

THE EFFECTIVE ADMINISTRATION OF CRIMINAL JUSTICE TO TACKLE TRAFFICKING IN HUMAN BEINGS AND SMUGGLING OF MIGRANTS IN INDIA

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I. STATEMENT OF THE PROBLEM

North India's premier newspaper 'The Tribune' dated 10th September, 2002 from Chandigarh reported in an article 'want to mint money, say \$ 200 to \$ 300 million per annum, without doing almost nothing? If yes, be an agent or sub-agent of a well-oiled conglomerate, run by dozens of "unscrupulous but powerful travel agents" based in Delhi or a foreign country, base yourself in a village or township in the Doaba region and successfully entice thousands of young foreign aspirants, each of whom is ready to pay anything from \$ 20,000 to \$ 30,000 for "permanent" settlement abroad.

This is no mere estimation. Official figures show that nearly 15,000 youth from Doaba and other parts of Punjab (Punjab is one of the many states of India) go to the U.S.A., Canada and other Western countries annually. Most of them go with the help of people based in different villages, who act as sub-agents or conduits of certain Delhi or foreign based "travel agents", running the flourishing "human cargo" business. The most popular method among young aspirants for settling in a country of their choice is to just intentionally misplace his or her original travel documents and then apply for fresh travel documents through embassies of different countries. The widespread use by unscrupulous agents, is evident from heaps of national status verification queries - forwarded by embassies of different countries to the local Regional Passport Office and the police authorities. And the number of those people who had "lost" their travel documents during their foreign trip has been on the rise during all these years.

The Regional Passport Office authorities, official sources revealed, received about 5500 verification queries during the past year, which were routed by them to the police authorities for the purpose. On the other hand, the office received about 625 such queries in 1999, followed by 582 and 632 during 2000 and 2001 respectively. The rise in number of course, is mind-boggling. "Though not all are wrong. But most who apply for a fresh passport intentionally misplace their travel documents so as to feign that they had not gone to that country through some illegal channel or were on a short visit as they had been accorded a visitor" visa," said an official adding that most such people act on advice given to them by their travel agents.

According to an official estimate, this way, people who work as sub-agents of those indulging in the human cargo racket, mop up about \$ 200,000,000 per year since they charge an amount of \$ 20,000 to \$ 30,000 per person and since the number of people actually landing in certain Western countries are estimated to be twice those who apply for fresh travel documents. "Actually if, on an estimate, 5,000 people apply for a fresh passport from abroad, the same number of people are those who either don't apply for a fresh passport or those who, had paid the money to travel agents in India, but had failed to get through", said a senior official associated with the verification process.

Police officials, admitted that the most favoured destinations were the USA and Canada and those indulging in the racket used varied routes, including Nepal and Mexico, for sending people to these two countries. The number of people who were not accredited travel agents but operated from various villages and townships of the Doaba region as sub-agents, according to the travel and trade industry sources, was between 125 and 150, but the police put the number at 500. "They don't have shops or

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offices and are generally those who have been to a foreign country once or twice or had adopted this profession after being deported. Their services are generally taken by people settled abroad, who want to get their relatives abroad at any cost”.

A notorious cheat Gurdip Singh was recently caught on September 19, 2002, and according to the Tribune of September 20, 2002, he confessed to having arranged green cards for over 200 immigrants under an amnesty offer by the U.S. government in 1982. Says Gurdip, “I command a lot of respect in the Doaba belt for sending their people abroad.” Gurdip used to arrange fake documents for illegal immigrants and charge money for it. After being caught by the FBI on December 23, 1989, for arranging green cards for the immigrants, he was released on January 31, 1990, after he turned state approver in the case. He was deported from Korea, Malaysia and Poland for sending illegal migrants through these countries.

There have recently been far more reports of smuggling migrants from India, reflecting an emerging migrant smuggling infrastructure that involves Indian agents recruiting migrants, transporting them to Europe or North America, collecting fees from them and perhaps providing them with jobs in the destination areas. The migrant smugglers located in the Paharganj area in Delhi generally charge \$ 7,500 to \$ 9,000 to send an individual to Europe.

