

Cross Border Human Trafficking between India and Nepal: Legal Dimensions

A Thesis Submitted

To

Sikkim University



In Partial Fulfilment of the Requirements for the
Degree of Doctor of Philosophy

By

Romana Lepcha

Department of International Relations
School of Social Sciences

August 2016

Gangtok 737 102 INDIA



सिक्किम विश्वविद्यालय

(भारतके संसदके अधिनियमद्वारा स्थापित केन्द्रीय विश्वविद्यालय)

SIKKIM UNIVERSITY

[A central university established by an Act of Parliament of India in 2007]

Date: 30/08/2016

DECLARATION

I declare that the thesis entitled "**Cross Border Human Trafficking between India and Nepal: Legal Dimensions**" submitted to Sikkim University in partial fulfilment of the requirements for the degree of **Doctor of Philosophy** is my original work. This thesis has not been submitted for any other degree of this University or any other university.

Romana Lepcha

Registration No: 13/PD/IRP/01

We recommend that this thesis be placed before the examiners for evaluation.

Head of the Department

Supervisor

६ माइल, सामदुर, पीओ तादुङ-७६७१०२, गान्तोक, सिक्किम, भारत
फोन : ०३५९२-२५१०६७, २५१४६८, फ्याक्स-२५१८६५
6th Mile, Samdur, P.O. Tadong 737102, Gangtok, Sikkim, India
Phone : 03592-251067, 251468, Fax : 03592-251865
Website : www.cus.ac.in



सिक्किम विश्वविद्यालय

(भारतके संसदके अधिनियमद्वारा स्थापित केन्द्रीय विश्वविद्यालय)

SIKKIM UNIVERSITY

[A central university established by an Act of Parliament of India in 2007]

Date: 30/08/2016

PLAGIARISM CHECK CERTIFICATE

This is to certify that plagiarism check has been carried out for the following PhD thesis with the help of **URKUND** software and the result is within the permissible limit decided by the University.

for submission in all the way
**“Cross Border Human Trafficking between India and
Nepal: Legal Dimensions”**

Submitted by Romana Lepcha under the supervision of Dr.
Sebastian N. of the Department of International Relations, School of Social
Sciences, Sikkim University,
Gangtok 737 102, INDIA

Signature of the Candidate

Countersigned by the Supervisor

६ माइल, सामदुर, पीओ तादुङ-७६७१०२, गान्तोक, सिक्किम, भारत
फोन : ०३५९२-२५१०६७, २५१४६८, फ्याक्स-२५१८६५
6th Mile, Samdur, P.O. Tadong 737102, Gangtok, Sikkim, India
Phone : 03592-251067, 251468, Fax : 03592-251865

Website : www.cus.ac.in

*"In dedication to my Amma and Appa
for supporting me all the way"*

Acknowledgements

It is great pleasure to submit this PhD thesis to Sikkim University and it would not have been possible to do without the support and guidance that I received from many people.

Foremost, I would like to express my deepest gratitude to Dr. Sebastian N., Assistant Professor of International Relations, Sikkim University, who have been a tremendous mentor for me. I would like to thank for his guidance, support and encouragement throughout my research and for allowing me to grow as a research scholar. His critical remarks and comments have greatly contributed on my research as well as on my career.

I would also like to thank faculty of Department of International Relations, Dr. Manish, Head of Department and Associate Professor for his insightful advice and comments during my research. Many thanks also to Dr Teiborlang T. Kharsyntiew and Mr. Newton Singh for encouraging me by feeding ideas to complete my thesis.

I am grateful to Dr. Amit Kumar Gupta, Assistant Professor, Department of Political Science, Sikkim University and Dr. Rajesh Raj S.N, Associate Professor, Department of Economics, Sikkim University for their valuable comments and suggestions during the pre-submission presentation of my PhD thesis.

A special thanks to Bala aunty, Anue Ledia, Akku Sumit, Pinky Di, Rina and Anuradha for helping and guiding me in numerous ways during my field study at Kathmandu. I am also thankful to Nani Maiya nana for providing pass to enter Singha Durbar, Kathmandu, to conduct interviews with officials of the concerned Ministries in Nepal. I also expand my thanks to Yusuf Dada for his huge support and guidance to conduct my field study at Delhi.

I would also like to thank to the officials of Ministry of Women, Children and Social Welfare, Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs, Ministry of Home Affairs, Ministry of Labor and Transport Management, National Human Rights Commission, Maiti Nepal of Nepal for facilitating my studies in Nepal. I also thank the officials of various Ministries in India including the Ministry of Home Affairs, Ministry of Women and Child Development, and also the National Human

Rights Commission of India, National Commission for Women of India and International Centre for Research on Women for their valuable assistance for collecting study materials that helped me in developing my ideas on various issues of human trafficking. I would also like to extend my gratitude towards all the NGOs of Siliguri who are fighting for the noble cause in eradication of human trafficking, especially to Kanchanjunga Uddhar Kendra, Mary Ward Social Centre, CONC'RN, CINI North Bengal Unit, and Durbar Mahila Samanwaya Committee and also to two transit homes of Pashupati Nagar and Kakarvitta, both run by Maiti Nepal, for providing me comprehensive and useful knowledge on the issue of human trafficking.

I gratefully acknowledge the Ministry of Social Justice & Empowerment, Government of India for providing Rajiv Gandhi National Fellowship (RGNF) under University Grants Commission (2010-2015) and Sikkim University for providing me Non-NET Fellowship for one Year (2015- 2016).

I'm most grateful to the Librarians of Sikkim University, JNU, Jamia Millia Islamia University, National Commission for Women, and National Human Rights Commission of both India and Nepal for helping me in collection of relevant data and other source materials for this study.

