

Role of Central Armed Forces in Combating Cross Border Crimes: A study of Indian legal Framework

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Abstract

“For to be free is not merely to cast one’s chains, but to live in a way that respects & enhances the freedom of others”. - Nelson Mandela

Human trafficking is a criminal offence or a crime against humanity. It is a problem not only in SAARC countries rather it is a global issue. Human trafficking has become a multinational trade, making billions of dollars at the expense of millions and millions of victim, many of them includes young girls and children, who are deprived of their dignity and freedom. The porous border between India, Bhutan, Nepal and Bangladesh and lack of proper law for the implementation to combat human trafficking for sexual exploitation has led to the rise in the rate of trafficking. It has been decades since the SAARC has been formed but till today no such laws has been implemented to combat human trafficking in any form. Nepal, Bhutan and Bangladesh being the closest neighbors of India having similar demographic features, cultural heritage, economic stability, similarity of customs and traditions etc, have accounted to the human trafficking in the border areas and cross border areas which has become very difficult to control.

Keywords: Cross Border Crimes, Human Trafficking, Smuggling, South Asia, North Bengal, Crimes, Prostitution, SAARC Countries, Public International Law, Constitution of India, etc.

1. Introduction

Human Rights- two simple words but when put together they constitute the very foundation of our existence. Human Rights are commonly referred to as inalienable fundamental rights enshrined under the constitution of India 1950, to which a person is inherently entitled simply because he or she is a human being.

Concept of human rights can be traced back to the philosophy of natural law school and the main philosophers of the schools Locke and Rousseau had explained the concept of natural as human rights.

According to Locke, “man is born with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the law of Nature” and he has by nature a power to preserve his property- that is, his life, liberty and estate, against the injuries and attempts of other men”². Thus, the concept of human rights represents right to life, liberty and

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² Paton: Jurisprudence

property and an attempt to protect the individual from oppression and injustice.

Today we are living in a world that has to a great extent accepted the outright control of one human being on the other, and regionalism has shockingly implied both an increase and decrease in the rate of crimes in the rising 21st century where the greatest challenge that the world is now facing is that of human trafficking and terrorism.

The rising level of human trafficking both for prostitution and slavery has become a rising trend in the globe today which has become a global issue and is multiplying in the speed of a cancerous cell which has mainly been accounted to rise due to poverty, illiteracy, unemployment, low income, domestic violence, natural disaster (as in case of Nepal earthquake) etc.

It has become a global issue today where no country can admit that they have not been affected by it at all. It is not always necessary that such crimes takes place only in urban or rural area, it may occur anywhere but usually happens in a poorer region where people are shown the lifestyle of the glittering rich countries and somewhere it is rightly said “ everything that shines is not gold”, and this is exactly what happens with the victims of trafficking.

Trafficking of human is a gross violation of human rights and is indeed the fastest growing criminal industry today. Every year millions of women , children and even men to a certain limit have been trafficked across the different borders and also within their own country mainly for prostitution, sexual slavery, commercial sexual exploitation for the traffickers or others,³ forced marriage, bondage, child labour, organ trafficking and also an armed combatants by some terrorists and insurgent groups etc.

Human terrorism has a direct impact on the facilitation of human trafficking and especially upon the right to life, liberty and physical integrity of the trafficked beings. Terrorists acts can destabilize governments, undermine civil society, jeopardize peace and security, threaten social and economic development, and may especially negatively affect certain groups. All of these have a direct impact on the enjoyment of fundamental human rights.

Human trafficking has been established as the third largest offence worldwide, which contributes to the sum of profit, which is being earned by the organized groups in charge of running this racket. On an average

³ <http://www.Amnesty.org.au> , last accessed on 15th August, 2019.

6,00,000 to 8,00,000 women and children have been trafficked.⁴ This estimate does not include those trafficked within their own countries or missing children.⁵ Of these 70 percent are women and 30 percent are children.

Human trafficking at present has become a transnational organized crime, where no member state of the South Asian Association for Regional Cooperation can come forward and claim that its borders are not affected by it and that they have not been a party to this rising trend of human trafficking.

Human trafficking is a great violation of human rights, which has taken the shape of a trans boundary criminal activity. Therefore, governments and various volunteering organizations are trying to eradicate the problem of human trafficking or at least mitigate it by detecting more and more cases of illegal activity in different countries of the world. Despite every effort the issue remains a global problem till date. Every year measures are undertaken to overcome this global issue but no permanent remedy has still been found to eradicate it completely. The United Nations And even the Human Rights Commission are working towards finding a permanent solution to this trans boundary criminal act.

According to the “SAARC Convention On Prevention And Combating Trafficking in Women and Children for Prostitution”⁶, “Trafficking” means 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 consent of the person who is subjected to trafficking”.⁷

The definition is a very comprehensive one comprising all forms of human trafficking it is evident from the definition that the ‘trafficking of individuals’⁸ for commercial sexual exploitation has three constitute elements, such as the act, i.e. recruitment, transportation, transfer, harboring or receipt of persons; the means i.e. threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim. The last element is the purpose i.e. sexual exploitation, forced labour, slavery or similar

⁴ Human Trafficking, Lok Sabha Secretariat Parliament Library and Reference, Research, Documentation and Information Service available at <http://164.100.47.134/intranet/HUMAN%20TRAFFICKING.pdf>

⁵ *ibid.*

⁶ https://www.unodc.org/documents/humantrafficking/2011/Responses_to_Human_Trafficking_in_Bangladesh_India_Nepal_and_Sri_Lanka.pdf

⁷ Article 1(3) of the “SAARC Convention On Prevention And Combating Trafficking in Women and Children for Prostitution.”

