Human Trafficking in South Asia: Application of Anti Trafficking Laws and The States’ Duty to Protect Human Rights of The Victims

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ABSTRACT

Human trafficking, a neo-slave trade, is a common menace in South Asia. It means the illegal transfer of one person from one place to another place. Thousands of people have been subjected to cross-border trafficking over the years from less developed countries, mostly from Bangladesh and Myanmar, to comparatively developed countries like Indonesia, Thailand, and Malaysia by sea. Many of them died en-route due to starvation and torture. Many died in high sea being evicted by the coast guards from the territorial zones of the countries where the boats, carrying the victims of human trafficking, are destined to. Thousands are also trafficked to India, Pakistan and the countries of Middle East. The victims are being subjected to sexual slavery, prostitution and forced labour. There seems to be some conflicts between the strict enforcement of the laws on prevention of unlawful entry by the foreigners in the countries where they are being illegally transferred and eviction of them therefrom and the international laws relating to upholding and protecting the human rights of every human being on earth. The human rights law have universal application. Almost all the member states of the United Nations that adopted Universal Declaration of Human Rights, 1948 and other human rights instrument like the ICCPR are promise-bound to protect some human rights of every human being irrespective of colour, race, sex, nationality and place of birth. This paper tries to understand the causes of alarming growth of human trafficking in this region. The study analyses the international conventions, regional conventions, and the domestic laws of the countries that deal with human trafficking. The study will discuss the duties of the concerned states under the international laws to protect the human rights of the victims of human trafficking especially the right to life and the right not be compelled to do any force labour.

Keywords: Trafficking, Prevention, Human Rights, Protection.

Introduction

Human trafficking is a ‘social evil’ that seems to be growing at an alarming rate throughout the world. This practice results in unimaginable human suffering and represents one of the most important human rights violations of our times, resulting in a form of ‘Modern Slavery’. South Asia is one of the most vulnerable regions for trafficking because of its large population, large-scale rural-urban migration, the large population living in conditions of chronic poverty, and recurrent natural disasters. All these factors make people vulnerable and an easy target of traffickers. During distress situation, lack of shelter for girls is a great problem.

1.1 Definition

The word ‘trafficking’ means to transfer from one place to another. If the term is used in reference to women and children, the phrase, ‘trafficking women and children’ means illegal transfer of women and children from one place to another. Human trafficking is a complex phenomenon, resulting from the involvement of diverse national and transnational factors. Although trafficking in persons is often identified as a part of organized and/or cross-border crime, it also occurs within national boundaries - called internal trafficking. Human trafficking, whether internal or cross-border is inextricably linked with forced, fraudulent or involuntary migration/movement of people, and the end-object of this crime is sexual, labor, or other forms of exploitation. As such, unsafe/irregular migration always runs the risk of human trafficking. Human trafficking is, however, different from human smuggling, which involves international travel/movement and in which the smuggled migrant is not forcibly held once he/she reaches the destination country.

1.2 Development of International Convention against Human Trafficking
International pressure to address trafficking in women and children became a growing part of the social Reform movement in the United States and Europe during the late 19th century. International legislation against the trafficking of women and children began with the ratification of an international convention in 1901, followed by ratification of a second convention in 1904. These conventions were ratified by 34 countries. The first formal international research into the scope of the problem was funded by American philanthropist John D. Rockefeller, through the American Bureau of Social Hygiene. In 1923, a committee from the bureau was tasked with investigating trafficking in 28 countries, interviewing approximately 5,000 informants and analyzing information over two years before issuing its final report. This was the first formal report on trafficking in women and children to be issued by an official body (Nitzka Berkovitch, 1999).1