I would also like to thank Yon Tshering Lepcha, Assistant Professor of Namchi Government College, for doing proof reading of my final draft and many thanks also to Komal Kaushik Baral, Ananta Swarup Bijendra De Gurung, Karma Sherap Bhutia, and Maheshwari Kharga for their moral and material support that helped me a lot in completing my thesis. I would also thank Shahid Rai of Jolibeez Xerox for providing print out and Xerox at affordable price and doing the final formatting and printing of this thesis.

This PhD study would not have been possible without the cooperation and unconditional support extended by my parents, sisters and brother. Hence, a heartfelt thank you to my Amma, Appa, Reshma, Ribika, and Jewel for always believing and encouraging me to follow my dreams.

Romana Lepcha

CONTENTS

Title	Page No.
<i>Acknowledgements</i>	i-ii
<i>Abbreviations</i>	iii-v
Chapter I: Introduction	1-23
1.1 Introduction	1
1.2 Definitions	1-3
1.3 Forms of Human Trafficking	3
1.3 .a. Sex Trafficking	3
1.3 .b. Labour Trafficking	3-4
1.3 .c. Child Trafficking	4-5
1.4 Trends and Patterns of Human Trafficking in South Asia	5-7
1.5 Cross Border Trafficking Between India and Nepal	8-10
1.6 The Legal Frameworks of India and Nepal on Human Trafficking	11-13
1.7 Survey of Literature	13-20
1.8 Research Questions	20
1.9 Objectives of the Study	21
1.10 Methodology	21
1.11 Organisation of the Study	22-23
Chapter II: Legal Regimes, Institutions and Human Trafficking in India and Nepal: An Overview	24-68
2.1 Introduction	24
2.2 Human Trafficking: The Concept	24-28
2.3 Causes of Human Trafficking	28-30
2.4 Distinctions between Human Trafficking and Human Smuggling	30-33
2.5 Legal Regimes/Institutions and Human Trafficking	33-36
2.6 Human Trafficking as a Human Rights Issue	36-38

2.7	Important International Conventions on Human Trafficking and its Related Crime	39
2.7 .a.	United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,1949	39-40
2.7 .b.	United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	40-41
2.7 .c.	The Convention on the Rights of the Child (CRC),1989	42-44
2.7 .d.	An Optional Protocol to CRC on the Sale of Children, Child Prostitution and Child Pornography, 2000	44-45
2.7 .e.	Conventions of International Labour Organizations (ILO) on Human Trafficking	46-49
2.7 .f.	United Nations Convention against Organized Crime, 2000	49-51
2.7 .g.	The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially of Women and Children, 2000	51-56
2.7 .h.	The Protocol against the Smuggling of Migrants by Land, Sea and Air	56-57
2.7 .i.	Trafficking Victims Protection Act, 2000	57-59
2.8	International Institutions and Human Trafficking	59
2.8 .a.	United Nations Global Initiative to Fight Human Trafficking (UN.GIFT)	59-60
2.8 .b.	Amnesty International	60-61
2.8 .c.	Coalition Against Trafficking in Women	61-63
2.8 .d.	End Child Prostitution And Trafficking (ECPAT)	63-65
2.8 .e.	Global Alliance Against Traffic in Women	65-67
2.9	Conclusion	67-68

Chapter III: Human Trafficking between India and Nepal: Socio-Legal **69-113**

Dimensions

3.1	Introduction	69
3.2	Major Acts on Human Trafficking in Nepal	69
3.2 .a.	<i>Muluki Ain</i> (National Code)1963	69-71
3.2 .b.	The Human Trafficking (Control) Act (HTCA), 1986	71-72

3.2 .c.	The Children’s Act, 2048 (1992)	72-73
3.2 .d.	Labour Act, 2048 (1992)	73-74
3.2 .e.	Bonded Labour (Prohibition) Act, 2058 (2002)	74-75
3.2 .f.	The Human Trafficking and Transportation Control Act, 2064 (2007)	76-77
3.2 .g.	Foreign Employment Act, 2064 (2007)	77-78
3.2 .h.	The Constitution of Nepal, 2015	78-81
3.3	Institutional Mechanisms on Human Trafficking: The Case of Nepal	81
3.3 .a.	Ministry of Women, Children and Social Welfare (MoWCSW)	81-82
3.3 .b.	National Plan of Action against Trafficking in Persons, Especially Trafficking in Women and Children 2056 (1998)	82-84
3.3 .c	National Human Right Commission (NHRC) of Nepal	84-86
3.3 .d.	Anti Trafficking Efforts by NGOs in Nepal	86-89
3.4	The National Legal Frameworks of India on Human Trafficking	90
3.4 .a.	Constitution of India	90-91
3.4 .b.	The Immoral Trafficking Prevention Act (ITPA), 1956	91-93
3.4 .c.	Bonded Labour System (Abolition) Act, 1976	93-94
3.4 .d.	Indian Penal Code 1860	94-96
3.4 .e.	The Child Labour (Prohibition and Regulation) Act,1986	97-98
3.4 .f.	The Transplantation of Human Organ Act, 1994	98-99
3.4 .g.	Juvenile Justice (Care and Protection of Children) Act, 2000	99
3.4 .h.	Immigration (Carrier’s Liability) Act, 2000	100
3.4 .i.	The Prohibition of Child Marriage Act, 2006	100-101
3.4 .j.	Protection of Children from Sexual Offences Act (POCSO), 2012	102-103
3.4 .k.	Criminal Law (Amendment) Act, 2013	103-104
3.5	Major Institutional Mechanisms on Human Trafficking in India	104
3.5 .a.	Anti Human Trafficking Units (AHTUs)	104-106
3.5 .b.	Role of Central Government Agencies	106-107
3.5 .c.	Role of State Government Agencies to Combat Trafficking	107-108
3.5 .d.	Police and Courts	108-109
3.5 .e.	Role of Non Governmental Organizations (NGOs)	109-112
3.6	Conclusion	112-113