II. CAUSES

What are the causes? Or what are the “pull” and “push” factors for migration? Why is it that an industry has emerged which involves helping migrants, for a fee, to secure visas, transportation and employment? Why has migration spurred the growth of illegal trafficking with the illegal flow of workers and a large market for forged documents?

The ILO secretariat has published a book entitled “Workers without frontiers - The Impact of globalization on International Migration”. According to the author, Peter Stalker, the flow of goods and capital between rich and poor countries is not large enough to offset the need for employment in poorer countries. Instead, social disruption caused by economic restructuring is encouraging people to look for work abroad. The total number of migrants around the world is now 120 million, up from 75 million in 1965 and is still growing. In a world of winners and losers, the losers do not simply disappear; they seek somewhere else to go. The ability to find good jobs and earn much higher pay is the prime reason for people to migrate. According to the ILO publication, the potential for migration is the difference in wage rates for occupations that are open to migrants. For instance, in the U.S., the sector in which the share of immigrants is highest is agriculture; in Belgium and the Netherlands, it is the extraction and processing of minerals; in Denmark, Germany, Australia and Canada, it is manufacturing; in France and Luxembourg, it is construction and civil engineering and in the U.K. it is services.

On this side of the globe, many countries are both sources and destinations for migrant workers. Thailand is host to migrants but also has Thai Workers spread across Asia. Similarly, skilled workers from India migrate to Indonesia and other East Asian countries.

In a number of Asian countries, the majority of migrants today are women, generally working as domestic servants in West Asia, Singapore and Hong Kong. The NIE (newly industrialized economies) of Singapore, Hong Kong, South Korea and Taiwan have all attracted large contingents of unskilled workers even as they try to control the inflow.

A Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime was held in Bali from 26-28 February which was attended by representatives from countries in the Asia - Pacific region and the Middle East. Ministers from these countries acknowledged that illegal movements were growing in scale and complexity world wide, including the Asia - Pacific Region. They noted with concern that many of the smuggling and trafficking activities were being orchestrated by criminal networks that were also involved in the trafficking of narcotics, document fraud, money laundering, arms smuggling and other transnational crimes. They also expressed deep concern about possible links between terrorist elements and people smuggling and trafficking operations and that these activities were now rivaling narcotics in profitability. Ministers affirmed that the root causes of

people smuggling and trafficking in persons were numerous and multi-dimensional, involving economic, social and political aspects. They reaffirmed that poverty, economic disparities, labour market opportunities and conflict were major causes contributing to the global increase in people smuggling and trafficking in persons. Ministers recognized that these problems should be addressed co-operatively and comprehensively.

III. INDIA - COUNTRY PERSPECTIVE

Let us examine the case of India. India, the world's most populous democracy with one billion people is both a host for and a source of migrants. Many Nepalese, have migrated to India. Census officials say that more than five million Bangladeshis have settled illegally in the northeastern region of India. According to Migration News July 2001 Volume 8 Number 7, it was estimated in May 2001 that there were at least 12 million illegal Bangladesh migrants in India's northeastern states. Most of the migrants are laborers in the dominant industry, tea production and in services. It is claimed that the presence of these illegal migrants poses economic and cultural problems.

India and Bangladesh share a 4,000-kilometer border. In fact, Dhubai, which is the last Assamese district, faces continuous influx from across the border. Bangladeshi migrants reportedly sneak in with the Indian farmers, who go across the border to cultivate. Though the Border Security Force issues token cards to these farmers, which they return on return, Indian officials can't check every individual. District officials also admit connivance of the local population in helping the infiltrators. Middlemen in the border villages are making huge sums of money from these infiltrators. Several instances in which these infiltrators were issued ID cards and residential certificates by village panchayats have come to light.

