



## Trafficking of Women and the Crisis of Identity

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### Abstract

In our globalizing world, trafficking of human beings, especially women and children, has increased in both magnitude and in reach, becoming a major human rights concern. An estimated 2.5 million people are in forced labor (including sexual exploitation) as a result of trafficking, out of which 1.4 million (56%) are in Asia and Pacific region. This paper seeks to assess the current situation of women trafficking in the Indian Subcontinent in general, and in the eastern part of the Subcontinent, in particular. It seeks to answer the following questions: How is trafficking related to forced migration? Are trafficked women prone to become stateless without proofs of identity? Is it possible to frame a regional regime to combat trafficking of women in South Asia?

### Author Profile

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“This is a story of a 19-year old Nepali girl Rukmini Tamang<sup>1</sup>”, said Purnimadi, an experienced worker of the anti-trafficking cell of Durbar Mahila Samanway Committee, a non-governmental organisation based in Kolkata.

*It was May 2008. Rukmini was rescued from a house at Sonagachhi, one of the oldest red light areas of Kolkata and was brought to the short-stay home run by the autonomous board set up by our Durbar Committee in 1996 for empowerment of sex-workers as well as prevention of trafficking and entry of minors and unwilling adults in the brothels of the state. The home mother Anwara called us immediately after Rukmini's entry to our home. Anwara informed us about the problems with the girl. She wanted anyone from our side; either me or Kamala should come and speak to her at our earliest. Generally, whenever a girl is rescued from a brothel, she is produced before the members of the autonomous board. Our preliminary work is to find out whether the rescued girl is a minor or an adult. If she is a minor, she is sent either to her own home or to a short-stay centre associated with us. In this case, since the girl was a foreigner, we thought, we should arrange to send her to her own country.*

*When we first met Rukmini she was adamant about not going back to her country, neither was she willing to go to any 'home'. She wanted to work here at Sonagachi. We were surprised and asked her whether she knew what work one had to do here. Rukmini nodded her head and said that she knew 'everybody here earned a living by raising their dresses'. She was so prompt in her reply that we didn't really want to expand our conversation in this matter. We asked her about her age and came to know that she was only nineteen years old. We advised her not to take up this profession as her country (Nepal) doesn't allow any entry into this profession before a person is 21. Therefore, she would be taken into custody if she does. She became furious and said 'who will feed my family if I go back? Do you know the education of my brother and sisters depends on my income? How can they go to school if I go back home? Would you help them continue their studies?'*

*Gradually we started realising the complex nature of this case. Rukmini was an adult under the Indian law but a minor under Nepali law. She didn't have any identity card with her. As we failed to convince her we decided to contact Maiti Nepal, our associates in that country to help us. This organisation in Nepal helps in the repatriation of trafficked women. We hoped if they came and talked to her in their own language, the situation could be changed. Representatives from Maiti Nepal came but failed to convince her to return to Nepal. As we did not have any other option we handed the girl over to the anti-trafficking department of the Kolkata Police. In the course of our work on prevention of trafficking, we have seen that generally it takes three or four years to repatriate a foreign woman and the whole process is very complicated. In this case Rukmini got shelter in a government 'home' due to legal complications. Since then she has been confined within the walls of that 'home'. You know, sometimes I think of Rukmini's family. She said that she had her*

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<sup>1</sup> All names in the paper have been changed to protect the identity of the trafficked women.

*parents and three younger brothers and sisters in Rolpa district of Nepal. How are they now?*

After narrating Rukmini's story, Purnimadi stopped and silence engulfed the office of Durbar located at Nilmani Mitra Street.<sup>2</sup>

Rukmini is not the only one. There are many trafficked women and children from Nepal and Bangladesh surviving in government run 'homes' and/or NGO sponsored short-stay 'homes' in West Bengal facing almost identical fate. However, Rukmini's story reveals that situations of endemic poverty lead to an increase in trafficking of women and children. In fact, experts have argued that poverty and globalization are important factors for human trafficking in South Asia. According to Upala Devi Banerjee, the accelerated pace of globalization associated with trade liberalization in the last decade has had far reaching effects worldwide, and nowhere have the effects been more pronounced than in South Asia. IMF and World Bank imposed loan conditionalities coupled with structural adjustment programs have rapidly disintegrated rural communities in South Asia and the impacts have been felt most severely by women and children<sup>3</sup>.

Several studies have already made it clear that trafficking is essentially a gender and age specific phenomenon in South Asia. It affects women and children particularly. There are undoubtedly instances of trafficking of men within the region as well. However, the movement of men and the profits to agents facilitating the transportation of men occurs primarily as smuggling or illegal/undocumented migration. Trafficking of boys and men in South Asia in no way approximates the dimensions that trafficking in women and girls has acquired in the region<sup>4</sup>. It is also interesting to note that although both women and men are smuggled or illegally transported for economic gain, men are more likely to have consented to this migration whereas women and children are trafficked.