Chapter IV: Legal Frameworks on Human Trafficking in/between India and Nepal: A Critical Examination		114-147
4.1	Introduction	114
4.2	Understanding Legal Issues of Human Trafficking in the Region	114-118
4.3	Regional Measures on Combating Human Trafficking	118-119
4.4	Examining Human Trafficking in India	119-125
4.5	Regulating Human Trafficking in Nepal	125-128
4.6	Gendered Laws, Practices and Human Trafficking	128-130
4.7	India and Nepal: Issues of Cross Border Trafficking	130-135
4.8	Open/Unregulated Border as a Factor of Human Trafficking	136-138
4.9	Role of NGOs/Civil Society Organisations	138-140
4.10	Gaps in the Legal Framework of Trafficking in India and Nepal	140
4.10 .a.	Non Implementation of UN Convention on Trafficking and its Protocols	140-142
4.10 .b.	Lack of a Comprehensive Definition on Human Trafficking	142
4.10 .c.	Missing of Gender Sensitivity in Enforcement of Laws	142-143
4.10 .d.	Lack of Cooperative Mechanism	143-144
4.10 .e.	Un-satisfactory Systems of Prosecutions	144
4.10 .f.	Limitations in Existing Laws for Understanding Dynamic Nature of Trafficking	145
4.10.g.	Lack of Organization for Examining Cross Border Trafficking Cases	145-146
4.11	Conclusion	146-147
Chapter V: Addressing Human Trafficking between India and Nepal: Reform of Legal Frameworks and Restructure of Institutions		148-185
5.1	Introduction	148-149
5.2	Addressing Human Trafficking in India and Nepal	149-152
5.3	Reforming Legal Framework and Law Enforcement system of India and Nepal	152

5.3 .a.	Re-define the term ‘Trafficking’	152-154
5.3 .b.	Reform Criminal Justice System and Procedures	154-156
5.3 .c.	Improve the Law Enforcement Capacity to deal with Human Trafficking	156-159
5.3 .d.	More Effective Investigation Process of Law Enforcement Agencies	159-160
5.3 .e.	Effective Border Control between India and Nepal	160-162
5.3 .f.	Addressing Illegal Migration to Curb Trafficking	162-165
5.3 .g.	Reforms in Rescue, Rehabilitation and Reintegration Programmes	165-168
5.3 .h.	Collaboration and Cooperation among Concerned Anti-Trafficking Institutions	168-169
5.3 .i.	Re-examining the SAARC Convention in case of Human Trafficking	170
5.3 .j.	Bringing Gender Sensitivity in the Policies and Provisions on Human Trafficking	171-172
5.4	Course of Action on Laws of Human Trafficking in India and Nepal	172-184
5.5	Conclusion	184-185
Chapter VI: Conclusion		186-196
References		197-220
Appendices		vi-xxxvi
Appendix I	Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (2000)	vi-xvi
Appendix II	Human Trafficking and Transportation (Control) Act, 2064	xvii-xxvi
Appendix III	The Immoral Traffic (Prevention) Act, 1956	xxvii-xxviii
Appendix IV	SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002	xxix-xxxvi

Abbreviations

AARWIN	Alliance Against Trafficking in Women and Children in Nepal
ABC Nepal	Agro Forestry Basic Health and Cooperation, Nepal
ADB	Asian Development Bank
AHTUs	Anti Human Trafficking Units
ATEST	Alliance to End Slavery and Trafficking
CAC	Central Advisory Committee
CATW	Coalition Against Trafficking in Women
CCPR	Covenant on Civil and Political Rights
CDU	Child Development Unit
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CID	Criminal Investigation Departments
CINI	Child in Need Institute
CRC	Convention on the Rights of the Child
CSEC	Commercial Sexual Exploitation of Children
CWC	Child Welfare Committee
ECOSOC	The Economic and Social Council
ECPAT	End Child Prostitution and Trafficking
EUROPOL	The European Police Office
FIR	First Information Report
FSWs	Female Sex Workers
GAATW	Global Alliance Against Traffic in Women
GoI	Government of India
GoN	Government of Nepal
HIV/ AIDS	Human Immunodeficiency Virus /Acquired Immunodeficiency Syndrome
HMG	His Majesty's Government
HTTCA	Human Trafficking and Transportation (Control) Act
ICCPR	International Covenant on Civil and Political Rights

ICDS	Integrated Child Development Services
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICLA	Immigration Carrier's Liability Act
ICT	Information and Communication Technology
ILO	International Labour Organization
INGOs	International Non Governmental Organizations
INTERPOL	International Police organization
IOM	International Organization Migration
IPC	Indian Penal Code
ITPA	Immoral Trafficking Prevention Act
JJ Act	Juvenile Justice (Care and Protection of Children) Act
MHA	Ministry of Home Affairs
MoFA	Ministry of Foreign Affairs
MOLTM	Ministry of Labour and Transport Management
MWCD	Ministry of Women and Child Development
MoWCSW	Ministry of Women, Children and Social Welfare
NCA	National Crime Agency
NCLP	National Child Labour Project
NCW	National Commission for Women
NGOs	Non-Governmental Organizations
NHRC	National Human Right Commission
NHRM	National Rural Health Mission
NIPCCA	National Institute of Public Co-operation and Child Development
NNLRJ	National Network of Lawyers for Rights and Justice
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co- operation in Europe
POCSO	Protection of Children from Sexual Offences
PRSP	Poverty Reduction Strategy Paper
SAARC	South Asian Association for Regional Cooperation
SAWC	South Asian Women's Centre

SITA	Suppression of Immoral Traffic Act
SSB	Sashastra Seema Bal
SVAW	Stop Violence Against Women
TOT	Training of Trainers
TVPA	Trafficking Victims Protection Act
TVPRA	Trafficking Victims Protection Reauthorization Act
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN.GIFT	United Nations Global initiative to Fight Human Trafficking
UNCRC	United Nations Convention on the Rights of the Child
UNDP	United Nation Development Programme
UNHCHR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Emergency Fund
UNIFEM	United Nations Development Fund for Women
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention on Transnational Organized Crime
YPP	Youth Partnership Project

Chapter I

Introduction

1.1 Introduction

Human trafficking as an organized crime is a matter of global concern. It is considered as the third largest form of organised crime against humanity after drugs and arms trafficking (US Department of State, 2015). South Asia as a region is of not free from this particular menace. Within South Asia, the Eastern Himalayan region remains as the fastest growing areas of illicit human trafficking. The region has all the necessary elements that facilitate this crime such as, source, transit and destination countries located side by side and of whose borders are relatively unmanned. This makes it much easy for the traffickers to freely move across borders. As a result, the region has witnessed rapid growth in human trafficking.