Why do people migrate to India? It is said that there are essentially two types of migrants from a country, the first due to political or religious reasons, and the other are economic migrants. In the first case the persons are given asylum in the adopted country, since it would be inhuman to send them back, knowing fully well that they will not have normal civil liberties and in many cases their lives will be in danger. Political asylum seekers usually tend to be small in number. Economic migrants do not receive such privileges and their number tends to be much larger and places a substantial monetary burden on the host country.

In the case of India there has been a stream of Hindu migrants from both Pakistan and Bangladesh since the independence of the country in 1947, but numbers have been small, and the absorption of this population has not been such a difficult task. Another group that has come to India from Bangladesh is that of the Chakmas. Chakmas live in a small hilly area of Bangladesh. While the Chakmas are being asked to go back, based on an assurance by the Bangladesh government, their future remains uncertain.

The case of economic migration into India is different. Sometimes, cases of illegal migrants acquire political overtones. Parties try to create a block of votes in order to win elections by granting such people ration cards, on the basis of which they get enrolled on the electoral rolls. Sometimes, they determine the fate of the election due to their concentration in certain pockets. Thus, the winner is chosen not by Indians, but by foreigners. Such migrants form significant blocks, and determine economic policies. As India is a poor country with a large number of unemployed people, illegal migrants are perceived as taking away jobs from legitimate citizens.

There is another side of the story. Illegal migrants from India are smuggled to other countries after paying smuggling fees. In 2001, 400 cases were registered at Police Station Indira Gandhi International Airport under sections of cheating, fraud and forgery of the Indian Penal Code and the Foreigners Act and 345 cases have been registered so far in 2002. During this year 205 persons have been arrested for attempting to travel with forged passports or visas.

In some cases, illegal migrants are unable to pay the full amount of fees demanded before they reach their place of destination. They endure even worse treatment at the hands of smugglers. According to the Los Angeles Times, May 5, 1998 a case in Florida involved 23 women from Vera Cruz,

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Mexico, some as young as 13 years old, who were enslaved in prostitution to pay off their \$2,000 smuggling fees. Similarly, when migrants from India and Nepal cannot pay their fees they are kidnapped and ransomed by their smugglers. Sometimes, repayment of debts is defrayed by migrants by serving as “mules” and carrying drugs. The Times recently reported on how Asian and African migrants are being smuggled into the United States through Central America. William D. Cadman, U.S. Immigration and Nationalization Service counter terrorism coordinator, in a recent testimony before Congress, said:

“Alien smuggling reaches far beyond our borders with Mexico and Canada - to the Caribbean, all regions of the globe and deep within the interior of the United States itselfOrganized crime syndicates and international terrorist organizations are known to use alien-smuggling operations to support and further their criminal objective.”

It is in this manner that smuggling of migrants becomes part of a wider network of transnational organized crime.

The National Seminar on Political Economy of Migration, held from August 17-19, 2001 in Bangalore focused on the issue of human trafficking, drug abuse, smuggling etc. Participants felt that porous borders, lackadaisical vigil and several other registration failures encouraged migration from the borders and recommended strict vigil and proper administrative infrastructures to check illegal migration.

The seminar also highlighted specific problems related to international migration. The participants recommended the revision of the existing international migration laws and the ratification of the United Nation’s International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families of 1990 by the Government of India. Neighbouring countries Bangladesh and Sri Lanka have signed the convention. India is yet to do so. The participants felt that the fundamental human rights of migrants are too easily violated or ignored. The violation of their rights contributes to increasing social disintegration and declining respect for the rule of law. There is more need than even before to promote the development and applications of international standards, which underline a fundamental fact that “migrants” rights, are “human rights”.