⁸ *supra*, note 3.

practices and the removal of organs.⁹ And ‘trafficking in human being’ means selling and buying of human being like goods and includes immoral traffic in women and children for immoral and other purposes.¹⁰

The conceptualisation of the issue of human trafficking is most vividly thought to be for the sole purpose of prostitution but the issues involved in the conceptualization of the victimhood reaches much beyond it. Human trafficking can be also linked to the rising terrorism terror worldwide due to extortion of every vulnerable group of people. Men, women, children, educated, uneducated, aged, specially aided people and all forms of people who are vulnerable in the society falls a victim in the chain of trafficking and terrorism.

Human trafficking is proven to be one of the most pervasive form of exploitation and infringement of basic human rights of the vulnerable groups. It has become a major social and political concern globally as well as nationally.

Human trafficking is a grave violation of human rights. Until 2000 there was no internationally recognized definition of human trafficking. The definition of the human trafficking under different legal system is given below:

In 2000, Article 3 of the “UN Protocol to prevent, suppress and punish trafficking in persons”¹¹ defined the human 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, of deception, of the abuse of power of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of person having control over another person, for the purpose of exploitation.¹²

According to the U.S. law called the “trafficking Victim Protection Act, 2000” trafficking in persons is defined as: All acts involved in the transport, harboring, or sale of persons within national or across international borders through coercion, force, kidnapping, deception or fraud, for purpose of placing persons in situations of forced labor or services, such as forced prostitution, domestic servitude, debt bondage or other slavery-like practice.¹³

According to a recent survey women are bought and sold with impunity and trafficked to other countries from different parts of India. They

⁹ *Ibid.*

¹⁰ *Raj Bahadur v. Legal Remembrancer, Government of West Bengal*, AIR 1953 Cal. 522.

¹¹ 34e0018a-fe30-44a8-8e06-e99a6060210f

¹² Article 3 of the UN. Protocol to prevent, suppress and punish trafficking in persons.

¹³ Section 102 of the “Trafficking Victims Protection Act, 2000, United States.”

are forced to work as sexual workers undergoing several exploitation and abuse. These women are the most vulnerable group in contracting HIV infection.¹⁴ Due to poverty, gender discrimination, illiteracy, lack of employment opportunity, lack of awareness and lack of good governance these women are easily trapped in trafficking. The position is same in almost all the SAARC countries.

2. Human Rights Violation Of The Vulnerable Groups

In modern times, it is widely accepted that the right to life with dignity and right to liberty is the very essence of a free society and it must be safeguard at all times. Trafficking is a serious type of violation of human rights since ancient times.

Since the dawn of civilization human being has been enjoying the human rights. In this twenty first century with the advent of science and technology, people have entered into the space age and globalization.

The entire universe has become a global village. Violation of basic human rights of the vulnerable groups especially women and children have become a rampant that we as individuals need to reassess whether we become more civilized or uncivilized.

3. Trafficking And Prostitution

Due to limited economic opportunities, illiteracy, existence of porous borders in the South Asian Region of India, Nepal and Bangladesh and low socio-economic and cultural status, the majority of trafficking victims are women and girls. It is very often seen that those women and girls, who are involved in marginalized livelihoods, deserted by their husbands or families, victims of abuse and violence, and are from disadvantaged communities and extremely poor families, are more vulnerable to trafficking. In SAARC region, victims are from all areas, but most targeted are those which are traditionally disadvantaged and marginalized groups.

In India, girls and women, mostly from the northeast are taken from their homes and sold in faraway states for sexual exploitation. Parents in tribal areas think that they are sending their young girls for better life in terms of education and safety. According to National Human Right Commission of India,¹⁵ over 40,000 children are reported missing every year of which 11,000 remain untraced.¹⁶

¹⁴ [www.awadindia.org/social-issues/women trafficking in India](http://www.awadindia.org/social-issues/women%20trafficking%20in%20India)

¹⁵ http://nhrc.nic.in/documents/publications/TheProtectionofHumanRightsAct1993_Eng.pdf

¹⁶ <http://www.mapofindia.com/my-india/government/child-trafficking-indias-silent-shame>.

Trafficking into the brothels of India and domestic & sexual slavery in the Middle East is a historic trade with between 5,000 and 12,000 girls aged from as young as 7 years old disappearing from Nepal every year.¹⁷ An estimated 200,000 girls from Nepal are working in brothels in India.¹⁸

The average life span of a girl working in prostitution in India is just 34 years.¹⁹ The United Nation cites human trafficking as the third largest international criminal industry, with traffickers making an estimated US \$ 32 billion annually.²⁰

4. Trafficking in South Asia

Human trafficking is one of the biggest problem which has emerged in South Asian countries in the recent times. The South Asian nations as a whole has put in some serious efforts in combating the problem but lack of coherence and statics on number of victims has always added to the complexity of the matter. According to International Journal of Gynecology & Obstetrics²¹ 1.5 to 2 million women, men and children are trafficked around the world and almost 35% to 40% of them are from SAARC region.

The rate of human trafficking in SAARC mentions in increasing at an alarming rate and most of the victims are women, who are usually forced into prostitution and sexual exploitation. The South Asian countries especially India and Bangladesh are considered as the biggest sex market of the world. More than 60% of trafficked women in India are adolescents of age of 12 to 16 years.²²

The main reason of inflation of trafficking in these regions are considered as poverty, migration, urbanization etc. one of the biggest problems arising from this is the increasing number of AIDS victims, according to WHO report of 2012 more than 40% of prostitutes in India suffers from HIV AIDS which is a very large number.

The following section shall put forward the country wise trends in sphere of human trafficking with special reference to SAARC countries.