1.2 Definitions

Generally, human trafficking means illegal trade of human beings for the purposes of slavery, forced and bonded labour, child labour and above all commercial sexual exploitation. Among the various forms of human trafficking, trafficking for sexual exploitation is the most common one. Human trafficking is an extreme form of human rights violation as it denies the fundamental rights of mobility, freedom and dignity of the victims.

Definitions of trafficking have varied according to countries and laws. However, the definition in the Article 3 (a) of *United Nation Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* is generally accepted internationally and has been recognized by all respective countries of the world according to which the standard of Human Trafficking is measured. It states that;

“‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the

consent of a person having control over another person, for the purpose of exploitation” (UN Trafficking Protocol, 2000: 2).

This is the first internationally accepted definition on human trafficking and the Protocol came into force on 25 December 2003. The most important characteristics of this is, it provides protections to victims of trafficking from prosecution for the acts they are forced into, and talks explicitly over preventive measures, victim compensation, repatriation, etc. (Ghosh, 2009).

In South Asia, cross border trafficking or movement of persons within and outside the countries for exploitation in various forms is a big problem. Among these, trafficking for commercial sexual exploitation is the most dangerous form. The trafficking of women and girl children from Nepal to India for the purpose of exploitation is a recent phenomenon. Further, women and girls are trafficked to the Middle East and other countries for commercial sexual work, domestic work, forced labour, nannies etc (NHRC Nepal, 2011). Trafficking within countries itself, is another important factor of India and Nepal. There have been a growing number of reports includes that individuals from rural areas being trafficked into the urban areas for different purposes. Further, a number of socio-economic and political factors like conflict driven internal displacement, poverty, and unemployment increase the chances of being trafficked.

Various steps have been initiated to combat this crime by the South Asian countries, especially India and Nepal. However, the problem has persisted and in fact, increased significantly, in India and Nepal over the period. These measures have proved to be inadequate, weak, and unresponsive to deal with the issues pertaining to human trafficking. This has been further accentuated by the limited awareness or knowledge about trafficking within society and even to the law enforcement officials, which is another big problem in India and Nepal.

This study, thus, tries to explore the major socio-legal aspects of human trafficking in India and Nepal by critically examining the nature and role of existing Laws of both the countries. This study will also look into the reasons behind the lack and failure of legal institutions and mechanisms to prevent human trafficking in the region. The study will further examine the problems which are hindering the implementation of the existing laws against human

trafficking. It further tries to propose some new measures or ways to strengthen legal frameworks and institutions to address human trafficking between India and Nepal.

1.3 Forms of Human Trafficking

There are three major forms in human trafficking. They are: (i) Sex Trafficking, (ii) Labour Trafficking (Bonded and forced Labour) and (iii) Child Trafficking (UNODC, 2014).

1.3 .a. Sex Trafficking

Sex trafficking is broadly defined as “the recruitment, transportation, harbouring, provision, or obtaining of a person for the purpose of a commercial sex act” (TVPA Fact Sheet, 2000). It is a well-known fact that women are traded, bought and sold like the objects of sex and treated with no human dignity. Very frequently the term trafficking is used to describe cross-border activity but it is known that the majority of trafficking takes place within nation-state boundaries. The major factors that fuels sex trafficking are poverty, gender inequality, false marriage proposal (that ultimately turn into bondage situation), promise of a good job in another country, so on and so forth. As such, the victims of human trafficking are forced into various forms of commercial sexual exploitation including prostitution, pornography, stripping, live-sex shows, military prostitution, sex tourism etc (Dalla, 2007).

If we are to take a report of the United Nations Development Fund for Women, it argues that sex trafficking appears to be growing in scope and magnitude, with increasing numbers of countries being involved in it due to globalization and the relative ease with which traffickers are able to transport victims between countries through porous borders (UNDP, 2004).

1.3 .b. Labour Trafficking

The Trafficking Victims Protection Act (TVPA) of 2000 defines labour trafficking as “the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud or coercion for

the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery” (TVPA, 2000:1). There are several forms of exploitative practices linked to labour trafficking that includes bonded labour, forced labour and even child labour.

Forced Labour is a situation in which victims are forced to work against their own will, under the threat of violence or some other form of punishment (Andreess, 2008). Forms of forced labour include domestic servitude, agricultural labour, sweatshop factory labour, and begging etc.

Various factors such as poverty, discrimination, social exclusion and inadequate implementation of legislations are the root causes of labour trafficking for bonded labour across the world. It is probably the least known form of slavery today. Victims become bonded labourers when their labour is demanded as a means of repayment for a loan or service in which its terms and conditions have not been defined.¹

Labour trafficking as a form of human trafficking is predominant in the South Asian region. The caste system of the region is one of the main social factors on which the structure of bonded labour rests. Dalits or the so called untouchables are denied access to land in India (Bhardwaj, 2011). *Badi* caste in Western Nepal are forced to work in inhuman conditions, and expected to perform labour for free (Gurung, 2014). This is due to the (so called) existing upper castes, who are practicing active boycott system which keeps the lower caste socially subjecting and keeps them economically exploited.