In our conversation, Purnimadi opined that the 'raid, rescue and repatriate' approach to removing girls and women from brothels and sending them 'home' often simply disrupts their lives and adds to their suffering. There are disturbing reports of human rights violations in many shelters. Several cases of women returning to the same brothels or taking up prostitution elsewhere have also been reported. In most cases women are unaware that they need to keep identity cards with them. In the absence of any proof of identity, trafficked women become even more vulnerable in an alien land.

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<sup>2</sup> Purnimadi was interviewed on 2 February 2012 at Durbar's office located at Nilmani Mitra Street, Kolkata. This case study has also been published by Durbar in its periodical *Namaskar*.

<sup>3</sup> Upala Devi Banerjee, "Globalisation and its Links to Migration and Trafficking: The Crisis in India, Nepal and Bangladesh", *Canadian Women Studies*, Vol. 22 (3, 4):124-130.

<sup>4</sup> Jyoti Sanghera, *Trafficking of Women and Children in South Asia: Taking Stock and Moving Ahead – A Broad Assessment of Anti-Trafficking Initiatives in Nepal, Bangladesh and India*. (UNICEF, ROSA and Save the Children Alliance, South and Central Asia, 1999), 7.

Despite the magnitude of the problem and the severe impact, very few cases related to cross border trafficking ever reach South Asian law courts and in no case have trafficked victims received any compensation. The number of prosecutions against traffickers is very low compared to the estimated amount of illegal activity. It has been noted that in India the crimes reported in 2005 under the Immoral Trafficking Prevention Act were 5,908 showing an increase of 2.8 per cent over the crimes reported in 2004<sup>5</sup>. According to a survey conducted by the UNIFEM, among more than 4,000 survivors of commercial sexual exploitation, trafficking occurred in only about 40 per cent of the cases<sup>6</sup>. The routes, methods and activities of traffickers are increasingly more organized and there is a greater penetration of organized crime syndicates into the trade and trafficking of women and children within and from outside the region<sup>7</sup>.

Against this backdrop, this paper seeks to assess the current situation of women trafficking in the Indian Subcontinent in general and in the eastern part of the Subcontinent, in particular. How is trafficking related to forced migration? Are trafficked women prone to become stateless without proofs of identity? Is it possible to frame a regional regime to combat trafficking of women in South Asia? These are some questions that are discussed in this paper.

### Setting the Scene

The United Nations Protocol on Trafficking in Persons, which was adopted in November 2000 and came into force in December 2003, defines trafficking as:

*“the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, or deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>8</sup>*

According to the protocol, ‘consent’ is considered irrelevant in the case of children. If any of the means stated above are used, consent becomes irrelevant in the case of adults too. This definition clearly indicates three elements are relevant to determine legality of the movement of persons namely, a) an action with intention, b) the means and c) the purposes. Thus, whether a person is trafficked or not is indicated by whether he or she

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<sup>5</sup> Ministry of Home Affairs, *National Crime Records Bureau, Crime in India: 2005*, Government of India, New Delhi, 2006, <http://ncrb.nic.in/crime2005/home.htm>, accessed March 17, 2012.

<sup>6</sup> See T. Krishna Prasad, *Trafficking in Persons: Tip of the Iceberg* (United Nations Development Fund for Women, 2006).

<sup>7</sup> Jyoti Sanghera, *op.cit.*

<sup>8</sup> *United Nations Convention Against Transnational Organised Crime and the Protocols Thereto*, United Nations Office on Drugs and Crime (UNDOC), Vienna, 2004, <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> accessed March 25, 2012

has been subjected to the means mentioned above. 'Vulnerability' refers to that section of a population, in a socio-economic context of severe deprivation, which is at risk because of its inability to cope with the pressure of life and living. It is understood to "refer to any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved."<sup>9</sup> Since its inception this definition of the aforesaid exploitative situations has been taken as the relevant definition worldwide. However, in South Asia the definition of trafficking has only stressed on 'commercial sexual exploitation'. A discussion on the South Asian definition is included in the later part of this paper.

In this context, the Global Alliance Against Traffic in Women (GAATW) report entitled *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* is especially relevant. The report underlines that trafficking in persons does not include only criminological issues but it is rather a multi-dimensional phenomenon including issues such as social, economical and criminological ones linked with issues like gender, health, migration, development and economic. These are more pronounced in the informal sector.