4.1. India

Human trafficking is an illegal activity prevalent all over the world and in India too. There are many reasons which can become root cause such as migration, natural disaster, poverty and absence of employment level, sex tourism and loopholes in the law dealing with it and lack of implementation

¹⁷ <http://www.asha-nepal.org/pages/the-issues/trafficking.php>

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ ljgo.org.(2016) available at <http://www.ljgo.org/>

²² UNDP report, 2014

procedure, war/internal armed conflicts in the country, porous borders, low level of education, low regard of women's right, cast driven victim and these are not exhaustive.

Poverty can be said as a major reason²³ for such activity but not for sole one. In India there are millions making it hub for world's largest poverty country. Government introduced many schemes to alleviate poverty in a long run to avoid trafficking at large such as MNREGA, MID-DAY meal, Dhanlakshmi, Sampurna Gramin Yojna (SGRY), Swarnajayati Gram Swarozgar Yojna (SGSY), etc.

One of the other root cause is a lack of comprehensive data in the country about the trafficked people, traffickers, procurers, brothel-keeper, and the people associated with it. In order to combat with evil and to net the criminal perpetually it is necessary to strengthen the reliable study on the crime which is widespread, regarding nature and extent. Unless a figure is before the table it is tough to make approaches in fighting the bad cause. Adding to this, migration is also a major reason which is generally the result of poverty, in search of livelihood and food security may be either due to natural phenomenon,²⁴ it is a situation where people can be trafficked easily by using bait of employment²⁵ and better future which is surely a fraud. Migration could be within the country or illegally between countries.

India is also a destination for women and girls from Nepal and Bangladesh trafficked for the purpose of commercial sexual exploitation. Nepali children are also trafficked to India for forced labor in circus shows and domestic helps. Children from Nepal are trafficked for labor in industrial sectors. Indian women are trafficked to middle east for commercial sexual exploitation. Indian migrants who migrate willingly, every year to the Middle East and Europe for work as domestic servants and low skilled laborers also end up being a part of the human trafficking industry and once they are into it, there is no way out of the exploitation.

Children below eight years are forced into begging. The older ones are pushed into child labor. Organised gangs kidnap minors and transport them to other cities. A rough estimate prepared in 2008 by an NGO, End

²³ Sadika Hameed, Human Trafficking in India: dynamics, current efforts and intervention opportunities for the Asia foundation VI (2010), available at <https://asiafoundation.org/resources/pdfs/StandfordHumanTraffickingIndiaFinalReport.pdf>, accessed on April 24, 2019.)

²⁴ DC correspondent, "Human trafficking at Indo-Nepal border after earthquake" deprei chronicle, last modified January 10, 2016 (last accessed on 27th April, 2019).

²⁵ A large proportion of cross border trafficking in Bangladesh is due to migration in search of employment.

Children's Prostitution in South Asia tourism, reveals that there are around 2 million prostitutes in India, 20% of them being minors.²⁶

4.1.1. Trafficking in the State of West Bengal

The state of West Bengal in India is a major source, destination and transit point for victims of trafficking.²⁷ West Bengal borders the Indian states of Sikkim, Bihar, Orissa, Jharkhand and Assam and shares international borders with the countries of Nepal, Bangladesh and Bhutan.²⁸

The capital, Kolkata, is the trade and cultural center of the eastern India and Siliguri (the chicken neck of West Bengal) in the northern part of the state – acts as the gateway to Nepal, Sikkim, and Bhutan and also to North-East due to its strategic location.²⁹

The National Crime Records Bureau reports that in 2009 there were 160 registered cases of trafficking in West Bengal.³⁰ Although the reports of both governmental and other actors suggest that the actual number of trafficking cases is much higher.³¹ Two-third of all children who are trafficked in West Bengal is girls. Nearly 90 percent of those girls have either dropped out of primary schools or have never attended school,³² thus evidencing a strong link between lack of education and the risk of being trafficked.³³

Within West Bengal, the districts of Jalpaiguri, Darjeeling, North 24 Parganas and South 24 Parganas present particular challenges from a trafficking stand point. Jalpaiguri and Darjeeling, which are located in the north of West Bengal, have been facing problem of unsafe out-migration by individuals bound for Kolkata and other metropolitan cities in search of livelihood opportunities.

²⁶ Hindusthan Times, 11th October, 2012

²⁷ <http://documentslide.com/documents/final-report-girls-project.html>

²⁸ *ibid.*

²⁹ Sen and Nair, above n 17, 35

³⁰ National Crime Records Bureau, <http://ncrb.nic.in/CII-2009-NEW//cii-2009/Chapter%206star.pdf>.

³¹ Global March Against Child labour, South Asian March Against Child Trafficking, <http://www.globalmarch.org/childtrafficking/010307.php> and C. Bhattacharjee, - trafficking's second Haven, The Sunday Indian, 5 April 2009, reporting that: - it was nothing short of sensation when West Bengal Chief Minister Buddhadeb Bhattacharjee admitted on the floor of assembly that over 60,000 girls have been trafficked out of the state in just four short years.

³² D. Gupta, - Right to Protection: Decoyed Lives!, Tehelka (2009), http://www.tehelka.com/story_main43.asp?filename=cr071109right_to_asp

³³ *Ibid.* See also SANLAAP, Trafficking our children: a brief situational Analysis on the trend of migration, child marriage and trafficking in eight districts of West Bengal (April 2006).

For example, Kolkata, is generally considered as major trafficking destination center for brothel-based prostitution, along with Mumbai and Delhi. Trafficking of girls and women coming from the tea estates of these districts is prevalent in the entire region. As for North and South 24 Parganas, recent data report say that these districts are two of the most significant source areas for trafficking in the state of West Bengal.³⁴ Push factors include single crop growing fields, lack of livelihood opportunities and natural disaster.