IV. STRATEGIES TO COMBAT SMUGGLING OF HUMANS

The Bali Ministerial Conference on People smuggling, Trafficking in Persons and Related International Crime emphasized the fact that while it was very difficult for any individual state to counter people smuggling and trafficking in persons effectively without the support of other states, and while people smuggling, trafficking in persons and other forms of illegal migration were global problems involving source, transit and destination countries, which required comprehensive international action, the Asia - Pacific region could make an effective and important contribution to combating these criminal activities by developing practical co-operative measures to prevent, intercept and disrupt people smuggling, trafficking in persons and other forms of illegal migration. Subject to national laws and according to their respective national circumstances, nations could work towards:

- Developing more effective information and intelligence sharing arrangements within the region to obtain a more complete picture of smuggling and trafficking activities and other forms of illegal migration.
- Improving the cooperation of law enforcement agencies to enhance deterrence and to fight against illegal immigration networks.
- Enhancing co-operation on border and visa systems to improve the detection and prevention of illegal movements.
- Increasing public awareness of the facts of smuggling and trafficking operations to discourage those considering illegal movement and to warn those susceptible to trafficking, including women and children - enhancing the effectiveness of return as a strategy to deter illegal migration through the conclusion of appropriate arrangements.
- Cooperating in verifying the identity and nationality of illegal migrants, in a timely manner.

An important strategy to deter and prevent such activities was to adopt and strengthen legislation that specifically criminalizes people smuggling and trafficking in persons. The Bangkok Declaration on Irregular Migration; the ongoing work of the Asia Pacific Consultations on Refugees, Displaced persons and Migration; and the existing ASEAN mechanisms in combating people smuggling, trafficking in persons and related transnational crime, were of utmost relevance. The United Nations Convention against Transnational Organized Crimes and the protocols thereto were international instruments for preventing, criminalizing and combating people smuggling and trafficking in persons and individual countries needed to consider the benefits of signing and ratifying the Convention and its Protocols.

In the Bali Conference, Ministers also urged the international community to assist source countries to address the root causes of the illegal movement of people by providing emergency aid, development assistance, direct support programmes for displaced persons and to address the plight of refugees. They agreed on the need for capacity building programs to achieve sustained economic growth and sustainable development and for assistance to countries with large refugee populations. Ministers emphasized that consideration should also be given to encouraging more opportunities for legal channels of migration including access to the international labour market.

The United Nations Convention against Transnational Organized Crime is supplemented by the Protocol against the Smuggling of Migrants by Land, Sea and Air. The definition of smuggling of migrants includes procurement of illegal entry into a country of which the person is not a national or a permanent resident in order to obtain direct or indirect financial or other material benefit.

According to the General Provisions, the purpose of the Protocol is to prevent and combat the smuggling of migrants, as well as to promote co-operation among state parties to that end. Article 6 talks of criminalization and states that:

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:

- (a) The smuggling of migrants;
- (b) When committed for the purpose of enabling the smuggling of migrants;
 - i) Producing a fraudulent travel or identity document;
 - ii) Procuring, providing or possessing such a document;
- (c) Enabling a person who is not a national or a permanent resident to remain in the state concerned without complying with the necessary requirement for legally remaining in the state by the means mentioned in sub paragraph (b) of this paragraph or any other illegal means”.

Part II of the Protocol is concerned with the smuggling of Migrants by sea and Part III elaborates on Prevention, co-operation and other means such as exchange of information, border measures, security and control as well as legitimacy and validity of documents, training and technical cooperation and other prevention measures. Part IV consists of Final Provisions.

The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families was adopted by the General Assembly on December, 18, 1990 and opened for signature, ratification and accession. The convention will come into force after ratification by 20 State parties. So far, 9 states have ratified the Convention.

An Ad hoc Committee on the Elaboration of a Convention against Transnational Organized Crime met in October 2000 for the finalization and approval of the additional international legal instrument against trafficking in and transporting of migrants.

V. TRAFFICKING

Trafficking in human beings is the illegal trade of human beings, through abduction, the use of threat of force, deception, fraud or “sale” for the purposes of sexual exploitation or forced labour. This definition is based on the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

A definition of trafficking offered by the United Nations Special Rapporteur to the United Nations Commission on Human Rights in 2000 states that trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage, for the purpose of placing or holding such person, whether for pay or not, in forced labour or slavery - like practices, in a community other than the one in which such person lived at the time of the original act described.