The League of Nations, formed in 1919, took over as the international coordinator of legislation intended to end the trafficking of women and children. An international Conference on White Slave Traffic was held in 1921, attended by the 34 countries that ratified the 1901 and 1904 conventions.2 Another convention against trafficking was ratified by League members in 1922, and like the 1904 international convention, this one required ratifying countries to submit annual reports on their progress in tackling the problem. Compliance with this requirement was not complete, although it gradually improved: in 1924, approximately 34% of the member countries submitted reports as required, which rose to 46% in 1929, 52% in 1933, and 61% in 1934.3 The 1921 International Convention for the Suppression of the Traffic in Women and Children was sponsored by the League of Nations. In 1949, the first international protocol dealing with sex slavery was the 1949 UN Convention for the Suppression of the Traffic in Persons and Exploitation of Prostitution of Others. This convention followed the abolitionist idea of sex trafficking as incompatible with the dignity and worth of the human. Serving as a model for future legislation, the 1949 UN Convention was not ratified by every country, but came into force in 1951. These early efforts led to the 2000 Convention against Transnational Organized Crime, mentioned above. These instruments contain the elements of the current international law on trafficking in humans. The United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) was conceived to promote the global fight on human trafficking, on the basis of international agreements reached at the UN. UN.GIFT was launched in March 2007.

1.3 An Overview of Human Trafficking in South Asia

Women and children are sold, traded, and exchanged for sexual slavery and prostitution, and bonded labor across borders, such as from Bangladesh to India, Pakistan, and the Middle East; from Nepal to India; from Burma to Thailand; from Vietnam to Kampuchea; and from the Philippines to Japan.

According to Government of Bangladesh estimates, in 1996–97, 227,584 Bangladeshi’s were legally employed overseas.4 If data for illegal migration is difficult to gather, statistics for trafficking are even more intractable. Despite this however, figures have been put forward by several sources (government and NGO) on the victims of trafficking for Bangladesh. Some of this data is presented below:

- 200,000 women and children are estimated to be trafficked to the Middle East in the last two decades. 200-400 women and children are estimated to be smuggled out each month to Pakistan, and in all 200,000 women have been trafficked to Pakistan over the last ten years.5
- It is estimated that 4,700 children have been rescued from traffickers in the past five years, and that 3,500 girls have been trafficked out of Cox’s Bazar over the past ten years.6
- It is estimated that 200,000 Bangladeshi children work in the brothels of Pakistan.7
- It is estimated that there are between 150,000 and 200,000 street children in Bangladesh. They are engaged in numerous low-range remunerative activities as well as petty crime, substance abuse and prostitution.8


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4 Bangladesh Bureau of manpower and Employment.
7 Lawyers for Human Rights and Legal Aid, Pakistan
After the independence from British colonization in 1947, the Indian subcontinent was divided into two countries: India and Pakistan. Pakistan had two distinct geographic regions: East Pakistan and West Pakistan separated by 1,200 miles. Thus, many cross-border families were formed. During separation, many Muslim families from India migrated to Pakistan, particularly to East Pakistan. Again, many Hindus living in East Pakistan moved to India. On both sides of the newly-drawn border between India and Pakistan and India and Bangladesh, there are many “enclaves”. 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 BWNLA has shown that these enclaves have been used as recruitment and collection sites by traffickers.

It has been reported that there are about one million ‘undocumented’ Bangladesh women in Pakistan. A significant number of who are believed to have been trafficked. According to the UNIFEM, about 300,000 Bangladeshi children have been trafficked to brothels in India over a period of time.

Over the last five years at least 13,220 children are reported as being trafficked out of the country and it was possible to rescue only 4,700 of them. It is believed that about 4,500 women and children from Bangladesh are trafficked to Pakistan annually. On the other hand, Bangladesh boys in the ages between 4-12 years are trafficked for camel racing in the Gulf; sexual exploitation of these boys by the employers in not uncommon.

A recent Amnesty International report on Malaysia indicated Bangladeshis spend more than three times the amount of recruitment fees paid by other migrant workers recruited for work in Malaysia. NGOs report many Bangladeshi migrant laborers are victims of recruitment fraud, including exorbitant recruitment fees often accompanied by fraudulent representation of terms of employment.