A 2003 study of trafficking in Madhusudanpur, a village in South 24 Parganas, showed that every second to third household in the village lives off the income of a trafficked girl between the age of 13 to 15.³⁵

4.2. Bangladesh

Bangladesh is one of the most vulnerable countries for trafficking today due to a host of factors. These are the large population of Bangladesh, chronic poverty among large groups of people, ongoing natural disaster like cyclones, tornados, river erosion, drought, flood and lack of shelter during disaster periods. Moreover, rural-urban migration in search of work due to unemployment or natural disasters increases violence against women including the risk of being trafficked.³⁶

Bangladesh has a 4,222 kilometers long border with India covering 28 districts of Bangladesh and India as the main recipient country receive trafficked women through 20 transit points of Bangladesh Indian Border.³⁷ To understand trafficking in Bangladesh, we have to look at it both from the historical and geographical perspectives.

In 1947, Indian subcontinent got the independence from British colonization and was divided in two countries named India and Pakistan. Pakistan had two regions namely East Pakistan and West Pakistan and these were geographically located 1200 miles away from each other. At that time, Muslim families from India migrated to Pakistan and Hindus from Pakistan moved to India. From that period, there are many enclaves found in border between India and Bangladesh and India and Pakistan. These enclaves are small piece of land belonging to a nation other than that which surrounds them.³⁸

³⁴ S. Sen and M. P. Nair, *Trafficking in Women and Children in India* (Hyderabad: Orient Longman Private Limited, 2005).

³⁵ *ibid*, at 681.

³⁶ Sarker, Profulla C. And Panday, Pranab Kumar, "Trafficking in women and children in Bangladesh: A National Issue In Global Perspective" 2/2 AJSP, 1-13

³⁷ Shamim, I. (2001). Mapping of Missing, Kidnapped and Trafficked Children and Women: Bangladesh Perspective. International Organization for migration (IOM).

³⁸ https://www.unodc.org/documents/humantrafficking/2011/Responses_to_Human_Trafficking_in_Bangladesh_India_Nepal_and_Sri_Lanka.pdf.

There are 111 Indian enclaves in Bangladesh and 51 enclaves of Bangladesh in India. Bangladesh National Women Lawyers Association (BNWLA)³⁹ in their report shows that these enclaves are used to collect the survivors and they are trafficked through these enclaves easily by the traffickers.⁴⁰

Traffickers use route over land, air and water. Western border districts of Bangladesh, particularly Jessore and Khulna are widely used by traffickers. The main trafficking route is Dhaka-Mumbai-Karachi-Dubai. Many of the victims end up in Middle East nations.

In a report, it was claimed that a small number of women are taken directly by air from Bangladesh to Middle East and Europe as in Dhaka Airport Corrupt officers helped issuing necessary documents. Bangladesh is thus largely a source country as far as trafficking is concerned, from which women, men and children are trafficked into different sites of employment in the destination country. Apocalyptic days are gone by but some serious problems haunting it since its inception; human trafficking crisis is one of the vicious ones. It is alarming that Bangladesh has become a fertile breeding ground for national and international trafficking mafias and their local perpetrators.

Today Bangladesh is primarily a source country for persons who are trafficked to other South Asian Countries (Malaysia, Brunei and Palau), Middle Eastern Countries (Bahrain, Iraq, Jordan, Lebanon, Kuwait, Oman, Saudi Arabia, UAE).⁴¹ Recently many mass graves have been recovered in Malaysia, Thailand and Myanmar who are suspected to be the victims of trafficking from Bangladesh and neighboring countries and witnesses heinous brutality.

Bangladeshi men and women migrate willingly to Saudi Arabia, Bahrain, Kuwait, The United Arab Emirates (UAE), Qatar, the Maldives, Iraq, Lebanon, Malaysia, Singapore, Europe and other countries for work, often legally via some of the more than 1000 recruiting agencies belonging to the Bangladesh Association of International Recruiting Agencies (BAIRA).⁴²

These agencies are permitted legally to charge workers recruitment fees that are equivalent of a year's salary, but these recruiting agencies often charge additional amounts in contravention of government regulations.

³⁹ http://wiscomp.org/Publications/38%20%20Prespectives%2031%20%20Cooperation%20to%20Combat%20Cross%20Border%20Trafficking%20India_Nepal_Bangladesh.pdf

⁴⁰ Gazi, R. et. al. (2001). Trafficking of Women and Children in Bangladesh: An Overview. Dhaka: ICDDR, B. Center for Health and Population Research.

⁴¹ Human Trafficking Report on Trafficking Persons, 2013.

⁴² Bangladesh Global Slavery Index, 2013.

These exorbitant fees place migrant workers in a condition of debt bondage, in which they are compelled to work out of fear of otherwise incurring serious financial harm. There are reports of an increased number of Bangladeshi transiting through Nepal to obtain Nepalese visas and work permits for employment in the Gulf; some are trafficking victims.⁴³ Some Rohingya Refugees from Burma have been subjected to human trafficking.⁴⁴

4.3. Nepal

In South Asia, Nepal remains the top country that carries the burden of worldwide child and women trafficking followed by India. As far as cross border trafficking from Nepal to India and then to the Middle East is concerned, it has become a challenge to the governments and the law enforcement agencies and social activists. The recent earthquake in Nepal and its adverse effect on its tourism industry and the overall economy has coupled the problems.

Nepal, a land locked country bordered to the north by Republic of China, and to south, east and west by the Republic of India has always been a favorite hunting ground for the traffickers. Nepal is one of the least developed countries of the world, lacking in sufficient economic capital, infrastructure, and developed human resources to forge an independent path of development.

Overwhelmingly, agrarian in nature, 90 percent of its 21 million inhabitants rely on subsistence agriculture. Adult literacy is as low as 23 percent for females and 57 percent for males; infants and maternal mortality rates are the highest in South Asia. The historically high level of out migration of people searching for sustainable livelihood options is escalating. In certain districts in the country the out migration of men and women of prime productive and reproductive age is particularly high.⁴⁵ Trafficking is an important offshoot of migration in Nepal, and one of its most abusive forms.