The United Nations interregional Crime and Justice Research Institute estimates that four million individuals are traded every year. The international Organization for Migration estimates that at least 500,000 women are trafficked into Western Europe. This is a business that does affect men, but it is predominantly women who are being sold into sexual slavery. The illicit trade of people is now a multimillion, perhaps multibillion dollar criminally organized industry, on par with drugs trafficking.

Trafficking routes replicate migration routes, with a traditional movement from South to North.

A. Countries or Areas of Origin

Afghanistan, Albania, Bangladesh, Belarus, Bulgaria, Cambodia, China, Colombia, Croatia, Hungary, India, Indonesia, Jamaica, Kosovo, Latvia, Lithuania, Mexico, Myanmar, Nepal, Pakistan, the Philippines, Poland, Russia, Romania, Slovakia, Thailand, Ukraine, countries of the former Soviet Union, Vietnam.

B. Countries or Areas of Destination

Austria, Australia, Belgium, Canada, China (including Hong Kong and Macao), Cyprus, Dubai, the Federal Republic of Yugoslavia, France, Greece, Germany, Hungary, India, Israel, Italy, Japan, Malaysia, the Netherlands, Pakistan, Poland, Saudi Arabia, Singapore, Switzerland, Taiwan, Thailand, Turkey, the United Kingdom, the USA and the United Arab Emirates.

VI. CAUSES

Over the past decade, trafficking in human beings has reached epidemic proportion. No country is immune. The search for work abroad has been fuelled by economic disparity, high unemployment and disruption of traditional livelihoods. Traffickers face few risks and can earn huge profits by taking advantage of large numbers of potential immigrants. In many cases, drug traffickers have switched to trafficking human beings because it is more lucrative and relatively risk free.

In Asia, girls from villages in Nepal and Bangladesh are sold to brothels in India. Similarly, trafficked women from Thailand and the Philippines are increasingly being joined by women from other countries in South East Asia.

Trafficking in human beings is not confined to the sex industry. Children are trafficked to work in sweatshops as bonded labour and men work illegally in the “three D - jobs” - dirty, difficult and dangerous. Children are often “sold” by unsuspecting parents who believe their children are going to be looked after, learn a trade or be educated.

The problems of trafficking are compounded by the fact that many women like to migrate. They do not want to live permanently in their villages and want to travel to urban areas. Many of the circumstances that are believed to lead to trafficking - widespread poverty, the low status of women and girls, and other social un-equities - are also reasons. Women and children often seek to migrate.

VII. A COMPLEX PROBLEM

There is no single way to identify a victim of trafficking. Trafficking is mainly a hidden problem, although many trafficking victims are in plain sight. Women and girls are often kept isolated and if they are allowed to go out, they are typically watched, escorted or guarded by associates. They are often raped, beaten, imprisoned, tortured, and made to live in life - threatening conditions. Trafficking victims often do not have their passports or other travel or immigration documents, because their abductors have confiscated them. Similarly, trafficking victims rarely have access to means of communication such as phones.

The complexity of the problem can be gauged by some of the newspaper headlines in 2001.

- U.K. National Plan launched to help protect most vulnerable children (19 Sept. 2001)
- Conference: Hidden Children - Funding London's solutions (19 Sep. 2001)
- Offenders could be electronically tagged, BBC News (3 Sept.2001)
- Children as young as five could learn about sex abuse, BBC News (3 Sept. 2001)
- US State Department - Trafficking in Persons Report July 2001 (3 Sep. 2001)
- Report on Victims of Trafficking and Violence Protection now available online (3 Sept. 2001)
- Thailand Hosts Meeting on child Sex Tourism (9 July 2001)
- Child Prostitution attracting foreign businessmen to Indonesia (11 April, 2001)
- Italian police bust sex slave ring (Apr. 2001)
- Nepal to India: Ending the Trafficker's Paradise (March 2001)
- Internet Pedophiles tracked down in global police operation (12 Feb. 2001)
- European Union ministers tackle sexual exploitation (9 Feb. 2001)
- She cost me \$ 800. And I can sell her for \$ 250 an hour (24 Dec. 2000)
- Japan: Reported Child Abuse cases Up Tenfold since 1990 (2 Nov. 2000).