1.3 .c. Child Trafficking

Child Trafficking is the third form of trafficking which is also a global phenomenon. This violates children’s rights and infringes upon the child’s physical and mental integrity which is central to the experience of human dignity, and poses a significant threat to the child’s life (UNICEF, 2008). Children are trafficked in South Asia for various purposes in which sexual exploitation is the primary goal. Child labour is a form of work that is likely to be hazardous to the

¹ See *Labour Trafficking Fact Sheet*; www.acf.hhs.gov/trafficking/about/fact_labour.pdf

physical and mental health, moral and social development of children and can also hamper their education (Bhoi, 2005). Other purpose for exploitation includes agricultural labour, factory works, domestic servitude, organs trade, child pornography, begging and other related criminal activities. Boys from Bangladesh and Pakistan have been trafficked to work in camel racing shows in the Middle Eastern countries (Global March against Child Labour, 2013). Trafficking for forced or arranged marriage is another critical issue in Afghanistan and Bangladesh where children are the major victims (ibid). Debt release, dispute settlement and forced military recruitment are other causes of trafficking of children (UNICEF, 2008).

Due to its transnational nature, the impacts of human trafficking reached almost each and every country. According to the Stop Violence against Women (SVAW)², trafficking patterns has been divided into ‘source’, ‘transit’ and ‘destination’ countries. The source countries refer to the country of origin of a trafficking victim; the country where traffickers recruit women and girls. The transit countries are those where traffickers frequently move women through intermediary countries, often for extended periods when the women may be forced to work. Traffickers choose transit countries based near border areas. Such countries had their weak border controls, corruption on immigration officials and police personnel which eventually offer space for organized crime of human trafficking. Destination countries are those that receive trafficking victims. These are generally economically prosperous countries than the origin countries and more often they can support the commercial sex industry, forced labour industry etc. (SVAW, 2010).

1.4 Trends and Patterns of Human Trafficking in South Asia

Human trafficking has been referred as ‘modern day slavery’. It presents threats to the human rights and human dignity of many people every year. Despite this, it remains one of the least understood forms of transnational crime with various problems within the countries and has various implications on

² The *Stop Violence against Women* is a project of *The advocates for Human Rights*. This is a forum for information, advocacy and change in the promotion of women’s human rights in countries of Central and Eastern Europe and the Former Soviet Union. For details see www.stopvaw.org

human security like it poses threats to border integrity, as millions of people are transported annually across the boundaries under false pretences; threats to human health through the spread of HIV/AIDS and other STDs; and threats to national and international security as it is believed that many of the world's major sex traffickers are connected to organized crimes such as terrorism (Jonsson, 2009).

The South Asian region is identified as one of the geographic areas heavily affected by human trafficking. As per the estimates of UN, South Asia has the second largest number of internationally trafficked persons in the world, where between 150,000-200,000 people are trafficked every year (UNDP, 2007). South Asia has seen as the most vulnerable region for human trafficking because of its huge population, growing urbanization, and relatively high poverty rate (Huda, 2006). In the words of Huda, poverty and lack of employment opportunities lead to increasing numbers of women and men migrating to other region in order to seek alternative livelihood options, but become victims of trafficking. For example, maximum numbers of Nepali girls in pursue of healthy life standard are sent to seek employment in urban areas or in neighbouring countries and this makes them more vulnerable to trafficking. This can be understood from the very fact that promises of employment remains as one of the most important aspect that attracts girls and women towards traffickers (Mandal, 2014).

In South Asia, many states are the origin, transit and destination points for human trafficking. Trafficking for commercial sexual exploitation is the most common forms of trafficking in South Asia. The major causes of human trafficking in South Asia include extreme economic disparities within the countries and different social groups. The rapid economic, political, demographic changes are occurring in the region which leads to extensive migration. Poverty and lack of employment opportunities are other causes of trafficking in the region. According to a World Bank, there are 500 million people under the poverty line in South Asia (World Bank, 2010).

Civil war and other types of internal conflict in the region is another issue that intensifies trafficking in South Asia. For example, from Nepal and

Afghanistan, thousands of young people flee to make their life better and end up in sex trade (US Department of States, 2015). In Afghanistan military and political oppression has created a situation of insecurity, which in turn leads to an increase in the numbers of people migrated to other region making women and children more vulnerable to trafficking for sex work (Wolte, 2004). Similarly armed conflict or the Maoist Movement in Nepal has created an extensive internal displacement of people that has increased the vulnerability of girls and women to trafficking.

Other critical factors that influence human trafficking in South Asia are social discrimination based on race, ethnicity, gender and continued existence of caste system within the region that makes them more vulnerable. In almost all South Asian countries, discrimination and violence against women and girls has been continuing in the family, community and society at large (Niaz, 2003). Patriarchal social systems and gender stereotypes predominant in the region reinforce women's lower status in the family and society and it leads to dependency, feelings of helplessness and low levels of self esteem. This ultimately create resilience in women and girls and making them most vulnerable to exploitation, and thus to trafficking (UNDP, 2007). Gender discrimination like women and girls are characterised in terms of their relationships to men as daughters, wives and mothers which ultimately determine their position in the family that is always lower to that of male. This unequal gender relation also creates women and girls more vulnerable to trafficking and other health issues like HIV/AIDS.

High number of forced and early marriages are another form of gender based violence in South Asia which in a way a method of trafficking of women and girls (SWAC, 2014). Caste and ethnicity play a crucial role in the exclusion and social marginalisation of women which also creates traps for women. Socio-economic and political domination of the higher caste over the lower caste and unequal distribution of wealth, opportunity, education and res etc results in a continuing marginalisation of lower caste people that make them the victims of trafficking.