The reason for trafficking of women and girls are myriad, ranging from poverty and the search for viable means of livelihood to the endemic social disadvantages suffered by women as a gender.⁴⁶ Other reasons may include individual compulsion and needs that fuel the desire to move, especially for young people, who may suffer abuse at home or merely wish

⁴³ Global Slavery Index, 2013.

⁴⁴ Bangladesh Narrative, 2013.

⁴⁵ Sangraula Yubaraj 2000. Draft study on Trafficking in Nepal. Kathmandu: Centre for Legal Research and Resource Development.

⁴⁶ Acharya, Usha. 1998. "trafficking in Children and Their Exploitation in Prostitution and Other Intolerable Form of child Labor in Nepal: A country Report." "with support from ILO/IPEC, Kathmandu and ASHMITA. 1998. "Efforts to prevent Trafficking in Women and Girls; A Pre Study for Media Activism." Kathmandu.

to explore the world. These reasons are many of the same reasons that people migrate from the countryside to the cities, and from one country to another.

Trafficking of Nepalese women and girls to Indian brothel was established in 1960. Even before the Rana rule in Nepal women required a special authorization to go to India. About 50 percent of Nepal's female sex workers have previously worked in Mumbai and more than 200,000 Nepalese girls are involved in the Indian sex trade.⁴⁷

According to the working agencies in anti-trafficking activities in Nepal, there is increasing tendencies in trafficking among Middle class women who are being trafficked to gulf countries under the veil of attractive jobs and handsome salaries. The magnitude of trafficking has increased over the years, but neither the extent nor the real expansion has been verified. The illegal structure of trafficking, community vested interests and lack of actual information/data and networking among stakeholders are the major constraints to preventive measures of trafficking.

Disadvantaged groups in all spheres of Nepali society plus the one and half decade long severe political instability and internal conflicts contribute to increasing vulnerability to trafficking. Many studies in the past revealed that the conflict induced inflows of women and girls to urban Nepal increased the commercial sexual exploitation and thus the internal trafficking too. Over the past few years, research has been a crucial component of anti-trafficking measures, but statistically data on trafficking victims remains widely varied. Figures range from 12,000 per annum as per an ILO Report to over 20,000 Nepali girls being trafficked to Indian brothels as per Maiti Nepal.⁴⁸ UNICEF (1998) shows that more than 20% of the total persons involved in sex work in Nepal are under the age of 16 years, with some young as 11.

Similarly, an ILO report shows that 29 districts of Nepal have a high occurrence of trafficking⁴⁹ where-as, UNIFEM study⁵⁰ identifies 39 districts as vulnerable compared to 26 identified by the government of Nepal. However, NGO's working these sectors claimed that 70 districts out of 75 are vulnerable in terms of human trafficking.

⁴⁷ Sangroula Y. Trafficking of Girls and Women in Nepal : Building a Community Surveillance System for Prevention. Kathmandu: Kathmandu School Of Law (Kathmandu), 2001.

⁴⁸ Mcgirk T. Nepal's Lost Daughters, "India's Soiled Goods. Nepal/India News 1997 Jan, 27.

⁴⁹ Hardman R. Prince brings hope to Nepal's rescued sex slaves, London Telegraph 1998 Feb, 9.

⁵⁰ New ERA. A situation analysis of sex work and Trafficking in Nepal. Kathamandu: New ERA/UNICEF, 1998.

These figures are based on trafficking cases reported in 2008. Nepalese girls, trafficked and sold into prostitution in India are abandoned when they infected with HIV. Out of the 218 Nepalese girls rescued in February 1996 from a Bombay brothel, 60-70% of them were HIV positive.⁵¹ Due to their highly marginalized status, female sex workers in Nepal have limited access to information about reproductive health and safe sex practices.

When we take a glance at human development indicators in the world, Nepal is lowly ranked. In 2004, 90% of Nepalese relied on subsistence agriculture, and 82% lived on less than \$ 2 US per day. This poverty specifically and disproportionately impacts women, in that it leads to the desire to migrate, which opens lanes for sexual trafficking and families begin to rely on young girls for income while investing in their son's future by providing them with an education.

Nepal's only 61% of girls are enrolled in school while 80% of boys were, and only 25% of women could read while 57% of men could. This investment in male offspring stems from the fact that sons are more likely to contribute economically to their families later in life, while women will be responsible for their families.⁵²

Based on the scenario parents sometimes sell their daughters, and husbands sell their wives to brothel. Parents are more likely to sell their daughters, since there is cultural preference for boys. That is largely because girls are considered economic burden since parents need to pay dowry upon marriage. This age of trafficking ranges from 7-24 years old, with the average being 15.⁵³

Nepal Earthquake and Human Trafficking

The tragic Nepal earthquake of 25th April, 2015 had shaken the whole world. This earthquake was said to be the largest of its kind. The death toll was above human imagination and the damage caused brought down the historical evidences of the country. Majority of people were rendered homeless while the ones who survived their lives were even worse as they had no one left with them and they kept searching for their dear ones in the rubbles.

⁵¹ Wadhwa S. Nepal- Facts on Trafficking and Prostitution, Coalition Against Trafficking in Women. In Fact book on Global Sexual Exploitation. Combating Human Trafficking in Asia. A resource Guide to International and Regional legal instrument, political commitments and recommendation practices, New York: Economic and social commission for Asia and Pacific, United Nation; 2003.

⁵² Wordpress, (n.d.). Dartmouth from Dartmouth edu:<http://sites.dartmouth.edu/NepalQuake-CaseStudies/human-trafficking/>

⁵³ Yngvdottir, A.E. (June 2016). The 2015 Earthquake in Nepal: Disaster Management and Human Trafficking. Reykjavik.