VIII. INDIAN PERSPECTIVE

In cross border trafficking, India is a sending, receiving and transit nation. Receiving children from Bangladesh and Nepal and sending women and children to Middle Eastern nations is a common occurrence. India and Pakistan are the main destinations for children under 16 who are trafficked in south Asia. According to Masako Iijima, ("S. Asia urged to unite against child prostitution," Reuters, 19 June, 1998) more than 40% of prostituted girls rescued during major raids of brothels in Bombay in 1996 were from Nepal and in February, 1998, there were 200 Bangladeshi children and women awaiting repatriation in different Indian shelters. 13 boys, between the ages of 7-13 were recovered in Delhi while being smuggled to Arab countries for becoming jockeys in camel races on 19 February 1998. The children come from relatively poorer areas and are trafficked to relatively richer ones. In Bombay, children as young as 9 years are bought at auctions for up to US\$ 1500.

In India, Karnataka, Andhra Pradesh, Maharashtra, and Tamil Nadu are considered "high supply zones" for women in prostitution. Bijapur, Belgaum and Kolhapur are common districts from which women migrate to the big cities, as part of an organized trafficking network (Central Welfare Board. Districts bordering, Maharashtra and Karnataka, known as the "devadasi belt, also have trafficking structures operating at various levels. The women here are in prostitution either because their husbands deserted them, or they are trafficked through coercion and deception. Many are devadasi dedicated into prostitution for the goddess Yellamma.

According to Radhika Coomaraswamy, UN Special Report on Violence Against Women, 2 April 1997, Indian brothels hold many Nepalese women and girls of whom 35 per cent were taken on the false pretext of marriage or a good job. About 5,000- 7,000 Nepalese girls are trafficked to India every year. The official figures regarding importation of girls are 78 in 1997, 146 in 1998 and only 1 in1999. Of the trafficked girls, the average age over the past decade has fallen from 14-16 years old to 10-14 years old. Calcutta is one of the important transit points for the traffickers for Bombay and to Pakistan. Most of the women are trafficked out of Bangladesh through land routes along the border areas of Bangladesh and India, such as Jessore, Satkhira, and Rajshahi.

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The girls are sold by poor parents, tricked into fraudulent marriages, or promised employment in towns only to find themselves in Indian brothels. They're locked up for days, starved, beaten, and tortured until they learn to comply. Trafficking in women and girls is easy along the 1,740 mile-long open border between India and Nepal. Trafficking in Nepalese women and girls is less risky than smuggling narcotics and electronic equipment into India. Traffickers ferry large groups of girls at a time without the hassle of paperwork or threats of police checks. The procurer-pimp-police network makes the process even smoother. According to Soma Wadhwa, ("For Sale Childhood," *Outlook*, 1998) they are bought for petty amounts and are known to fetch much greater amounts in later transactions. Girls may not leave the brothels until they have repaid their debt, at which time they are sick, with HIV and/or tuberculosis, and often have children of their own. Any attempt to resist results in brutal torture. All their "earnings" are taken away by the so-called husbands or mistresses. The "husbands" occasionally write from fake addresses to their parents to avoid arousing any suspicion. The areas used by traffickers to procure women and girls are the isolated districts of Sindhupalchow, Makwanpur, Dhading and Khavre, Nepal where the population is largely illiterate.

