on 30-09-06)

http://www.unicri.it/wwd/trafficking/minors/docs_ilr/saarc_convention_on_regional_arrangements.pdf (as on 24-09-06)

<http://cbi.nic.in/interpol.htm> (as on 27-09-06)

http://www.unicri.it/wwd/trafficking/minors/docs_ilr/1949_Convention_Suppression_traffic.pdf (as on 23-09-06)

http://www.unicri.it/wwd/trafficking/minors/docs_ilr/saarc_convention_on_regional_arrangements.pdf

<http://www.ohcr.org/english/law/ccpr.htm>

<http://www.unhcrch/html/memo3/b/33.htm>

<http://www.ohcr.org/english/law/slavetrade.htm>

<http://www.ohcr.org/english/law/cescr.htm>

<http://www.un.org/womenwatch/lawcedaw/cedaw.htm>

<http://www.unhrc.ch/html/menu3b/k2crc.htm>
<http://www.saaarc.sec.org/old/freepubs/conv-trafficking.pdf>
http://www.saaarc.sec.org/old/freepubs/11_conv-childre.pdf
<http://www.law-lib.toronto.ca/resources/org/intorg3.htm#5>
<http://labour.nic.in/welcome.html>
www.unhcr.ch/html/racism/indialeaflet2doc
http://india.gov.in/spotlight/spotlight_archive.php?id=42
<http://blog.taragana.com/n/india-unconcerned-over-us-report-on-human-smuggling-chidambaram-102693/>
<http://www.libraryindex.com/pages/2439/Refugee-Influx-VICTIMS-TRAFFICKING-VIOLENCE.html#ixzz0OigHJHJN>
<http://timesofindia.indiatimes.com/articleshow/1241203.cms>
<http://timesofindia.indiatimes.com/India/India-on-human-trafficking-watchlist-US-report/articleshow/4665583.cms>
http://www.refugeelawreader.org/1184/Refugee_Law_and_Policy_in_India.pdf
<http://www.unhcr.org/protect/3c0762ea4.html>
<http://www.unhcr.org/pages/49c3646c2.html>
www.unhcr.ie/pdf/Traffickingconcerns.pdf
<http://www.indianexpress.com/res/web/ple/ie/daily/19980923/26652234.html>
http://www.sacw.net/i_ain/Report.html accessed on 7 April, 2008.
<http://ibnlive.in.com/news/illegal-bangladeshi-immigrants-threat-to-india-court/71035-3.html>
<http://lawcommissionofindia.nic.in/reports/175thReport.pdf>
http://bmsf-bd.org/bmsf/Human_Trafficking_30_years.pdf
<http://www.uri.edu/artsci/wms/hughes/banglad.htm>
<http://www.state.gov/g/drl/rls/hrrpt/2000/sa/692.htm>
http://nepal.usembassy.gov/uploads/images/eZPsZ0OkQAIbBUsm89XW5w/TIP_2009.pdf (19th August, 2009).

www.ilo.org/public/english/region/asro/.../subpubl01eng8.pdf
www.reliefweb.int/library/documents/2003/tdh-nep-2jun.pdf
http://www.cwin-nepal.org/resources/reports/roc_2002/index.htm
www.unhcr.org/.../country,,,BLZ,4562d94e2,4a4214cec,0.html
http://www.cwin.org.np/resources/papers_articles/trafficking.htm
<http://www.ilo.org/public/english/region/asro/newdelhi/ipecc/responses/nepal/national.htm>
<http://www.ilo.org/public/english/region/asro/newdelhi/ipecc/responses/nepal/national.htm>
<http://www.hrdc.net/sahrdc/hrfeatures/HRF32.htm>
<http://www.cwin-nepal.org/resources/issues/trafficking.htm>
http://www.worldstatesmen.org/Nepal_Interim_Constitution2007.pdf
<http://www.unhcr.org/refworld/docid/4a42149f2d.html>
[accessed 15 August 2009].
http://www.unodc.org/pdf/india/Nat_Rep2006-07.pdf
<http://www.hrdc.net/sahrdc/hrfeatures/HRF32.htm>
http://www.nepaldemocracy.org/documents/intl_commitments/saarc_trafficking_convention.htm
<http://www.unodc.org/unodc/en/treaties/CTOC/index.html>
http://www.unodc.org/pdf/india/Nat_Rep2006-07.pdf
<http://www.globalministries.org/news/sasia/stories-of-human-trafficking-in.html>
http://www.thaindian.com/newsportal/uncategorized/human-trafficking-on-the-rise-in-bihar_100225480.html
<http://www.du.edu/intl/humanrights/trafficking.pdf>
http://www.thaindian.com/newsportal/uncategorized/india-has-failed-to-implement-human-trafficking-laws-activists_100206032.html
http://www.thaindian.com/newsportal/world-news/india-biggest-market-for-trafficked-nepali-women_100206009.html
http://www.unicef.org/bangladesh/Child_Abuse_Exploitation_and_Trafficking.pdf

www.yapi.org

<http://www.unodc.org/unodc/en/organized-crime/index.html>

<http://www.yapi.org/rpchildtrafficking.pdf>

<http://ideas.repec.org/p/iss/wpaper/339.html>

<http://www.un.org/News/Press/docs/2008/ga10712.doc.htm> >

<http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>

<http://www.unodc.org/unodc/en/human-trafficking/news-and-events.html>

<http://timesofindia.indiatimes.com/>

<http://www.springerlink.com/content/g76nk4v987k9wek9/>

<http://policy-tracc.gmu.edu/resources/publications/stoeck01.pdf>
NEWS/India/Human-trafficking-a-serious-organised-crime-CBI-chief/articleshow/4511706.cms

<http://biblio.iss.nl/opac/uploads/wp/wp339.pdf>

<http://www.ohchr.org/english/about/publications/docs/trafficking.doc>

<http://untreaty.un.org/cod/avl/ha/prsr/prsr.html>,

http://www.usaid.gov/bd/files/trafficking_overview.pdf

About WISCOMP

Initiated in 1999, WISCOMP is a project of the FOUNDATION FOR UNIVERSAL RESPONSIBILITY, in New Delhi, India. It is a South Asian initiative that works at the confluence of peacebuilding and security studies. Gender concerns provide the leitmotif of its programs.

Cooperation to Combat Cross Border Trafficking: India-Nepal-Bangladesh

Awarded by WISCOMP for academic research, media projects and special projects, the *Scholar of Peace* Fellowships are designed to encourage innovative work by academics, policymakers, defense and foreign affairs practitioners, journalists, NGO workers, creative artists and others. The fellowships are seen as an important step to encourage work at the interface of gender and security; conflict resolution and peace. These studies are expected to provide information about problems pertaining to security, promote understanding of structural causes of conflict, suggest alternatives and encourage peace initiatives and interventions. The work of the Fellows is showcased in the form of the WISCOMP Perspectives and Discussion Papers series.

Thirty first in the Perspectives series *Cooperation to Combat Cross Border Trafficking: India-Nepal-Bangladesh* by Sarasu Thomas fills a gap in the research on trafficking in India, Nepal and Bangladesh. These three countries account for a large number of cases of trafficking and yet the governments have not been able to adopt a comprehensive policy to either combat trafficking within the country or to cooperate over stemming the tide of cross border trafficking of women, men and children. The research elaborates the various approaches that have been used across the global to prevent trafficking and then evaluates the efficacy of the strategies that are currently being used in the three countries that are the focus of this research. Thomas concludes by recommending several essential steps at both the legal and implementation levels whereby cooperation can be increased and trafficking curbed in the region.

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