

Women trafficking in contemporary Asia: a regional panorama and international legal framework

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Abstract

Human Trafficking is exploitation and is a world where Men, Women, and Children are sold and purchased, and commoditised and exploited in multifarious ways leading to complete demolition of human life. The United Nations Office On Drugs and Crime (UNODC) defines human trafficking as any form of recruiting, transporting, transferring, harbouring, or receiving a person by means of threat or use of force or other forms of coercion, abduction, fraud, or deception. There are approximately 800,000 people trafficked across international borders annually and, of these, 80% are women or girls and 50% are minors. The costs to society include the degradation of human and women's rights, children exploitation, poor public health, disrupted communities, and diminished social development. Victims of sex trafficking acquire adverse physical and psychological health conditions and social disadvantages.

For years the south Asia region has been a hot bed of paradoxes – from hosting the largest democracy in the world, to hosting the most volatile regional civic unrest, the subcontinent has fuelled constant need to monitor and safeguard civil society of its varied problems. The purpose of this research is to identify the protection of independence and privacy of women, adolescents and foreign bride trafficking, in India and its shared boundaries. It will also address the multidimensional nature of the problem focusing particularly on the vulnerability of socially and economically disadvantaged women and girl child exposed to trafficking. It will also harbour a link between International agreements and laws relating to the same and also the gaps in law enforcement and strategies to combat effectively. In conclusion, this note fosters measures that may be taken in addition to ultimate prohibition and criminalization of human trafficking.

Keywords: Freedom, Human Rights, Trafficking, Women's Right

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Introduction

Hilary Clinton once said 'I believe that the rights of women and girls are the unfinished business in the 21st Century'. This statement by her is absolutely precise as in many countries women still have to struggle for their basic rights. History reveals that women were (are) deprived and made to suffer on the basis of gender, culture, race and religion. Human Trafficking is an inflating issue which includes both labour exploitation and sexual exploitation of its victims. Human Trafficking is a realm that affects people of all caste, creed, religion, age and gender in majority of countries in the world. Trafficking does not discriminate on gender basis and can both men and women can be the victims, although the predominant victims are women and girls worldwide, who are trafficked for the purpose of sexual exploitation. Traffickers primarily target women because they are not commensurate and affected by poverty, discrimination, factors that impede their access to employment, educational opportunities and other resources.

The evolution of the definition of trafficking

In the 1990s, the international community was sharply divided in its approach to the definition of trafficking in women. Until the drafting of the 2001 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, the main international legal document concerning trafficking was the 1949 United Nations Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The 1949 Convention took an approach to trafficking and prostitution that required states parties to punish any person who "procures, entices or leads away, for the purposes of prostitution, another person, even with the consent of that person; [or] exploits the prostitution of another person, even with the consent of that person." As the Special Report on Violence Against Women noted in her 2003 Report, this approach began to be challenged in the mid-1990s by advocates who argue that sex work is a legitimate commercial enterprise and who call for the decriminalization and licensing of prostitution.

In part because the 1949 Convention was weakened by the lack of monitoring and enforcement mechanisms, a new international framework for dealing with trafficking in

persons was needed. This framework was provided by the 2001 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons. In defining trafficking, drafters of the Protocol had to negotiate around the differences between advocates endorsing the approach similar to that taken in the 1949 convention and advocates favouring the regulation of commercial sex work. These differences centred on the question of consent in commercial sex work.

Some advocates argued for a definition of trafficking that would include all commercial sex work, regardless of whether the woman involved had consented. These advocates took the position that prostitution is inherently exploitative because even when prostitution would appear to be consensual, the choices of the woman involved were usually the product of poverty or past abuse. Therefore, they argued that the question of "consent" should be irrelevant. In addition, including the question of consent in the definition of trafficking would help traffickers by giving them a defence against prosecution, while placing a burden on the victim of trafficking, who would then be required to show that she did not consent. For more information on this position please see the website of the Coalition Against Trafficking in Women and A Guide to the New UN Trafficking Protocol by Janice G. Raymond.