IX. INDIAN LAW

The Principal Act of the Immoral Traffic (Prevention) Act, 1956 was originally enacted with the title "The Suppression of Immoral Traffic in Women and Girls Act, 1956 (58Aof 1956)". The Act was introduced in Lok Sabha with a view to implementing the International Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of Prostitution of others signed in New York on 9th May, 1950. Under Article 23 of the said Convention, traffic in human beings is prohibited and any contravention of the prohibition is an offence punishable by law. The Statement of Objects and Reasons appended to the Bill states that legislation on the subject of suppression of immoral traffic does exist in a few States but the laws are neither informed nor do they go far enough. In the remaining States, there is no bar on the subject at all. Therefore, it was felt necessary and desirable that a Central Law should be passed which will not only secure uniformity but also would be sufficiently deterrent for the purpose. A special feature of the bill is that it provides that no person or authority other than the State Government shall establish or maintain any protective home except under a licence issued by the State Government. This will check the establishment of homes which are really in use for prostitution.

The Act has a limited scope and character. There is no provision in the Act which makes prostitution *per se* a criminal offence or punishes a person for indulging in prostitution. It defines prostitution as promiscuous sexual intercourse for commercial purposes. What is punishable under the Act is sexual exploitation for commercial purposes or to earn bread thereby. There is such exploitation in a brothel (Section 3) or when one knowingly lives wholly or in part on the earnings of prostitution of a woman or girl (Section 4) or procures, induces or takes a woman or girl for the sake of prostitution (Section 5) or detains a woman or girl in premises where prostitution is being carried on (Section 6).

Prostitution by itself is not an offence except when it is committed in the vicinity of a public place or somebody seduces or solicits a person for the purposes of prostitution. No order could have been passed against the petitioners for rescue from their rooms simply because they belonged to Badya caste whose profession is said to be singing and dancing. Medical examination revealed recent sexual intercourse but sexual intercourse by itself is not an offence (*Km. Sangeeta v. State and another*, 1996 Cr Ruling 129 (Delhi)]. A perusal of the relevant provisions of the Act goes a long way to show that the purpose and object of the Act is not to abolish 'prostitute' or prostitution (*Ibid*). The Act provides a fertile ground for legal manipulation.

X. ACTION OF NGOs

The NGOs can play a major role in the rehabilitation of trafficked women. A major trafficking network was discovered by the Karnataka State Commission for Women in which 12-18 year old girls were being smuggled from various impoverished districts to contractors who run brothels in Goa. The contractors were paying the parents for their girl children under false pretenses. Durga Chimire, chairperson of a 98-NGO-strong pressure group National Network Groups Against Trafficking feels that the alarmingly low rates of female literacy, coupled with the traditionally low status of the girl child in Nepal have to be addressed to tackle the problem. There are several shelters run by various

Kathmandu based NGOs working against trafficking and rehabilitation of girls who manage to escape or are rescued from Indian brothels. This is not easy work. Relatives of the rescued girls generally do not want them back and Nepal's government is worried about the spread of HIV, as many of the trafficked girls contract HIV while in India. Rehabilitation of trafficked women and children is hampered by lack of government support and an agenda for their rehabilitation. The sending country may not come forward to claim them and younger children may not know where they originally came from. Moreover, a survey of trafficked women in India reveals their reasoning for staying in prostitution (in descending order of significance): poverty /unemployment; lack of proper reintegration services, lack of options; stigma and adverse social attitudes; family expectations and pressure; resignation and acclimatization to the life style (CATW - Asia Pacific, Trafficking in Women and Prostitution in the Asia Pacific). NGOs can contribute towards their health and well-being instead of their receiving treatment at the hands of unlicensed doctors, who give the women mood elevators, IV drips of colored water or medicinal herbs. Moreover, the women pay for this "treatment" with cash from moneylenders, and the Mafia collects a percentage from the "doctors." In fact, repatriation is perceived as a cheap way of getting rid of HIV infected girls.