In Bangladesh, the procurement of women and children for the purpose of trafficking occurs in diverse methods. One of these practices is procuring young girls through marriage. For this purpose, men are being employed outside the country. They come back to their village homes to get married. After marriage, the young wife accompanies the husband to his place of work and no trace could be found of these young girls.

Another way adopted by the traffickers entices young girls that they would provide them with jobs and better prospects in other countries. “What is alarming is that a large number of garment factories are now acting as recruiting stations for the traffickers”. Third method, sometimes, parents also sell their children to the traffickers on account of poverty and hunger. Kidnapping is another way that is being practiced for the procurement of women and children for trafficking.

Bangladesh, India, Myanmar, Pakistan, Sri Lanka prohibit the selling and buying of a child under the age of 18 for prostitution in Articles 372 and 373 of their Penal Code. Prescribed penalties under these sex trafficking statutes ranges from 10 years’ imprisonment to the death sentence. The most common sentence imposed on convicted sex traffickers is life imprisonment. These penalties are very stringent and commensurate with those prescribed for other serious crimes, such as rape. Article 374 of Bangladesh, India, Myanmar, Pakistan, Sri Lanka’s Penal Code prohibit forced labor, but the prescribed penalties of imprisonment for up to one year or a fine are not sufficiently stringent.

Its high-profit, low-penalty-nature makes human trafficking attractive to criminal gangs. The crime of trafficking is mainly committed against persons who are socially and economically vulnerable. Economic underdevelopment generates huge exodus of men and women to affluent countries. As far as trafficking in women and children is concerned, it necessarily involves a gender dimension and a negative consequence on the rights of women and children as almost all the women-victims are trafficked for the immoral purposes of flesh trade or child-victims are sold as suppliers of human organs.

3 Consequences of Trafficking

Trafficking is a violation of human rights, and has various consequences at the individual, family, community and country levels. The trafficked women and children are forced and sold as sex workers, domestic workers, laborers and other type of exploitative works. The specific consequences are stated below.

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9 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.
10 BWNLA stands for Bangladesh National Women Lawyers Association.
11 UNIFEM Annual Report 2008-09.
1.1 Violations of Human rights

The main consequence of trafficking is the violation of basic human rights of women and children. A few of the fundamental human rights of the trafficked people that are risked and violated are discussed below.

1.1.1 Right to life in a secured environment

Article 6 of ICCPR conform the right to life and survival and Article 17 assures the right to privacy and its' protection by the law. According to the Article 9 of ICESCR, everyone has the right to social security, including social insurance. In the Article 11 of Bangladesh’s constitution it is stated that “the Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured.” Human trafficking is the violation of all this rights of a human being.

1.1.2 Right to Health

Victims of trafficking work under conditions which are hazardous to their mental and physical health. The trafficking of young women into prostitution has a formidable impact on HIV transmission. Studies have shown that brothel sex workers are most likely to become infected during the first six months of work. Another study reported that about 80% of the street child prostitutes were suffering from problems relating to reproductive organs, such as vaginal oozing, vaginal itching. Children and women trafficked for purposes other than commercial sex, for instance, domestic and industrial work may also have an increased risk of HIV infection because of their exposure to instances of forced sex and perhaps also the potential initiation into substance misuse, including contact with intravenous drug users. The provision of health care for these women and children is often sporadic at best. Serious illnesses often go untreated. Unwanted pregnancies and high-risk abortions are also common and may have lethal consequences.  

1.2 Legal effects

The legal consequences for trafficked persons vary depending on the legislation in the country of destination and the country of origin. In the vast majority of destination countries, trafficking is primarily seen in terms of illegal migration and prostitution. Since trafficked persons rarely have either travel documents or residence permits, the law enforcement authorities focus on the victims rather than the traffickers. Victims may be arrested and deported while the perpetrators go unpunished and continue to operate.

1.3 Communal effects

The effects of trafficking in persons on society have not yet been sufficiently analyzed. However, there seem to be negative repercussions. Trafficking manifests and perpetuates patriarchal attitudes and behavior and undermines efforts to promote gender equality and eradicate the discrimination of women and children. Trafficking in persons is also closely intertwined with other criminal activities such as drug dealing, illegal gambling and money laundering.