GAATW also mentions that there are laws and policies that have negative consequences for the people they seek to protect. These laws are grouped by types of impact they have. They include: 1) those providing assistance for trafficked persons conditional on cooperation with law enforcement officials, 2) the anti-trafficking measures affecting migrants and labor workers, and 3) the misuse of the concept of 'trafficking' to further the political agendas of governments, which refers also to the impact of prevention campaigns, conducted since 2001 in countries throughout the world by the United States with a view to counter terrorism. To fight trafficking of women, GAATW suggests that the governments should link gender, migration and labor laws to combat trafficking<sup>10</sup>.

From GAATW's interventions, it seems that the UN Protocol responds to trafficking by criminalizing traffickers rather than by ensuring rights of trafficked persons as migrants. Also, the Protocol has failed to treat women as full citizens whose rights need to be recognized.<sup>11</sup>

In our globalizing world, trafficking of human beings, especially women and children, has increased in both magnitude and in reach, becoming a major human rights concern. An estimated 2.5 million people are in forced labor (including sexual exploitation) as a

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<sup>9</sup> Ann D. Jordan, "The Annotated Guide to the Complete UN Trafficking Protocol", [www.walnet.org/csis/papers/UN-TRAFFICK.pdf](http://www.walnet.org/csis/papers/UN-TRAFFICK.pdf) accessed March 20, 2012. In this connection also see Lara Fergus, "The 'Trafficking Protocol': Definitions and Interpretations: 2005", [www.aifs.gov.au/acssa/pubs/briefing/b5pdf/acssa\\_brief5\\_protocol.pdf](http://www.aifs.gov.au/acssa/pubs/briefing/b5pdf/acssa_brief5_protocol.pdf), accessed November 28, 2006.

<sup>10</sup> See *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, Global Alliance Against Traffic in Women (GAATW), Bangkok, 2007.

<sup>11</sup> Pascale McLean, "Incomplete Citizenship, Statelessness and Human Trafficking: A Preliminary Analysis of the Current Situation in West Bengal, India", *Policies and Practices*, Issue No. 38, Calcutta Research Group, Kolkata, 2011, 4.

result of trafficking, out of which 1.4 million (56%) are in Asia and Pacific region<sup>12</sup>. Human trafficking affects vulnerable individuals, particularly women and children, in every region of the world and South Asia is no exception to it. South Asia is estimated to be home to the second largest number of internationally trafficked persons, around 150,000 annually.<sup>13</sup> The pattern of trafficking in the region has led scholars and officials into designating some countries as sending countries or sites of origin, while others are being treated as receiving countries or sites of destination. However, the situation on the ground is complex.

India, for instance, is not only a site of destination within the region, but a transit country as well. It works as an intermediary space from where women and children are trafficked to sites within the region as well as to other parts of the world. Bangladesh and Nepal, on the other hand, may be characterized as sending countries or countries of origin, whereas Pakistan is both a country of destination as well as transit. It has been observed over the recent years that trafficking of South Asian women and children occurs not only within and across countries of the region but to other regions and continents as well.<sup>14</sup> Due to the underground and clandestine nature of this trade it is difficult to procure reliable statistics on the number of women and children affected by trafficking, but recent reports published by government as well as non-governmental organizations and the newspapers indicate that the magnitude of trafficking within and from the region is expanding. It is also true that dearth of data prevails because of the complexities in regulations, which vary from country to country.<sup>15</sup> At present, there is no law governing the repatriation of trafficked victims from India to Bangladesh and Nepal.<sup>16</sup> Only NGOs working in the field are able to provide data on this aspect as they have sought to assist trafficked girls in reaching their homes by liaising with partner organizations across countries.

It is estimated that every year between 5,000 to 10,000 Nepalese women and girls are trafficked to India for the purposes of commercial sexual exploitation and work in brothels in various cities in India. However, 90% of India's sex trafficking is internal with victims of trafficking mostly being used for forced labor. Trafficking from neighboring countries accounts for the remaining 10%. Of this 10% about 2.17% is from Bangladesh and 2.6% from Nepal<sup>17</sup>. Movement from Pakistan and Sri Lanka has also been observed.

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<sup>12</sup> "Global Initiative to Fight Human Trafficking: The Facts", [http://www.unglobalcompact.org/docs/issues\\_doc/labour/Forced\\_labour/HUMAN\\_TRAFFICKING\\_-\\_THE\\_FACTS\\_-\\_final.pdf](http://www.unglobalcompact.org/docs/issues_doc/labour/Forced_labour/HUMAN_TRAFFICKING_-_THE_FACTS_-_final.pdf), accessed March 23, 2012.

<sup>13</sup> The highest numbers are estimated to come from South-East Asia, estimated to be 225,000. See *State of World Population 2006: A Passage to Hope; Women and International Migration*. (UNFPA, 2006), 45.