While the country was trying to overcome this tough period, it subsequently faced another problem with regards to human trafficking. Even after protection measures taken up by the Government of Nepal and several NGO's to curb human trafficking, the rate of traffickers increased tremendously. The main reason behind an increasing rate of human trafficking during that period was due to scarcity of food and money and the deteriorating living conditions that they were in. In order to search for better living conditions and a better life many people were trafficked and the basis of false promises and fraud.

Nepal earthquake 2016 is one of the vital reasons behind the rise in the rate of human trafficking for commercial sexual exploitation both internally and in the international level in the form of cross border human trafficking. There is news now and then in the news paper stating about young girls being found in railway stations and on verifying their whereabouts it is found that they belong to Nepal and unaware about their travel to India. Such girls are usually dragged and trafficked to the main centre, so that there are no problems while completing the assignment of the travel.

4.4. Bhutan

The geographical location of Bhutan as a landlocked country, sandwiched between two large nations has made its people vulnerable to traffickers and to them being trafficked. This is evidenced from historical records, which reveal that kidnapping and trafficking of people was a frequent reason for border disputes between the then British Raj in India and Bhutan⁵⁴.

Historically Bhutan served as a major trade route between India and Tibet, and there was frequent movement of people from both sides. The small population of the country was not able to till the lush and fertile valleys of Bhutan and as a result many people from the plains were trafficked into the interiors of the country. This gave rise to the establishment of serfs in the country, with many of them having been brought into the country either as captives following border skirmishes or as a result of having been trafficked. The serfs were bonded for generations to wealthy families and were mainly employed as labours.

The British Political Officer Pemberton noted in 1838, that there were some thousands of these serfs in the hills and were restricted to undertaking most of the menial jobs.⁵⁵ Many of them had married Bhutanese

⁵⁴ Collister P., Bhutan and the British, UBS Publishers' Distributors' Ltd, New Delhi; 1996 p 51, 66.

⁵⁵ Pemberton BB. Report on Bhutan. In: Political Missions to Bhutan. Asian Educational Services (Publishers), New Delhi 2001; p 81

people of lower grade and with children of their own did not find the heart to leave and go back to the plains in India. This system of modified slavery, also known as serfdom was to last for 120 years when His Majesty, the third King of Bhutan abolished slavery by royal edict in 1958.⁵⁶ In addition the third King implemented many other social reforms such as abolishing the caste system, granting equitable distribution property rights and improving the position of women in society.⁵⁷

The print media has been the only source of information on trafficking in Bhutan often writing about the heinous crime to inform and educate the public. Over the last few years it has also reported on few cases that were apprehended and charge sheeted by the courts. It is clearly evident from those reports that trafficking does occur in Bhutan, although in very small numbers. It also firmly establishes the country as both a source as well as a destination place for trafficking. Reviewing the media reports, the evidence as a source country comes from two articles published in Kuensel in 2010 about a 12 year old Bhutanese girl who was trafficked to Nepal and a 16 year old boy trafficked to Kashmir.⁵⁸ Both children were rescued and subsequent information provided by the children and further investigation by the Police confirmed these to be cases of trafficking in humans. Similarly as a destination country, the first case of trafficking in Bhutan involved a 16 year old girl trafficked from Darjeeling to work as a baby sitter in Bhutan.⁵⁹

Two of the victims were from Chukha and one was from Trashigang and they were rescued with the help of the police. The man was convicted of trafficking under section 154 of the Penal Code and also for harassment under section 462. All three victims were interviewed for this study and their story is presented as a case study in the box below. The case highlights the circumstances under which trafficking occurs and also the background of the victims.

5. Why Human Trafficking Is Still A Challenge In SAARC Countries

There is no definition of organised crime in either the SAARC⁶⁰ Convention on Mutual Assistance in Criminal Matters, 2008, or the SAARC Convention on Preventing and Combating Trafficking in Women and

⁵⁶ Singh N. Bhutan: A Kingdom in the Himalayas; Thomas Press India Limited, New Delhi; 1978; p 109

⁵⁷ Parmanand. The Politics of Bhutan, Retrospect and Prospect. Pragati Publications, Delhi, 1998; p 87

⁵⁸ Kuensel. Women Vendor detained; 24th August, 2010

⁵⁹ Bhutan Times. Human Trafficking from Bhutan; Available at: http://www.bhutantimes.bt/index.php?option=com_contents&task=view&id=1048&Itemid=1

⁶⁰ https://www.unodc.org/documents/humantrafficking/2011/Responses_to_Human_Trafficking_in_Bangladesh_India_Nepal_and_Sri_Lanka.pdf

Children for Prostitution, 2002.⁶¹ One of the challenges is that police authorities are not serious about human trafficking involving corruption factor in it.

The scenario is same everywhere whether defect in governmental policies, victim's rights (rehabilitation, employment, compensation, standard of living etc.), implementation procedures, prosecution and conviction, corruption. Practically the penal laws in all the SAARC countries are different although SAARC convention provides definition for the same, thus it will have a minimal impact on controlling the crime. However, it is useful in cooperation efforts and in making future policy for the South Asian Region which would help to combat trafficking.

As regard to Constitution application the situation differs in each country as while Bangladesh prohibits all forms of forced labour,⁶² talks of taking effective measures to prevent prostitution, and not sex trafficking.⁶³ In 2011, Bangladesh enacted special act in order to prevent and suppress all forms of human trafficking and protects the victims of human trafficking.⁶⁴ The duty of a state to protect children seems to be mute on trafficking⁶⁵ under Sri Lankan Constitution.