The specific consequences are given below:

I. The young women are being victim of deception with the false hope of employment and marriage without dowry and ultimately many of them are involve in sex trade.

II. Many of the women and children are compelled to forced marriage, forced begging, camel jockeying due to coercion.

III. Women and children are subject of forced labor and slavery like practices.

IV. Many children are being victim of debt bondage labor.

V. Probability of HIV/AIDS due to expansion of sex industry.

VI. In many times trafficked victims are killed for organ harvesting.

1.4 Social effects

Trafficking into the sex industry leads to stigmatization of the victims and their families. This makes it hard for the victims to return to their families, who may not welcome them. It may also be hard to get acceptance and support from the community at large. It may be even harder if the victim is believed to suffer from HIV.

2. Anti-trafficking arrangements in South Asian countries

2.1 Prevention

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20 Ibid.
22 Ibid.
Trafficking in persons particularly in women or children is the worst form of human rights violations and a heinous crime committed by the organized syndicate. This is a billion-dollar enterprise next only to narcotic drugs and arms trafficking. Trafficking in women and children is not a new phenomenon either within the South Asian region or globally but from all the given evidence it appears that trafficking in women and children witnessed alarming escalation in recent years. Bangladesh has been marked by its role as "sending" country or country of origin.23

South Asian countries like Afghanistan, Bangladesh, Bhutan, India, Maldives, Myanmar, Nepal, Pakistan and Sri Lanka have signed following International Instruments. The governments of those countries are pressured by the international community to take necessary steps in order to prevent Human Trafficking:

I. The Government of Afghanistan, Bangladesh, Bhutan, India, Maldives, Myanmar, Nepal, Pakistan and Sri Lanka have ratified the Conventions on the Rights of the Child (CRC) in the early 1990s.

II. The governments of Afghanistan, Bangladesh, Bhutan, India, Maldives, Myanmar, Nepal, Pakistan and Sri Lanka have ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1981.


IV. South Asian countries are signed and ratified the South Asian Association for Regional Cooperation (SAARC) Convention on Prevention and Combating Trafficking in Women and Children for Prosecution.


VII. Afghanistan, Bangladesh, India, Maldives, Nepal, Pakistan and Sri Lanka have ratified ILO Forced Labor Convention, 1930.

VIII. Afghanistan, Bangladesh, India, Maldives, Nepal, Pakistan and Sri Lanka have ratified Abolition of Forced Labor Convention, 1957.

IX. Afghanistan, Bangladesh, India, Maldives, Nepal, Pakistan and Sri Lanka have ratified Worst Forms of Child Labor Convention, 1999.


4.2 Protection

4.2.1 Rescue and Recovery of Trafficked Persons

As mentioned earlier, the law enforcing agencies, like Police, BGB, BSF, Pakistan Rangers, Nasaka and Coast Guards of those countries have been given strict instructions to rescue and recover the trafficked persons and apprehend the traffickers. The Deputy Commissioners and the Superintendents of Police have also been tasked to rescue and recover the trafficked persons. Because of the measures put in place, 543 trafficked persons were recovered from 15 June 2004 to 15 February 2007. Of them, 257 are women and 261 are children.25

4.2.2 Rehabilitation/Reintegration of Recovered Persons

The members of law enforcing agencies, the Deputy Commissioners, the Superintends of Police and NGOs have been tasked to rehabilitate the recovered trafficked persons through social reintegration process. The recovered trafficked persons are rehabilitated in the following two ways, (i) the trafficked persons are sent to their parents or guardian after due verification and proper documentation and (ii) if parents or guardians are not found immediately, the trafficked persons are sent to the nearest government or NGO-run safe homes (shelter). Some initiatives have been taken by respective GO / NGO in their safe homes for the welfare of the trafficked persons, while waiting for the reintegration with their family/ society.