<sup>14</sup> Jyoti Sanghera, *op.cit.*

<sup>15</sup> See *Preventing and Combating the Trafficking of Girls in India Using Legal Empowerment Strategies: A Rights Awareness and Legal Assistance Programme in Four Districts of West Bengal, (June 2010-March 2011)*, International Development Law Organization, Rome, 2011.

<sup>16</sup> *Combating Trafficking of Women and Children in South Asia: Country Paper Bangladesh*. (Manila: Asian Development Bank, 2002), 22.

<sup>17</sup> See *Trafficking in Persons: Global Patterns*, United Nations Office on Drugs and Crime, Vienna, 2006.

During times of hardship, what starts out as illegal migration often ends up as trafficking.

A study conducted by the UNDP shows that the average age of trafficked girls from Nepal to India fell from 14 -16 years in the 1980s to 10 -14 years in 1994. Citing the data collected by *Sanlaap*, a leading Kolkata based NGO working for the rescue and rehabilitation of trafficked girls in West Bengal, the Asian Development Bank report indicates that about 10,000 women have been found in Kolkata brothels, of which 70 per cent are from Bangladesh<sup>18</sup>. The experts working on trafficking have identified many purposes namely, forced marriage, domestic work, agricultural labor, construction work, carpet industry, garment industry as well as other sites of work in the formal and informal economy, forced begging and organ harvesting. However, trafficking for commercial sexual exploitation is the most potent form in South Asia.<sup>19</sup> A study of the International Labor Organization estimates that whereas 43% of all victims are trafficked for sexual exploitation, another 32% are victims of economic exploitation, the rest being undetermined.<sup>20</sup>

Once these women are trafficked from one country to other, they lose most of their rights and become virtually stateless people. Even migrant women workers from Nepal and Bangladesh end up being trafficked. The NNAGT report (2002) reveals that there are cases where the journey starts as a migrant worker but ends up in brothel primarily because there are no authorized or safe channels for women migrant workers where their employment and payment for their work are guaranteed. In most cases the migration occurs without any legal or authorized documents. Unskilled female workers, between the ages of 9 and 25 years are the most vulnerable group and are often trafficked.<sup>21</sup>

### Migration and Trafficking

There is an increase in the trafficking of women and children alongside an increase in illegal and undocumented migration within the region.<sup>22</sup> This dramatic growth in migration and trafficking flows has resulted from a combination of push, pull and facilitating factors. Illiteracy, poverty, class clashes, natural calamities, political and ethnic unrest have all constantly increased vulnerabilities of marginalized groups, and made them susceptible to gross violations of human rights. At the same time, economic growth, relative prosperity and peace in industrialized and newly industrializing countries act as 'pull' factors. Growing economies create increased demand for imported

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<sup>18</sup> *Combating Trafficking of Women and Children in South Asia: Country Paper Bangladesh*, *op.cit.*, 21.

<sup>19</sup> S. Huda, "Sex Trafficking in South Asia", *International Journal of Gynecology and Obstetrics*, 2006, Vol. 94: 374-381.

<sup>20</sup> See "A Global Alliance against Forced Labor", International Labour Organisation, 2005 <http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf>, accessed March 24, 2012.

<sup>21</sup> *Women's Rights: Its Challenges and Sensitivity*. (Kathmandu: National Network against Girl Trafficking, 2002), 5.

<sup>22</sup> Jyoti Sanghera, *op.cit.*, 3-4.

labor. Young women are in particular demand because they are regarded as more compliant and less likely to rebel against substandard working conditions. In this context, it is to be noted that much of the earlier migration flows in Asia involved unskilled men looking for any type of work. However, studies indicate, a steady feminization of migration since the 1990s as women seize the economic opportunities that migration offers. This phenomenon has also affected the trafficking situation.<sup>23</sup>

Radhika Coomaraswamy's report provides important indicators for the possible intersections between trafficking and migration.<sup>24</sup> To describe the trends of trafficking in this part of the region Coomaraswamy says, "...traffickers fish in the stream of migration. They prey on the most vulnerable section of the migrants to supply to the most exploitative, hazardous and inhuman forms of work. Traffickers can also create migration situation by capitalizing on the lack of choice for the poor especially women and children. This very powerlessness of the migrants creates a condition in which they can easily be duped, coerced and exploited furthering their susceptibility to continuance of exploitation". A high demand for the services of women and children have been created in the flexible labor markets where women and children are paid much lower wages than men as they are considered "cheap" labor force and have little or no capacity to negotiate. "Women and children are in greater demand within the trade of human labor as the market is segmented on the basis of gender and age. Moreover, they are easier to control, intimidate and exploit than other groups and offer a far greater range of services at a very small cost. The gender discrimination they suffer and exclusion from the economic and political arenas makes them socially vulnerable subjects and is the key ingredient in their oppression."<sup>25</sup>

Human trafficking *per se* involves forced or coerced movements. Sometimes people are kidnapped outright and taken forcibly to another location. In other cases, traffickers use deception to entice victims to move with false promises of well-paying jobs. After providing transportation to get victims to their destinations, they subsequently charge exorbitant fees for those services, creating debt bondage. What begins as voluntary movement ends in some form of coercion.