On the other side of the debate, some advocates rejected the notion that voluntary participation in prostitution could be considered trafficking, and sought to draw a clear distinction between consensual and forced prostitution. These advocates argued that women should be free to make choices about how to live their lives, including the choice to enter prostitution. In addition, she maintained that punishing all prostitution might simply drive prostitution underground, making already marginalized women further subject to exploitation. For more information on this position please see the website of the Global Rights: Partners for Justice.

The definition of trafficking adopted in the 2001 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons reflects a compromise. The language adopted allows individual states to choose how they will address prostitution. The definition states:

(a) "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 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;

By allowing domestic laws on prostitution to prevail, the Protocol allows states to regulate or ban prostitution as they choose.

Trafficking of women

The trafficking of women for sexual exploitation is an international, organized, criminal phenomenon that has grave consequences for the safety, welfare and human rights of its victims.

Trafficking of women is a criminal phenomenon that violates basic human rights, and totally destroying victims' lives. Countries are affected in various ways. Some see their young women being lured to leave their home country and ending up in the sex industry abroad. Other countries act mainly as transit countries, while several others receive foreign women who become victims of sexual exploitation.

Sex and labour trafficking of women is a complicated phenomenon with many forces that affect women's decisions to work abroad. Perhaps the strongest factor is a desperate economic situation, which impacts the availability of satisfactory employment in many countries for women more severely than men. Women may become victims of trafficking when they seek assistance to obtain employment, work permits, visas and other travel documents. Traffickers prey on women's vulnerable circumstances and may lure them into crime networks through deceit and false promises of decent working conditions and fair pay. Women may go abroad knowing that they will work in the sex industry, but without awareness of the terrible work conditions and violence that accompany the trafficking business. Other women answer job advertisements for positions abroad such as dancers, waitresses, and nannies, only to find themselves held against their will and forced into prostitution and sexual slavery. In the destination countries, women are subjected to physical violence, sexual assault and rape, battery, imprisonment, threats and other forms of coercion.

Human trafficking in numbers

- 51% of identified victims of trafficking are women, 28% children and 21% men
- 72% people exploited in the sex industry are women
- 63% of identified traffickers were men and 37% women
- 43% of victims are trafficked domestically within national borders

(Estimates by the United Nations Office for Drugs and Crime (UNODC))

Trafficking in women: causes and risk factors

The various factors that contribute to trafficking are sometimes categorized as "supply side" factors, such as the feminization of poverty, and "demand side" factors, such as weak border controls in destination countries. Frequently, it is a combination of these factors that pushes women and girls into situations in which they are exploited and become victims of trafficking. Effective strategies to eliminate trafficking necessarily involve addressing multiple contributing factors.

While this analysis is useful in explaining the complex nature of trafficking, the factors that play a role in trafficking are actually interdependent and interconnected. Some factors, such as military conflict, do not fit neatly into either the "demand" or "supply" side of trafficking, but nevertheless have contributed to this problem in some regions. For example, internal conflicts force people to leave their home country, which may encourage trafficking across borders. At the same time, an increase in military personnel in a specific region also increases the "demand" for women to be brought from outside to work in the commercial sex industry.

Following are some of the most common causes and risk factors associated with trafficking in women.

Economic factors

At its core, trafficking is a result of women's unequal economic status. Of the world's poor, the majority are women. The number of women living in poverty has also increased disproportionately to the number of men. Women, more frequently than men, have the additional economic burden of caring for children. Women also face discrimination that limits their educational and employment opportunities. In the employment setting, women are often the last hired and the first fired. Women also disproportionately

experience sexual harassment in the workplace. This situation forces many women to look abroad for work and makes them particularly vulnerable to exploitation.