In fact India has become one of the favoured destinations of paedophile sex tourists from Europe and the United States according to The Indian Express, 21 November 1997. Foreign tourists are frequenting India because of its non-implementation of laws, abundant child prostitutes and the false idea that there is a lower incidence of AIDS (Rahul Bedi, "Bid to Protect Children As Sex Tourism Spreads," 1997). Multinational tour operators, hotel companies, airlines and travel agencies set up the tourism agenda for Goa, India and the world over. In December 1997, a nine-year-old girl from Pune was found living with a 54-year-old Swiss national in a Goa hotel for over nine months. A local NGO filed a complaint with the police and the girl was sent to an observation home. When contacted, her father said she was there with his consent. The man was released following an investigation.

XI. POLICY

A number of investigations into this subject have revealed the need for more empirical research. There are no solid data on the extent of trafficking, the determinants and processes of trafficking, and the needs of trafficked persons who return. Gathering such basic information can be given high priority. Similarly, interventions such as intervention strategies need to be systematically assessed. There have been reports of women and girls being prevented from crossing the border despite their vehement protestations that they are traveling of their own free will.

The support services for returned trafficked girls and women must also be evaluated and improved. Returnees are often assumed by community members to be immoral and at fault in their own trafficking. They are also frequently thought to be infected with HIV/AIDS. Thus, they face a double stigma and require care and support to meet these challenges. Many trafficked persons may have originally left home because of dysfunctional situations, and may not be able to return to their families safely. Family assessment, therefore, should be improved, along with residential care for girls and women who cannot return home.

Anti trafficking interventions need to be refocused so that they do not infringe upon the human rights of women who wish to migrate but who are at risk of trafficking. Rather than attempting to frighten women into remaining at home, interventions could provide support systems to permit safe migration and to help women once they reach their destinations.

A view is that both HIV/AIDS and trafficking control programmes work with vulnerable and powerless populations, deal with stigma and discrimination against people infected with or affected by HIV and require similar rights - based responses. Rather than advocating that migration be limited, it calls for interventions to address the spreading of HIV without compromising the right of freedom of movement and the right to seek a better standard of living.

Although trafficking is a global phenomenon, governmental and non-governmental attentions and resources vary from region to region and country to country. The international community has classified trafficking of women as a serious abuse of women and punitive measures, prevention, rescue and

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rehabilitation have all been used to combat trafficking. However, there is still a lack of political will in terms of guaranteeing the human rights of trafficked women. This applied to countries of origin, transit and destination. Countries have failed to develop appropriate mechanisms of prevention and redress for victims of trafficking, and have also failed to enforce the existing law against assault, rape, kidnapping and extortion to prosecute traffickers.

There is a need to move from an agenda of rescue, rehabilitation and deportation to an approach that is designed to protect and promote women's human rights in countries of origin and destination.

The 1997 European Union Hague Declaration on the Question of Trafficking in Women calls on Member States to:

- Provide or explore the possibilities of providing national rapporteurs to gather and exchange information on trafficking.
- Undertake information campaigns in countries of destination and origin.
- Recognize that trafficked women are victims of crime and are not treated as illegal immigrants and deported.
- Provide victims of trafficking with time and support as they decide whether or not to press charges.
- Provide trafficked women with legal, financial and medical assistance.
- Provide women with temporary residence status and protection during criminal proceedings.
- Train the police and judiciary on the nature and characteristics of trafficking.
- Work within the framework of development co-operation to improve the economic and social status of women in the countries of origin.

The UN Convention on the Suppression of the Traffic in Persons (1949), and the supplementary convention on the abolition of slavery, the slave trade and institutions and practices of slavery have been signed by most of the SAARC countries, including Bangladesh, India, Pakistan and Sri Lanka. Another important step forward is coordinating an international convention against Transnational Organized Crime was signed by 140 countries and ratified by six. A total of 101 countries have signed its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and four have ratified it. States that ratify the Protocol are required to criminalize trafficking, punish offenders, protect victims and cooperate in seeking out traffickers.

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