Crossing the borders between India-Bangladesh and India-Nepal is a daily routine for many. It is interesting to note that India shares a 4,096 km border with Bangladesh, a large part of which is flat terrain and has only 20 official checkpoints manned by the Border Security Force (BSF) along this border. Being few and widely dispersed, often they are ineffective in maintaining strict vigil and illegal entries by traffickers are very common. A number of illicit migration businesses have developed to facilitate this cross-

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<sup>23</sup> *Ibid.*

<sup>24</sup> Radhika Coomaraswamy, *Report on Trafficking in Women, Women's Migration and Violence against Women*, February 29, 2000. UN Doc. E/CN.4/2000/68 (The Special Rapporteur's Report), <http://www.unhchr.ch/html/menu2/7/b/mwom.htm>, accessed March 12, 2012.

<sup>25</sup> *Ibid.*



border movement which may charge up to Rs. 50 per person for each trip.<sup>26</sup> A well-organized bribe system also assists the informal system that has developed. Further, a multiple passports system 'facilitates easy entry of Bangladeshi girls into Kolkata brothels and a close nexus exists between traffickers and border village communities'. In *Kushtia* area of Bangladesh, some villages are used as stations for the traffickers. Rajshahi borders of *Bidirpur* and *Premtali* are used because there are fewer check points. The border adjacent to *Jessore* is very popular with traffickers. Some hotels are used to keep the girls brought from different parts of Bangladesh. Usually the traffickers do not accompany the women while crossing the border. Therefore, it is difficult for the border police to arrest them. There are female members in the trafficking gang and this helps to hide their identity.<sup>27</sup> Once the women enter India, they are kept in West Bengal and Orissa. After being 'sorted and graded', they may be sent to Delhi, Mumbai or even to the Middle East.

Similarly, India has a 1,740 mile long open border with Nepal with 14 legal entry points along the entire stretch.<sup>28</sup> Under the 1950 Treaty between India and Nepal there is no immigration control for Nepalese traveling or migrating to India, which makes it easier for the traffickers to cross undetected. The ADB study on Nepal lists the districts through which this movement takes place and identifies the entry and exit points as well as the major border regions used by traffickers between Nepal and India.<sup>29</sup>

Internal conflicts in Nepal and Bangladesh have been a boon for traffickers. While adverse human security conditions in this part of South Asia have contributed to the process of forced migration and thereby created opportunities for trafficking, traffickers have also used the ongoing conflict to their advantage. Since border controls and normal policing are reduced at the time of turmoil, it becomes easier for the traffickers to move victims across borders.

Moreover, female members who are traditionally used to living within the private space, face a changed social context due to the conflict. The conflict places them on the streets, in the midst of the public space. When the patriarchs themselves are at risk, they have less power to escape, defend themselves and their female folk or obtain the protection and assistance necessary to survive.<sup>30</sup> The weakening or breakdown of community and family protection mechanisms make displaced women and girls especially vulnerable, leaving them subject to physical and sexual attacks, rape, and domestic violence. All these conditions increase vulnerability to trafficking. Experts argue that in many cases

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<sup>26</sup> See Jyoti Sanghera, op. cit. Also see *Survey in the Area of Child and Women Trafficking* (Dhaka: Bangladesh National Women Lawyers Association, 1998); *Review of the SAARC Convention and the Current Status of Implementation in Bangladesh*. (Dhaka: Asian Development Bank and International Organisation for Migration, 2009).

<sup>27</sup> See *Trafficking in Women and Children: The Cases of Bangladesh*. (Dhaka: UBINIG, 1995).

<sup>28</sup> *Combating Trafficking of Women and Children in South Asia: Country Paper Bangladesh, op.cit.*, 24.

<sup>29</sup> *Ibid.*

<sup>30</sup> See Anasua Basu Ray Chaudhury, "Women after Partition: Remembering the Lost World in a Life without Future", in *Gender, Conflict and Migration*, ed. Navnita Chadha Behera (New Delhi: Sage, 2006), 155-174.

when conflict leads to refugeehood and internal displacement, women and girls are taken as hostages and later trafficked into slavery, forced prostitution, abduction, forced military recruitment or sold into marriage. Sometimes refugee women and girls may be forced to provide sexual services to men in exchange for safe passage for themselves or their families or to obtain needed documents or other assistance.