1.5 Cross Border Trafficking between India and Nepal

A study conducted by Asian Development Bank (ADB, 2000) indicates that human trafficking is one of the vital threats to the states and to state control of borders in South Asia. Open and porous border facilitates millions of illegal transportation of goods along with people across the country. And in South Asia, Nepal remains the top country that holds the burden of trafficking issue. The incidences of cross-border trafficking, especially women and children trafficked between India and Nepal has been increasing day by day³ (Samuels, 2011). Due to open and porous border, transnational organized crime like human trafficking become a hazardous threat to national and international security through connecting world's major organised crimes like arms and drug trafficking.

Open and porous border between India and Nepal facilitates trade, ideas and culture, and also fostered close socio-economic aspects that strengthen the bilateral relations between the two countries (Upreti, 2009). At the same time, the open border has been misused by many criminal groups. The rise of human trafficking has been the major concern of open or porous border between India and Nepal. It has posed challenges to both the government including law enforcement officials like border control officials or immigration officers in detecting, identifying and reporting incidents of human trafficking.

Each and every country is now exposed to rapid social changes which made individuals vulnerable for the purpose of commercial exploitation. The open and porous border between the countries has significantly increased cross border migration. Majority of victims are women and girls, who are more vulnerable due to limited economic opportunities, illiteracy, and low socio-economic and cultural status. Thus, the existing problem of employment and economic hardship, which are common phenomenon in South Asia, directs the flow of individual from one region to another region. It is, at times, a positive and inevitable thing but mostly for inhumane purpose. Besides, gender discrimination, lack of access to education and information and domestic

³ According to the National Crime Records Bureau, there were 5,466 cases of human trafficking registered in India in 2014, an increase of 90 percent over the past years (NDTV, 2016). Maiti Nepal rescued 64 victims in 2010 which was increased to 183 in 2015 (Maiti Nepal, 2015).

violence and disintegration of the family are other causes of human trafficking in South Asia in general and Nepal in particular. Nepal is the major source country of human trafficking in South Asia and India is the main destination for trafficked men, women and children, who are later subjected to forced labour and commercial sex. Sex trafficking is particularly rampant within Nepal with as many as 5,000 - 10,000 women and girls being trafficked to India alone each year (Maiti Nepal, 2010).

In India and Nepal, among all the initiatives of trafficking, more concerns are given to prosecution and the rescue of the victims as a process of trafficking not on the reasons for which it occurs. Many laws/Acts have been initiated but just limited to preventing or managing trafficking. The major concern, that to stop trafficking, can be met by addressing those socio-economic issues effectively. This can be done by changing society's perceptions with organising awareness programmes among people and by imposing severe punishment and making strict laws against the perpetrators of human trafficking. From the experience of the region, it is understood that, the negligence on enforcement of laws and legislation became the major challenge for the rescued victims to be re-trafficked. Thus, if there is no real commitment to implement the effective laws in both international and national levels, then the issue of trafficking will continue to be on high level.

With regard to India and Nepal, cooperation on the issue of trafficking is still minimal. Corruption, naturally, has a major impact on the border control activities. Other major problems or gaps that exist between the two countries are the lack of law enforcement capacity and commitment to deal with human trafficking. For instance, there is no proper law enforcement mechanism between Nepal and India for border surveillance and to prevent trafficking of women and children. Till now, none of the treatise between Nepal and India mentions the procedures for the regulations of the Indo-Nepal border (Deane, 2010). Further, both the countries have the problem of differentiation on law and legal

procedures implementation in their domestic laws in the strategy to combat trafficking⁴.

1.6 The legal frameworks of India and Nepal on Human Trafficking

In view of the growing magnitude of the problem of human trafficking and the concern for safeguarding the basic human rights of ordinary people, many laws/regulations have been introduced in both India and Nepal. For instance, Nepal has different Acts/Laws in place to control human trafficking. To name some, (a) the *New Muluki Ain (Code of Law)* 1964 that prohibits the taking of persons out of the country, by fraud or incitement, for the purpose of selling them, and imposes penalties of 10-20 years (Deane, 2010); (b) the *Human Trafficking Control Act* 1986 – it provided a number of legal safeguards, including the provision of rehabilitation and integration of victims of trafficking, protection of victims and witnesses, compensation and others (Paudel & Carryer, 2010); (c) *the Children Act of 1992*; This Act contains a number of provisions on child labour, and it has recently been amended to make the Act more abuse-specific, especially in relation to sexual abuse (ILO, 2009); (d) *the Child Labour (Prohibition and Control) Act* 2000 prohibits the work performed by children under the age of 14 years; and *the Trafficking in Persons and Transportation (Control) Act, 2007* which aims at preventing trafficking in persons in Nepal and also cross border trafficking from Nepal.

The important domestic laws and Acts of India that deals with human trafficking are; (a) *the Indian Penal Code* 1860, which is the substantive law of the country which are relevant to the context of human trafficking including the displacing of a person from her community by coercion or deceit or lure or force, which is tantamount to kidnapping/abduction (Nair, 2010); (b) the *Immoral Trafficking Prevention Act* 1986 which brings out specific offences of sex trafficking and address human trafficking for commercial sexual exploitation. The offence includes procuring, inducing, trafficking or taking persons for the sake of prostitution, even an attempt to procure or take and seduction and

⁴ For example some sexual activities that are illegal in Nepal are not illegal in India. In India, according to The Immoral Traffic Act 1956, prostitutes can practice their trade privately but cannot legally solicit customers in public whereas in Nepal, prostitution or any activity involving women for sexual exploitation is illegal.

soliciting of a person for the purpose of prostitution would constitute the offence (Nair, 2010). The (c) *Juvenile Justice (Care and Protection of Children) Act* 2000 commonly called *JJ Act* has a few penal provisions that deal with the legal issues of procurement of a child under the age of 18 years for the purpose of exploitation (Deane, 2010). According to this Act, anybody in control of a child who assaults, abandons, exposes or wilfully neglects the child or procures him to be assaulted, abandoned or exposed causing the child unnecessary mental or physical suffering, is liable under Section 23 of JJ Act (Nair, 2010).