23 Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka, United Nations Office on Drugs and Crimes, Regional Office for South Asia, New Delhi: 2011.


These are physical and mental treatment, psychosocial counseling, shelter, food, clothing, and legal aid, training on skills development for economic and social reintegration.

Of the recovered victims during 15 June 2004 to 15 February 2007, (a) 484 persons were rehabilitated by being sent to their parents and guardians after proper verification and documentation, (b) 11 persons were sent to the safe homes of the Ministry of Social Welfare and the Ministry of Women and Children Affairs, and (c) 39 persons were sent to the safe homes of NGOs.  

4.2.3 Repatriation of Trafficked Persons

When any information regarding trafficked victim is received through foreign mission of Bangladesh or other organizations including NGOs, the Ministry of Home Affairs takes necessary steps for quick and smooth repatriation of such victim. Recently, UNICEF-Bangladesh has taken initiatives to hold a bi-lateral meeting between India and Bangladesh for repatriating the Bangladeshi children who were trafficked in India.  

4.2.4 Follow up of Recovered and Rehabilitated Trafficked People

Due care has been taken to see that trafficked persons once recovered and rehabilitated do not become unfortunate victims of trafficking again nor do they feel neglected or be left without attention and care. The Deputy Commissioners (DCs), Superintendents of Police (SPs), the Officers in Charge of Police Stations (OCS), representatives of NGOs and different committees at various administrative units are involved in the monitoring of rescue, repatriation, rehabilitation and reintegration. They have been advised to regularly monitor the condition of recovered and rehabilitated trafficked persons and report back to MOHA. A Community Care Committee for Reintegrated Camel Jockeys has also been formed to prevent them from being re-trafficked, to facilitate their education, and to be vigilant about the social and economic security of the child.  

4.3 Prosecution

4.3.1 Legal Reforms

Afghanistan, Bangladesh, India, Maldives, Nepal, Pakistan, Sri Lanka have several laws governing children’s and women’s rights but they are not consolidated in one statute. Instead, they are scattered in various laws and statutes, such as Constitutional provisions, the Penal Code. South Asian countries have made significant and noteworthy changes in their legal provisions to address the issue of trafficking, exploitation and violence against women and children.

4.3.1.1 Penal Code, 1860 with Amendments to Section 366A and 366B in 2001

The Amendment of section 366 now prohibits inducing a girl under 18 years of age to go from any place or to do any act with the intent that she will be forced to or seduced into having illicit intercourse. Section 366B prohibits imposing a girl below 21 years of age with the intent that she will be forced or seduced into having illicit intercourse.  

4.3.1.2 Cruelty to Women (Deterrent Punishment) Ordinance, 1983

The Ordinance contains specific penalties for trafficking in women with a provision of imprisonment that could extend up to 14 years.

4.3.1.3 Women and Children Repression Prevention Act, 1995 (Special Provision)


27 Ibid.


30 Ibid.
The Women and Children Oppression Act of 1995 (Special Provision), is a modification of the 1983 Cruelty to Women (Deterrent Punishment) Ordinance. In the new Act, crimes related to children are tied to those related to women. This Act specifies (section 8) that, trafficking a woman for prostitution or unlawful or immoral purposes or import or export or buying or selling or renting or engaging in any other form of transportation of women, is subject to life imprisonment and fine. Section 9 of this Act stipulates that kidnapping a woman for illegal or immoral purposes such as, prostitution, non-consensual marriage or forced/falsely enticed intercourse is an offence punishable by life imprisonment, 10 years rigorous imprisonment and fine. Section 12 of this Act states, that a person engaged in the act of illegally importing, exporting, buying or selling of a child, keeping a child or transferring a child to another is subject to the death penalty or life imprisonment. Section 14 of to Act makes accomplices to any of the above offences liable to the same penalties as the principals.31

74.3.1.4 Women and Children Repression Prevention Act, 2000 [Amendment in 2003]

This contains specific penalties for trafficking in women and children with a provision for death sentence or life imprisonment; and Amendment to Women and Children Repression Prevention Act, 2003. In this revision a child has been defined as a person of the age of 16. At present all offences relating to trafficking in women and children are tried under the Act of 2000, as amended up to 2003.