On the other hand, it has been noted that internal trafficking within a state shares many overlaps with internal displacement. The United Nations Guiding Principles on Internal Displacement describe IDPs as “persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence...and who have not crossed an internationally recognized international boundary.”<sup>31</sup> The Handbook for applying the Guiding Principles on Internal Displacement makes it clear that the distinctive feature of internal displacement is coerced or involuntary movement that takes place within national borders. The reasons for flight may vary and include armed conflict, situations of generalized violence, violations of human rights, and natural or human-made disasters.<sup>32</sup> Whatever be the reason for displacement insecurity prevails.

Sometimes, internally displaced women and girls are forced to take refuge in the makeshift camps for their survival and security inside the camps leaves women and girls at risk of attack by men. In camps where protection is weak, prostitution, alcohol abuse, trafficking in drugs and other illegal activities have been considered as normal incidences. Women's inability to obtain basic services or protection takes a tremendous toll on their physical and mental health.

### **In Search of Protection**

The GAATW report reveals that migrant women, who might also be trafficked, combine multiple identities. They are victimized during trafficking, but as migrants they continue to be agents, devising resistive strategies, individually or collectively, as subaltern subjects. In this process of resistance, nationality, religion, class, caste and race are factors that provide cohesion, shaping their consciousness and identity.

Migration of people from conflict zones and crisis situations in turn interacts with structures of gender equality at every level - national and global, in families and communities. In the process of migration or forced displacement of these women, often their identity documents are lost, forfeited or destroyed. This issue gets accentuated in the context of trafficking. There are widespread reports of documents being stolen or destroyed either on arrival in a third country or prior to transfer. Once undocumented, problems can arise in relation to the establishment of both identity and nationality. This, in turn, may make it impossible for individuals to prove their status when they try to re-

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<sup>31</sup> See *Guiding Principles in Internal Displacement*, (New York: United Nations, 2001). In this context, also see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2000, which highlights in detail the legal basis of each of the Guiding Principles, [http://www.asil.org/pdfs/study\\_32.pdf](http://www.asil.org/pdfs/study_32.pdf) accessed March 16, 2012.

<sup>32</sup> *Ibid.*

enter their country – of their own accord or where the host country attempts to return them, or obtain assistance while in the host State. Thereby they may become *de facto* stateless<sup>33</sup> in due course.

Statelessness can have a severe impact on the lives of the individuals concerned. This is in part due to the role that nationality, as membership, plays in the formation of people's identities and the connection that they feel to the place where they live and the people around them. The possible consequences of this identity crisis are profound and touch on all aspects of life. These people may be easy prey for exploitation as cheap labour. In such situations sexual abuse and trafficking go hand in hand. Given these complex connections between trafficking and statelessness, trafficking of women and children must be seen as both a cause and a consequence of statelessness.<sup>34</sup>

In most cases the trafficked women and girls do not have documents that prove their legal status and this becomes a primary reason for their vulnerability and statelessness. Without papers they are unable to access justice or demand rights. These women do not have any unions to protect their interests and neither do they have linkages with their embassies. Also most of these women come from very poor families, so even their family networks are unable to protect them. In fact, often their families are responsible for selling them. Thus at a time when they need it most, these women are unable to turn to either the state or the community or the family. The moment they cross borders they become stateless and liable for prosecution, if they are caught. They are unable to protest because they are undocumented migrants. In all countries of South Asia stateless people are dealt with much severity notwithstanding the fact that they have been trafficked. In countries such as India stateless people are marked as "illegal migrants" and are often equated with terrorists.

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<sup>33</sup> Within the realm of public international law, rules have evolved in response to the problem of statelessness such as 1954 Convention relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness. According to the International Law Commission, the definition of stateless persons contained in Article 1 (1) of the 1954 Convention relating to the Status of Stateless Persons now forms part of customary international law. The Article defines 'stateless persons' as those who are not recognized as nationals by any state under the operation of its law. They therefore have no nationality or citizenship and are unprotected by national legislation and left in the arc of vulnerability. The International Law Commission has observed that the definition of a stateless person contained in Article 1(1) is now part of customary international law. 1954 Convention relating to the status of Stateless Persons and 1961 Convention on the Reduction of Statelessness exclusively deal with the issue of statelessness. These two legal instruments explain statelessness mainly in two ways *de jure* and *de facto*. A stateless person as defined by the 1954 Convention is generally equated with the term *de jure* statelessness. Besides, the Convention also refers to the category of *de facto* stateless persons - who remain outside the country of their nationality and hence are unable, or, for valid reasons, unwilling to avail themselves of the protection of that country. For a detailed discussion see Carol A. Batchelor, "Statelessness and the Problem of Resolving Nationality Status", *International Journal of Refugee Law*, Vol. 10 no. 1, 1998.