Protection of Children from Sexual Offences Act (POCSO) Act of 2012 is the first specific and comprehensive legislative framework in India to punish the offence of different forms of child sexual abuse. The provisions of the Act put punishment of people who traffic children for different illegal purposes. The Act prescribes strict punishment to the individual who found guilty with a maximum term of rigorous imprisonment for life with fine. Similarly, the Criminal Law (Amendment) Act 2013 has been one of the most concrete steps taken by the Indian government to curb violence against women. The Act is considered to be one of the most important changes that have been made in the existing criminal laws namely the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act (Kaushik, 2015)

India has addressed trafficking related issues in its constitution in the three Articles of Fundamental Rights in Part III and Directive Principles of State Policy in Part IV. When the Fundamental Rights ensures the rights of people against trafficking and of forced labour (Article 23), Directive Principles of State Policy directed at ensuring that health and strength of individuals are not abused and that no one is forced by economic necessity to do work unsuited to their age or strength. Article 39 (e) and also (Article 39(f)) of the Directive Principles of State Policy stating that childhood and youth should be protected from exploitation. In Nepal since trafficking is a priority issue in the country, the Constitution deals with it in Article 29 as prohibition of trafficking in human beings, slavery, and bonded labour.

It is also important to mention that, both the states are party to several international conventions to curb trafficking. These include the *Convention on*

Suppression of Trafficking and the Convention on Exploitation of the Prostitution of Others, 1949, Convention on the Elimination of all Form of Discrimination against Women, 1979, the Convention of Rights of Child, 1990 and the UN Protocol to Prevent Suppress and Punish Trafficking in Persons, especially Women and Children, 2000 etc. On the regional level, both the countries has strongly supported regional instruments such as the SAARC Convention on Regional Arrangements on Child Welfare in South Asia, as well as Regional convention on Combating the Crime of Trafficking in Women and Children for Prostitution, 2002 which was signed by all the SAARC member states.

Despite all such efforts by both the states, the rate of trafficking increases in an alarming mode. It has been estimated that 100,000-200,000 trafficked Nepali citizens are in India (Maiti Nepal, 2012). The major reasons for the high rate of trafficking in this region are the socio- economic conditions; inadequate prevention measures; absence of cooperation between the countries in providing information, lack of joint investigation; lack of set guidelines for safe migration; penalties at different stages and for different forms of trafficking are unclear; and gender sensitivity is missing even though there are laws for women but those laws and rights are violated and it is assumed that, most of the time, the victims of trafficking are women and girl (UNODC, 2011). Hence, the study explores the ways with effective legal and other related mechanisms as an essential weapon in the fight against human trafficking.

The inadequacy of anti-trafficking legislation between the states has its impact on several issues like lack of proper training to border patrol officers or local enforcement officers, weak enforcement of laws, lack of awareness within the masses etc. The other problem within the states would be lack of a common definition of trafficking. Even the definition adopted in the SAARC Convention was proved limited as it covers those trafficking only for commercial sexual exploitation. It also fails to make adequate distinctions between women and children, does not address the needs of women who choose not to repatriate. It lacks provisions for victim compensation and adequate monitoring (Nair, 2010). It defined trafficking as ‘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 subjected to trafficking⁵.

Each country of South Asia has their own domestic laws and those laws lack a shared understanding of trafficking and even the very definition of human trafficking varies country to country. Disparity in interpretations of what it means to be trafficked is a major problem in the existing laws and legislation of the countries in the region. For instance, India has a specific law on trafficking but defines ‘prostitution’ or sexual exploitation to have the usual attributes of trafficking⁶. Some of the laws in Nepal cover more forms of trafficking including removal of organs but not strictly speaking on trafficking⁷.

1.7 Survey of Literature

The materials used in the study are mainly books and articles on the concept of human trafficking, socio-legal aspects of human trafficking, cross border human trafficking, globalisation and human security to develop a clear understanding of such concepts and their various manifestations in the contemporary debates.

The book, *Human Trafficking: Dimensions, Challenges and Responses* written by P.M Nair 2010, (Konark Publishers) demonstrates the rights oriented and gender sensitive response patterns, mechanisms and methodologies of human trafficking. The book also presents various issues, problems and challenges of human trafficking and appropriate responses to it. This book is helpful to the study especially for understanding legal or institutional regime of South Asian regions. Similarly, the article “Global Trafficking in Women: Some Issues and Strategies”, (*Women’s Studies Quarterly*, Vol. 27, No.1/2, , Spring-Summer, 1999, pp. 11-18) by Lin Chew analyse various initiatives of INGOs and NGOs in tackling the violation against human rights and the success in their plans of action. The article focused on the Acts of nation states to use human rights instruments in order to respect the rights of women.

⁵ South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002

⁶ The Immoral Traffic Prevention Act,1956.

⁷ The Special Provisions of Human Trafficking Act,1996

The book *International Law of Human Trafficking* by Anne T. Gallagher, (Cambridge University Press, 2010), presents the first-ever comprehensive and in-depth analysis of the international law of human trafficking. She discusses the rules to the international human rights law, transnational criminal law, refugee law and international criminal law in the process of identifying and explaining the major legal obligations of States with respect to preventing trafficking, protecting and supporting victims, and prosecuting perpetrators.

The book, *Sex Trafficking, Human Rights and Social Justice*, by Tiantian Zheng, (ed.) (Routledge, 2010) explores the life experiences, agency and human rights of trafficked women in which the term anti-trafficking, human rights and social justice are intersected. The book points out the global anti-trafficking policy and the root causes for the undocumented migration and unemployment by offering different case studies on sex trafficking. The book, *Sex Trafficking: Inside the Business of Modern Slavery* by Siddharth Kara, (Columbia University Press, 2009) provides a complete account of sexual exploitation and sex trafficking by revealing the shocking conditions of the victims. The book, *Sex Trafficking in South Asia: Telling Maya's Story*, written by Mary Crawford (Routledge, Taylor & Francis Group, 2010), primarily aims at documenting the reality of sex trafficking in South Asia. The book exposes the local issue of sex trafficking as global problems with the painful story of Maya of Nepal and the gender and caste system as the root cause of trafficking.