6. Legal Framework in India to Deal with Human Trafficking

In the South Asian region, countries have their own domestic legislation while an international instrument requires ratification by the domestic government to have legally binding effects. Thus, these countries are now monist.⁶⁶ But on the other hand relevance of international instruments cannot be discarded the only thing being that it is not uniform across South Asia.

The Constitution of India provides fundamental rights against human trafficking including forced labour. Above all, Constitution⁶⁷ is supreme legislation providing right against exploitation in the form of forced labour and traffic in human being but defining neither of them.⁶⁸

Constitution provides Fundamental Rights to its citizens as well as protection and ensures safety and security too from the danger. Even though

⁶¹ Ibid.

⁶² Constitution of Bangladesh, 1972, Article 34 (1)

⁶³ Constitution of Bangladesh, 1972, Article 18 (2)

⁶⁴ Human trafficking (Deterrence and Protection) Act, 2011

⁶⁵ Constitution of Sri Lanka, 1978, Article 27 (13)

⁶⁶ Legal regimes where treaties upon ratification become part of domestic law automatically without further procedural formalities.

⁶⁷ Constitution of India, Article 23.

⁶⁸ A large proportion of cross border trafficking in Bangladesh is due to migration in search of employment at 16

the laws are stringent, there are certain loop holes in the statutes which are dealing with trafficking and making it a criminal act. The following are the loopholes in various statutes in India:

a. Indian Penal Code, 1860

Before the criminal law amendment in section 370⁶⁹, Indian Penal Code, 1860, India, was not having inclusive definition i.e., covering all aspects for the offence of human trafficking. A complete Act has still not been enacted; there are different statutes in fragmented manner providing prohibition, prevention and prosecution of the offenders. This particular provision of Section 370 of Indian Penal Code, 1860 has very wide scope which includes within its ambit prostitution⁷⁰ or other forms of sexual exploitation, forced labour or service, slavery or practices. Section 366,⁷¹ 366A,⁷² 366B,⁷³ 367,⁷⁴ 371,⁷⁵ 372,⁷⁶ 373,⁷⁷ 374⁷⁸ are also included amongst laws to combat human trafficking.

⁶⁹ Trafficking of person.—(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by— First.—using threats, or Secondly.—using force, or any other form of coercion, or Thirdly.—by abduction, or Fourthly.—by practising fraud, or deception, or Fifthly.—by abuse of power, or Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

⁷⁰ *ibid.*

⁷¹ Kidnapping, abducting or inducing woman to compel her marriage, etc.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;[and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid].

⁷² [366A. Procurement of minor girl.—Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

⁷³ Importation of girl from foreign country.—Whoever imports into 3 [India] from any country outside India 4 [or from the State of Jammu and Kashmir] any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, 5*** shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.]

⁷⁴ Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.—Whoever kidnaps or abducts any person in order that such person may be subjected, or

b. The Immoral Traffic (Prevention) Act, 1956 (ITPA)

Some of the drawbacks in the ITPA, 1956 are that it continues to penalise the victims including the women and children of trafficking treating in the same line as of the traffickers, safe rehabilitation and corruption, lack of compensation schemes, prosecution of offenders, inadequate punishments to deter trafficking, poor infrastructure facilities, insufficient psychological care facilities, rapid prosecution are some of the issues which needs attention now and requires appropriate amendments for the prohibition of crime. Although India has a specific law on trafficking, it does not define trafficking, but defines ‘prostitution’ to have the usual attributes of trafficking for sexual exploitation⁷⁹.

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

For the rescued children it is necessary that a proper set is made where they can stay as part of rehabilitation programme and is also a legal mandate under the Juvenile Justice Act, 2000 for their protection especially minor girls. Even though juvenile home being requisite several states don’t have such facility, also they are sometimes overcrowded or are inadequately

may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

⁷⁵ Habitual dealing in slaves.—Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with [imprisonment for life], or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

⁷⁶ Selling minor for purposes of prostitution, etc.—Whoever sells, lets to hire, or otherwise disposes of any [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

⁷⁷ Buying minor for purposes of prostitution, etc.—Whoever buys, hires or otherwise obtains possession of any [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

⁷⁸ Unlawful compulsory labour.—Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

⁷⁹ UNDOC, engaging a person in prostitution with or without consideration and having sexual intercourse with a prostitute are examples, http://www.undoc.org/pdf/insia/Nat_Rep2006-2007.pdf. visited 24th April, 2017.

equipped. Apparently there is dearth in the mechanism dealing with it and is applicable only to minors below 18 years. Insufficient compensatory schemes or financial support and little knowledge of legal process to get assistance make the situation worse.

7. Implementation of International Treaties or Conventions in India

There are several national legislation to combat this illicit human trade as well international treaties and convention to deal with immoral trafficking. A positive step taken by India by formally ratifying International Protocol Relating to Human Trafficking that is the United Nations Convention against Transnational Organised Crimes (UNTOC) and its supplementary protocol which provides a roadmap for cross national collaboration as well as recommendations for enacting effective domestic human trafficking laws.

As already established, India is a monist it has its own regime to deal with implementation of international treaties and conventions that is dualist regime. It means that even after the treaties or convention are being ratified it does not have force of law in domestic courts automatically.⁸⁰ There is also another provision under the Constitution of India that states that, “*The State shall endeavour to foster respect for international law treaty obligations in the dealings of organised peoples*”.⁸¹

In *Gramophone Co. of India v. Birendra Bahadur Pandey*⁸², the Supreme Court held that there was no question that nations must march with the international community and the municipal law must respect rules of international law as nations respect international law. The comity of nations requires that the rules of international law may be accommodated in the municipal law even without express legislative sanction provided they do not run into conflict with Acts of Legislation.⁸³

Further, the Supreme Court in *Vishaka v. State of Rajasthan*⁸⁴ established that provisions of international treaties might be read into existing Indian law in order to “expand” their protections. “In the absence of domestic law occupying the field, to formulate effective measures to check (certain evils), the contents of International Conventions and norms are significant for the purpose of interpretation.” Any International Convention that is not inconsistent with the Part III of the Constitution and in harmony

⁸⁰ National Commission to review the Working of the Constitution, “A Consultation Paper on Treaty Making Power under Our Constitution” (2001) available at <http://lawmin.nic.in/ncrw/finalreport/v2b2-3.htm>

⁸¹ Constitution of India, Article 51 (c), <http://www.lawschool.cornell.edu/Clinical-Programs/international-human-rights/upload/BiharBriefFINAL-2.pdf>

⁸² 1984 AIR 667.