Demand for women's sexual services

Because women are often trafficked for the purpose of sexual exploitation, the demand for women's sexual services must be recognized as one of the root causes of trafficking in women. The U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children asks states to "adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking." The United Nations High Commissioner for Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking also addresses demand which calls for the preparation and dissemination of "public awareness materials designed to discourage the demand that fosters the exploitation of persons, especially women and children that leads to trafficking."

Search for a better life and desire to travel

A desire to travel combined with poverty and other factors compel many women to look abroad in search of better lives. Many women attempt to explore the world through employment agencies or study abroad programs, without knowing whether the agencies are legitimate. While it is possible in some countries to verify the legitimacy of an educational or employment agency, often through hotline services, non-governmental organizations have determined that there is still a need for basic information about safe employment or travel opportunities.

Domestic violence

Domestic violence is one of the most widespread violations of women's rights in the world. Due to limited legal mechanisms and support for abused women in many communities, women often see few opportunities to end the abuse. Research suggests that victims of domestic violence may also be at risk of becoming victims of trafficking when they seek work abroad in order to leave the abusive situation.

Organized crime

Organized crime in the region includes activities such as money laundering, racketeering, extortion, bribery of public officials, trafficking of narcotics and weapons, and trafficking of women and children. According to the United Nations Centre for International Crime Prevention:

Over the last decades, smuggling and trafficking have become a major activity and source of income of criminal organizations, at the national and international levels. Different criminal networks, both local and transnational, are facilitating and/or managing smuggling and sexual exploitation, while making substantial profits. An ever increasing networking among different organized crime groups provides for economies of scale and for full control of the smuggling-trafficking sequence; from smuggling to the control of sex markets.

Government policies and practices

Trafficking in women persists, in part, due to the fact that many national governments neither control nor prevent the problem. Government policies and practices may actually facilitate trafficking. The connections between national government practices and trafficking vary. At one end of the continuum, government inaction and lack of attention to the matter make it possible for trafficking to exist. At the other end, corrupt government officials may be actually involved in the trafficking process.

The UN High Commissioner for Human Rights report, Recommended Principles and Guidelines on Human Rights and Human Trafficking, specifically cites the lack of adequate legislation on human trafficking as a major obstacle in the fight against trafficking. It additionally states the need to harmonize legal definitions and procedures and cooperation at the national and regional levels in accordance with international standards, as well as the need for cooperation and coordination between states and regions because trafficking is a regional and global phenomenon that “cannot always be dealt with effectively at the national level.”

Trafficking of women across the world

The United Nations estimates that 4 million people are trafficked each year, resulting in \$7 billion in profits to criminal groups. Many countries have weak, unenforced or no laws against trafficking in human beings, often making it less risky and more profitable to criminal groups than drug or arms trafficking. With increased economic globalization,

trafficking in women from poor to wealthier countries appears to be on the rise. Trafficking networks may recruit and transport women legally or illegally for slavery-like work, including forced Prostitution, sweatshop labour, and exploitative domestic servitude.

Thailand

Thai and hill tribe women and girls are trafficked to Japan, Malaysia, South Africa, Bahrain, Australia, Singapore, Europe, Canada and the United States for sexual and labour exploitation. Many women and girls are trafficked by international criminal syndicates and lured to Chinese Taipei, Malaysia, Gender Equality in the Gender Equality in the Gender Equality in the United States of America of America of America, and the Middle East by labour recruiting agencies and are forced into involuntary servitude because of the high debt owed to the agencies. A number of women and girls from Burma, Cambodia, and Vietnam transit through Thailand's southern border to Malaysia for sexual exploitation primarily in Johor Bahru, across from Singapore. 5 Anecdotal evidence also points to an increase in trafficking of foreign migrants for sexual exploitation. Burmese, Khmer, Lao and ethnic minority girls/young women have been reported trafficked in border areas and into major urban centres and sometimes through Thailand to third countries such as Malaysia, Japan and destinations in Europe and North America.