<sup>34</sup> See Paula Banerjee, "Women, Trafficking and Statelessness in South Asia", *Refugee Watch*, Issue 17, 2006.

In addition to legal issues arising out of statelessness and lack of identification papers, repatriation process itself poses several problems. In most cases the repatriation process is long and complicated and often obstructed by difficulties with cross-border cooperation in such matters. In this context, one can cite Jubeida's story, which shows how the process of repatriation can be further complicated where brothel owners and others have been involved in the exploitation of girls over an extended period.

*Jubeida is a 16 year old girl. She lived in Rongpur, Bangladesh with her mother and four younger siblings until a relative promised to find job in Dhaka. The relative ultimately trafficked her to West Bengal and sold her to a brothel. After two years of living in the brothel, she was rescued and taken to a short-stay home, where she delivered a baby boy. When she was rescued, Jubeida had given her name as Ratna – the new name given to her in the brothel. Out of fear of her exploitation she had also given the police false family information, which caused delays in the repatriation process. When Jubeida later shared her real name with counsellors, the relevant organisation located her family and the order was issued for her repatriation. Yet, because her son was born in India, he could not be repatriated along with her<sup>35</sup>.*

While Jubeida's story tells us about some of the legal complications that may obstruct the process of repatriation of trafficked women, these are further problematized due to statelessness. Trafficked women and girls without their identity papers become almost nowhere people in an unknown land.

### **Cloud of Suspicion**

Until recently, in the Eastern part of South Asia, the issue of cross-border trafficking was not a priority at all. While countries like Nepal and Bangladesh, the two main sending countries in the region, were interested to deal with the growing incidents of women and child trafficking regionally, the receiving countries like India and Pakistan did not want to acknowledge the cross-border dimension as being a major contributor to the problem. This polarization made it extremely difficult to address the issue of cross-border trafficking in an effective manner as countries played the "blame game" without wanting to take responsibility to combat the problem. As a result, no consensus existed on accepting the issue as a cross-border problem with regional dimensions.

However, in the last decade there have been changes in the attitude of most of the South Asian governments. One of the key shifts has been the growing consensus among countries in the region to view trafficking as a cross-border issue with clear regional dimensions, which has to be addressed jointly. In the year 2000, the then UN Special Rapporteur on Trafficking, Radhika Coomaraswamy visited all South Asian states to assess the problem and evaluate the response of state and non-state partners to combat the problem. The Report she submitted to the UN Secretary General was an important

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<sup>35</sup> See *Preventing and Combating the Trafficking of Girls in India Using Legal Empowerment Strategies: A Rights Awareness and Legal Assistance Programme in Four Districts of West Bengal*. (Rome: International Development Law Organization, 2011), 15.

catalyst in bringing about the desirable shift. The signing of the SAARC Convention on Trafficking in 2002 is the strongest indicator of the changed approach.

Article 1 of the Convention defines trafficking as:

“...the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consents of the person subjected to trafficking...”<sup>36</sup>

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

Though the SAARC Convention is seen as a milestone on the path to coordinated interventions against trafficking at the regional level, the Convention has its limitations. It defines trafficking within the limited scope of prostitution. Critics have argued that as the definition of trafficking provided in the Convention does not address trafficking from a general perspective, but only focuses on prostitution, the text of the Convention needs to be reviewed in order to broaden its scope. When there is no recognition of the fact that not all women in prostitution are held in force and that some enter it voluntarily, then the autonomy of women and their agency to make choices, however limited these may be, is denied. It has been said that when adult women are denied agency then they are ‘infantilized’ and in this situation they are treated as minors and children. While it is more or less universally agreed, that children may not enter commercial sex work since it is extremely hazardous for them as such work violates their rights, conflation of women with children is a different matter. Treating women as children deprives them of their adult status, and their right to mobility, sexual autonomy, agency and work.<sup>37</sup> Besides, it also fails to address the differential needs and rights of children. Moreover, the Convention is a regional instrument but it holds back from laying out specific processes for regional or bilateral collaboration to combat trafficking. On the other hand, there is apprehension that the Convention may become an instrument to restrict or control the voluntary movement of women from one country to another, and thereby reinforce patriarchal mindsets that it was expected to break.

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<sup>36</sup> See *SAARC Convention on Preventing and Combating in Women and Children for Prostitution*, 2000.

<sup>37</sup> In this context see Jyoti Sanghera and Ratna Kapur, *An Assessment of Laws and Policies for the Prevention and Control of Trafficking in Nepal*. (Kathmandu: The Asia Foundation and New Delhi Population Council, 2000), 26-29; Radhika Coomaraswamy, *Addendum Report to the Commission on Human Rights Mission to Bangladesh, Nepal and India on the Issue of Trafficking of Women and Girls* (October 28 to November 15, 2000); *Integration of the Human Rights of Women and the Gender Perspective, Violence against Women*. UN Doc. E/CN.4/2001/73/Add.2, February 6, 2001: 1-3, 10-18, 37-38.