⁸³ *Gramophone Co. of India v. Birendra Bahadur Pandey*, 1984 AIR 667

⁸⁴ AIR 1997 SC 3011, Para. 7.

with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee.⁸⁵

8. Role of Central Armed Forces in Dealing with the Crisis

As per current surveys, it is observed that the central police forces play a vital role in managing and controlling trans boundary human trafficking activities. It is the sole responsibility of such governmental agencies to secure the border areas and boost a healthy, safe and habitable environment. Border management is a security function that calls for coordination and concerted action by various government agencies within our country. The aim is to secure our frontiers and safeguard our nation from the risks involved in the movement of goods and people from India to other countries and *vice versa*.

While some of these borders are properly fenced and require proper documentations for any form of transit, at the same time there are few border areas which are porous and transit of any form is easy as no documentations are required. It has been seen that when any third country tries to take passage into India through these porous borders they require proper documentations or else transit is prohibited. It is here that we get to see an increase in the rate of cross border crimes mainly in the Northern part of West Bengal including the small town of Siliguri which forms the chicken neck corridor of West Bengal connecting the rest of India with the North East of India and Sikkim. It also has border areas with Bangladesh, Bhutan and Nepal where the borders of Nepal and Bhutan are said to be porous and transition through these are very easy as no Visa or Passport are required. Here lies the major problem since the use of fake documentation is very prominent and common. The keen observations of the security forces of both the countries are always on high alert. Whereas the border area of Bangladesh has been fenced to a certain limit and require a proper visa and passport for any transit to take place.

In the border areas of Pakistan the only threat that the country faces is of terrorism and war attacks. To the certain limit money laundering is also carried out. But through the border areas of Nepal, Bangladesh and Bhutan a number of illegal and unethical acts are carried out such as human trafficking, organ trafficking, supplying of drugs and narcotics etc., which is again a contributing factor in human trafficking. There are various remedial ways opted by the Ministry of Home Affairs and the Ministry of Defence of all the countries to curb out menace. Yet due to the loopholes in the international laws the scope widens day by day. The international covenants need proper channelization for such upliftments. The UNO has also put forward its major concern in regard to the issue of human trafficking and

⁸⁵ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

violation of human rights due to it. Various additional powers are delegated to the security forces to curb out and control such menace but often it is observed that the powers are misused.

However, the police and the armed forces have come together to overcome this problem. Likewise a proper coordination between the four pillars of the society i.e., communication, law, production and economy, must prevail to eradicate human trafficking.

9. International Human Rights Law and its Ratification by SAARC Countries

Majority of the SAARC member states are yet to ratify the optional protocols (OP) to the International Convention on Civil and Political Rights (ICCPR) and the convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which would enable the respective bodies to receive individuals complaints on violation of these treaties.⁸⁶ Only Maldives and Nepal have ratified both optional protocols, while Sri Lanka has ratified the CEDAW OP only. Among the SAARC countries, Bhutan are yet to ratify the ICCPR, International Convention of Economic, Social and Cultural Rights (ICESCR), and the Convention Against Torture (CAT). Sri Lanka is the only member to have ratified the Convention on the Rights of Migrant Workers (CMW). Only Nepal has ratified the Second Optional Protocol to the ICCPR aimed at abolition of the death penalty.⁸⁷

10. Conclusion

Trafficking in women and children are very rampant in the SAARC region particularly in India, Bangladesh and Nepal. Poverty, lack of education and awareness are the main reasons to trap the women and children by the traffickers. Many NGOs have been working for child rights in these regions. They establish various centres and help to create awareness among the women and children about the dangers of trafficking and similar crimes. Prevention of these types of heinous crimes requires proper investigation, prosecution, conviction, addressing the need effectively. There is also a need to implement proper schemes for Rehabilitation and Compensation of the victims so that they could lead a better and meaningful life as guaranteed by the Constitution. Although the criminology and victimology have settled principles of Victim Compensation, the State is not adequately implementing these principles due to lack of infrastructure. The states have not formulated proper schemes, allocating funds for such activities, etc. Lack of proper mechanism for Rehabilitation and

⁸⁶ http://nlrd.org/wp-content/uploads/2012/02/11_38_48Final_Landmark_Judgement.pdf

⁸⁷ Surya Deuja, "Establishing a Robust Regional Human Rights Mechanism in South Asia Regional Human Rights Mechanism," Vol. 6, No. 1, 5.

Resettlement, the victims are vulnerable to re trafficking, lack of livelihood etc. Various International, Regional, National Organisation are working towards spreading awareness among the general public about Terrorism, Trafficking, Money laundering, Smuggling etc., to keep them away from such cross border crimes and presently the various kinds of Military and Security forces are deployed in these regions to combat these crimes. The rate of conviction in the region is also very low in these countries, mainly due to two reasons, one, that the laws are not punitive, but reformative and two, the corruption among the departments. The need of the hour is by the international and regional communities should join hands and take necessary steps to get rid of these kinds of heinous crimes between the borders and also spread the awareness among the mass about this growing menace.