India

According to the Ministry of Women and Child Development, 19,223 women and children were trafficked in 2016 against 15,448, the previous year. The highest number of victims recorded in the eastern state of West Bengal. 9,104 children were trafficked last year, a 27% increase from the previous year.

The National Crime Records Bureau showed that almost equal numbers of children and women were trafficked. Thousands of people, largely poor, rural women and children are lured to India's towns and cities each year by traffickers who promise good jobs, but sell them into modern day slavery.

Some end up as bonded labour or domestic workers, or forced to work in small industries such as textile workshops, farming or are even pushed into brothels where they are sexually exploited. Around 80% of the human trafficking across the world is done

for sexual exploitation and the rest is for bonded labor. India is considered as the hub of this crime in Asia.

As per the statistics of the government, in every 8 minutes a child goes missing in our country. In 2011 about 35,000 children were reported missing.

In the Mewat district of Haryana (India) women are sold as sex slaves to men and then sold again in a 'bizarre form of currency'. For many years now, girls (some barely in their teens) are trafficked from the poor regions of Assam, Bihar, Jharkhand, Orissa, eastern Uttar Pradesh and West Bengal with promises of employment or marriage and are sold in this district. These girls are locally called 'Paros'. A Paro literally means 'one from Yamuna par', i.e. 'one from across the river Yamuna'. The number of Paros in Mewat is estimated to be anywhere between 15000 to 50000.

The Mewat region lies loosely in the North-Western states of Haryana and Rajasthan in India, and covers the districts of Mewat (Haryana), and Alwar, Bharatpur and Dholpur (Rajasthan). The region derives its name from Hasan Khan Mewati, a local chieftain, who had fought the Mughal ruler Babur in 1527. The region is extremely poor, and one of the most backward in the country.

Bride trafficking in India

Bride trafficking is a form of modern slavery where the victim is bought and sold against their will for the purposes of marriage. In India's northern state of Haryana, female foeticide, female infanticide and deliberate neglect of female children have resulted in one of the worst instances of gender imbalance in the country. Preference for sons stems from centuries old patriarchal traditions which see women as financial burdens where property is passed down the male lineage and dowry expenses are expected to be paid by the bride's family to the groom upon marriage.

According to the 2011 census there were 877 females to 1,000 males in Haryana against the national average of 933 females to 1000 males. A 2013 field study of 10,000 households in Haryana revealed that 90% of the married women were sold as brides from other states. The vast majority of women trafficked into Haryana are from impoverished states in the region such as Andhra Pradesh, Assam, Bihar and West Bengal.

Haryana is one of the wealthiest states in India with the third highest per capita income in 2014-2015 of 147,076 rupees (USD\$2,293). An unintended consequence of Haryana's economic development is the advancement of medical technology and accessibility of its health care system which offer prenatal screening to determine the sex of the foetus. This has created a paradoxical situation where adverse sex ratio is perpetuated by parents routinely aborting female foetuses in favour of sons, meanwhile contributing to the increase in demand for imported brides.

Due to the shortage of women in Haryana, the men in higher caste groups of Haryana are able to marry local women while those in lower caste groups, the unemployed, poor or those who have disabilities seek cross-region brides from the neighbouring poorer regions. Despite the prevalence of the dowry system across all castes and regions in India, men in lower caste groups are willing to pay for a bride, referred to as a "low caste practice."

In the many cases of bride trafficking, women's exploitation is an indirect impact of agrarian class structure which drives their families into extreme poverty. Women are seen as commodities to be exchanged and a form of cheap labour to be exploited under a patriarchal setup.