Besides these laws:
- The Suppression of Immoral Trafficking Act, 1993, provides stringent penalties for forcing a girl into prostitution.
- The Anti-terrorism Ordinance of 1992 makes all types of terrorism including the abduction of women and children a punishable offence.
- The Children Act of 1974 and 1933 (Pledging of Labor), seek to protect children from exploitative and hazardous conditions.
- The Penal Code of 1860 contains strict provisions and penalties for kidnapping.

4.3.2 Special Tribunals for prosecuting the cases relating to violence against Women and Children including trafficking

Under Women and Children Repression Prevention Act 2000 (as amended in 2003) 42 Special Tribunals have been established in 33 districts of the country and a special Judge has been posted to each tribunal for trying cases only relating to violence against women and children including trafficking in women and children. 42 Special Public Prosecutors have been designated in 42 tribunals for conducting these cases. A Deputy Attorney General has been designated for dealing with cases in trafficking in women and children at the national level. This initiative was taken to facilitate the quick disposal of cases related to trafficking in women and children.

Conclusion

Trafficking is today a major social and political concern both globally as well as nationally. It has also become the fastest growing criminal enterprise in the world. Bangladesh is a poverty stricken country, human trafficking is increasing at an alarming rate. However, concerted efforts are there on the part of the Government, the international agencies, the donor community and the NGOs to combat the problem. Trafficking in women and children is a violation of several human rights including the very right to life, the right to liberty and human dignity, and security of person, the right to freedom from torture or cruelty, inhuman or degrading treatment, the right to a home and family, the right to education and proper employment, the right to health care and everything that makes for a life with dignity. Trafficking in women and children is on the rise. And yet, the re-addressed mechanisms are woefully inadequate and the way the various governmental agencies have dealt with this gross violation of human rights has left much to be desired.

Rescue is a thorny issue. It has its limitations and unacceptability, largely due to the attitude and violent behavior of the law-enforcing agencies. Although the police rescue many women and children but what happens to them is largely unknown. Often the rescue processes are violent, aggressive, and ‘male dominated.’ Sometimes the minors are sent either to state-run remand homes or to an NGO shelter. Most are unable to go back to their home because of a whole series of problems, and when they are released, they are again at risk of being picked up by the traffickers. ‘Repatriation’ means voluntary return to the country of origin of the person subjected to trafficking across international frontiers. The minors have no choice; they have to be taken back to their place of origin, but an adult woman has the right to choose to stay in the country if she so wishes. The choice of women is not even considered, because the focus has always been to protect the interest of State over and above the interest of women.

‘Reintegration’ means social and economic integration acknowledging her right to self-determination.

Efforts have been made during the last decade by the UN, other international agencies, international and local NGOs and governments to highlight and address the issue by reaffirming policy commitments and strengthening legislation and law enforcement, as well as by supporting the victims. During the last few years a series of broad programs have been developed. Most countries have ratified the UN Convention on the Rights of the Child and the UN Convention on Elimination of All Forms of Discrimination against Women, thereby committing themselves to respect, protect, promote and fulfill the human rights of women and children.

Ibid.
In South Asia, many international NGOs have incorporated women and children specific programs related specifically to addressing issues of trafficking in their activities. These are: Save the Children Alliance, The Asia Foundation, Plan International, Action Aid, etc. In addition, some major INGOs and donor organizations such as CIDA, DANIDA, SIDA, OXFAM, CEDPA, Population Council, US AID, Red Barnet, etc. are involved in anti-trafficking programs.

Besides, UN Task Force, Office of the High Commissioner for Human Rights (OHCHR), UNDP, UNICEF, UNIFEM, ILO–IPEC supports NGO program, International Organization of Migration (IOM), UNFPA and WHO are involved for combating the trafficking of women and children.

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