However, it is true that most of the countries of the South Asian region which are affected by the problem have made a commitment at a national level to combat trafficking of women and children. Thus, India, Nepal, Bangladesh, Pakistan and Sri Lanka have each formulated some policy or plan of action to address this problem. Of these, Nepal, Bangladesh and India are perhaps the most proactive in attempting to combat the problem. To varying extents, most countries of the region have ratified the relevant international Conventions such as the UN Convention on the Rights of the Child (1989), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), the ILO Conventions No. 29 on Forced Labour (1930) and No. 138 on Elimination of Child Labour (1973). In addition, the Fourth UN Conference on Women in Beijing (1995), the World Congress Against Commercial Sexual Exploitation in Stockholm (1996), and the two International Conferences on Child Labour in Amsterdam and Oslo (1997) have provided avenues and impetus to the South Asian states to promote the human rights of the children and women.

Countries in South Asia, especially India, Bangladesh and Nepal have tried to bring about specific legislation addressing the issue in a broader perspective and not limiting it to prostitution as was the case so far. The Government of India has redrafted the Immoral Trafficking Prevention Act (1956), so that it moves away from victimizing the victim and addresses more effectively the issue of punishing the traffickers.<sup>38</sup> The Government of Nepal had as early as 1986 enacted a special law to deal with human trafficking. In recent years, due to extensive lobbying and advocacy by NGOs and women's activist groups, the inadequacies in this law are being examined and a new Human Trafficking Control Bill has been proposed. The Government of Bangladesh has also shown interest in defining strategies to arrest the rising incidence of trafficking in women and children. Bangladesh has set up an inter-ministerial task force to address the issue of trafficking. However, in most of the cases implementation is very weak. Due to limited advocacy for cross border cooperation and collaboration among the states at the multilateral and bilateral levels, expected results have not been achieved. As a result, trafficking of women and children from Nepal and Bangladesh continues unabated.

It is important to underscore the fact that every major anti-trafficking initiative in the region has been led by civil society. NGOs have carried the main burden in reaching out to trafficked persons, providing health and legal assistance, raising public awareness, steering the national legislative initiatives and providing training and technical assistance to law enforcement and border control authorities.<sup>39</sup>

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<sup>38</sup> Nandita Baruah, "Trafficking in Women and Children In South Asia- A Regional Perspective", <http://www.empowerpoor.org/downloads/Trafficking%20in%20South%20Asia.pdf> accessed March 20, 2012.

<sup>39</sup> See Ratna Kapur in *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, Global Alliance Against Traffic in Women (GAATW), Bangkok, 2007:114-141.

It would not be incorrect to say that an atmosphere of suspicion lies over South Asia. Suspicion has driven South Asian states to progressively tighten the strings on those migrants who may claim membership, thus creating growing pockets of statelessness at their cultural and geographical margins.<sup>40</sup> It has also been argued that if migration and the consequential presence of 'illegal' immigrants is an issue related to resources such as land and money then it is an issue related equally to nationalized politics, citizenship, and search for a self-sufficing identity".<sup>41</sup> In South Asia, colonial legacy, partition of the subcontinent and post-colonial state formation have together made trafficking a more complex phenomenon. As a result we see that the notion of nationalism, in a way, has become reflexive in South Asia, such that the nationalism of one South Asian country is articulated only vis-à-vis that of another South Asian country.<sup>42</sup> Therefore, "India will be nationalist vis-à-vis Bangladesh and never Great Britain, Pakistan vis-à-vis India or Bangladesh but never USA." To a South Asian country, articulating nationalism and defining nationalism has to be done in terms of distancing itself from other neighboring countries. Under the situation, without mutual understanding among the states of South Asia on human trafficking and migration and acknowledgment of the cross-border dynamic of the problem, stories like those of Rukmini and Jubeida will continue to persist.

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<sup>40</sup> Raghu Amay Karnad, Rajeev Dhavan, Bhairav Acharya, "Protecting the Forgotten and Excluded Statelessness in South Asia", <http://y4e.in/pdf/wc/Refugees%20and%20Displacement/Statelessness%20in%20South%20Asia.pdf>, accessed March 25, 2012.

<sup>41</sup> Ranabir Samaddar, "The Insecure World of the Nation" in *Migration and Circles of Insecurity*, Ranabir Samaddar and Paula Banerjee. (New Delhi: Rupa & Co, 2010), 5.

<sup>42</sup> See Anasua Basu Ray Chaudhury, *SAARC at Crossroads: The Fate of Regional Cooperation in South Asia*. (New Delhi: Sanskriti, 2006).

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