Constitutional and legislative provision in India:

- Trafficking in Human Beings or Persons is prohibited under the Constitution of India under Article 23 (1).
- Protection of Children from Sexual offences (POCSO) Act, 2012, which has come into effect from 14th November, 2012 is a special law to protect children from sexual abuse and exploitation.
- The Immoral Traffic (Prevention) Act, 1956 (ITPA) is the premier legislation for prevention of trafficking for commercial sexual exploitation.
- Criminal Law (amendment) Act 2013 has come into force wherein Section 370 of the Indian Penal Code has been substituted with Section 370 and 370A IPC which provide for comprehensive measures to counter the menace of human.
- There are other specific legislations enacted relating to trafficking in women and children:
 - Prohibition of Child Marriage Act, 2006,

- Bonded Labour System (Abolition) Act, 1976,
- Child Labour (Prohibition and Regulation) Act, 1986,
- Transplantation of Human Organs Act, 1994,
- apart from specific Sections in the IPC
- State Governments have also enacted specific legislations to deal with the issue. (e.g. The Punjab Prevention of Human Smuggling Act, 2012).

International instruments concerning trafficking in person

- The most important international instrument to combat trafficking is the Palermo Protocol, a supplement to the UN Convention against Transnational Organized Crime (2000). Article 5 of the Protocol requires States to criminalize trafficking, attempted trafficking, and any other intentional participation or organization in a trafficking scheme.
- Two International Labour Organization (ILO) conventions focus on forced labour or services: The ILO Forced Labour Convention (Convention No. 29 of 1930) and its newly adopted Protocol, which defines forced or compulsory labour, and the ILO Abolition of Forced Labour Convention (Convention No. 105 of 1957).
- The Slavery Convention (1926) defines slavery, and its Supplementary Convention describes “practices similar to slavery,” including debt bondage, and institutions and practices that discriminate against women in the context of marriage.
- The UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) requires States to punish any person who exploits the prostitution of another.
- The International Covenant on Civil and Political Rights (ICCPR) prohibits a number of practices directly related to trafficking, including slavery, the slave trade, servitude and forced labour. Instruments Concerning the Trafficking.
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires States to take all appropriate measures to suppress all forms of trafficking in women and exploitation of prostitution of women. General recommendation No. 19 identifies trafficking as a form of violence against women because it puts women at special risk of violence and abuse. Trafficking is incompatible with the equal enjoyment of rights by women and with the respect for their rights and dignity.

- Some international instruments have specific provisions concerning the trafficking of children. The Convention on the Rights of the Child (1989), and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (2000), prohibits trafficking in children for any purpose, including for exploitive and forced labour. Article 39 of the CRC requires States to “take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse.” The CRC also requires States to recognize the right of every child to education (Article 28) and “to facilities for the treatment of illness and rehabilitation of health” (Article 24). The Optional Protocol to the Convention on the Sale of Children specifies particular forms of protection and assistance to be made available to child victims.
- Additionally, the ILO’s Worst Forms of Child Labour Convention (Convention No. 182 of 1999) prohibits perpetrators from using children under 18 years of age for all forms of slavery or practices similar to slavery, trafficking, debt bondage, serfdom, forced or compulsory labour, and prostitution. Article 7(2)(b) and (c) requires States to take effective and timely measures to provide for the rehabilitation and social integration of former victims of the worst forms of child labour, including trafficking, as well as to ensure their access to free basic education, and, wherever possible and appropriate, vocational training.

Conclusion

More than 200,000 Indian children are trafficked each year and forced into domestic servitude or labour in brick kilns or embroidery factories. But while government-sponsored Anti-Trafficking Units, which are supposed to investigate human trafficking cases, continue to be established and more prosecutions are occurring, the laws are not widely enforced. Part of the problem is that it’s hard to say if one universal trafficking law can work and be enforced for a country as large and regionally diverse as India. At the same time, factors like corruption and lack of training and resources make it difficult to ensure that programs are effective.

In order to combat the evil human trafficking, we need to strengthen our education system as well as promote effective delivery and execution of judgement. People need to be made more aware of their rights. Proper punishment must be delegated to the culprits who encourage such activities in the society. N.G. O’s and other hoax organisation’s working

under the veil, must be warned. Compensation must be provided to the victims and other necessary services such as health services, education facilities as well. The governments of the countries must work together in an effective way creating a healthy and secured life for their every citizen.