The book written by Kevin Bales, *Understanding Global Slavery: A Reader*, (Berkeley: University of California Press, 2005), explores that economic globalization and the facilitation of trade between nation-states has contributed a great deal to the trafficking of humans across state boundaries. The book, *Crime and Punishment around the World, Volume 3: Asia and Pacific* by Doris C. Chu and Graeme R. Newman (ABC CIO, 2010), gives region wise assessment regarding crime and punishment of Asia and Pacific. The book surveys each country and explores the root causes of trafficking and their trafficking patterns. Obi N.I Ebbe and Dilip K. Das on *Global Trafficking in Women and Children*, (CRC Press, Taylor and Francis Group, 2008) presents an important role of police practitioners, government officials, academicians, and researchers in

regards to the issues of human trafficking especially women and children and its control and prevention measures to curtail it completely.

The book, *Trafficking in Human: Cultural, Social and Political Dimension* (ed) by Sally Cameron and Edward Newman, (United Nations University Press, 2008) analyses that human trafficking can be understood only when structural factors are related with proximate factors. For the author, structural factors include social, economic and political context and proximate factors are policy and governance issues.

Alexis A. Aronowitz in *Human trafficking, Human Misery: The Global Trade in Human Being*, (Praeger Publishers, 2009), provides a deeper understanding of human trafficking by combining scientific, academic, and government reports; studies generated by nongovernmental, international, and intergovernmental organizations, conducting various trafficking assessments in different countries. The book argues that globalization has created the biggest market for trafficking. The book also explores the role played by different stakeholders in prevention, enforcement, and victims' assistance projects to control human trafficking.

The article "Human Trafficking: A Twenty First Century Slavery" (*The Forrow*, Vol. 57, No.10 (Oct., 2006), pp. 528- 537) written by Sile N. Gabhan, explores different concepts of slavery than that of Transatlantic Slave Trade in the form of bonded labour, early and forced marriage, forced labour and sexual exploitation etc.

The book written by Katja Franko Aas, *Globalization & Crime* (Sage Publication Ltd 2007) provides very detailed analyses of the term globalization and its impact on transnational crimes in a local, national and global level. Similarly, the edited book by Rianne Letchert and Jan Van Dijk *The New Faces of Victimhood: Globalization, Transnational Crimes and Victim Rights*, (Springer Science & Business Media (2011) is a critical study that explores the negative side of globalization and discusses how globalization produces an increasing number of victims which include victims of human trafficking, international terrorism, transnational organised crime, cross border environmental crimes, internet-based identity theft,

cyber stalking and misconduct by private military companies etc. The book is useful in the present study as it explored the absence of efficient legal or operating institutions for global justice.

The book written by Shahrbanou Tadjbakhsh and Anuradha M. Chenoy, *Human Security: Concepts and Implications* (Routledge, 2007), provides the concept of human security as economic security, food security, health security, environmental security, personal security, community security and political security and in a way it gave way to recognition of new threats and conflicts facing by nation state. This book is very useful to the study to understand the concept and implication of human security. Similarly, the edited volume of David T. Graham and Nana K. Poku, *Migration, Globalization and Human Security* (Routledge, 2000), is helpful to understand the notion of migration, globalization and human security. The book is particularly helpful to understand how population movements have an implication on creating human insecurity. *South Asia in the World: Problem Solving Perspectives on Security, Sustainable Development and Good Governance* by Ramesh Thakur and Oddny Wiggen (eds.), (Tokyo: United Nations University Press) is also useful in the present study to understand South Asia since it critically integrate state wise discussion on various aspect of security, sustainable development and good governance.

The article “Cross-Border Trafficking in Nepal and India- Violating Women’s Rights”, (*Human Rights Review*, 2012) by Tameshnie Deane provides overall understanding of cross border trafficking of women and girls in Nepal to India. It explores lack of enforcement of existing laws is the major problem with Nepal’s and India’s domestic laws. This article is helpful as it looks at ways to fight trafficking and make the governments of India and Nepal more effective in their fight against trafficking. Soma Wadhwa’s “For Sale Childhood” (*Outlook* 1998) presents details about the size, modus operandi, cost and areas of cross border trafficking form Nepal to India. The article is useful to understand background of victims of trafficking. Author describe the causes behind the trafficked victim, the victims are sold by poor parents, tricked into fraudulent marriages, or promised employment in towns only to find themselves in Indian brothels. The article is particularly helpful to understand cross border trafficking

between India and Nepal as trafficking in Nepalese women and girls is less risky than smuggling narcotics and electronic equipment into India.

The article “Combating Human Trafficking: A Legal Perspective with Special Reference to India” (*Sociology and Anthropology*, 2013) by Eira Mishra, provides an analytical framework for designing more effective laws against human trafficking in India. This article helps in examining human trafficking operations in India and the efforts of the Indian government, non-governmental organisations, and various international organisations to put a stop to trafficking by prosecution of traffickers and providing assistance to survivors of trafficking. The article is also helpful to identify the legal arrangement/framework for the protection of victims with the efforts which the government have to take in order to eradicate human trafficking. The article “Indo-Nepal Human Trafficking Post Earthquake Perspective: Concern and Challenges” (2015), by Ajay K. Jha (ed.), PAIRVI, is useful to understand the scenario of India and Nepal after earthquake. The article provides information of the increased threat of human trafficking and migration after earthquake using open border. This article is useful to understand the challenges in Indo-Nepal cross border trafficking and also helps to examine the gaps in policy framework of both the countries.

The book *India’s Human Trafficking Laws and Policies and the UN Trafficking Protocol: Achieving Clarity* (2015), Policy brief by Kimberly Rhoten (ed.), Jindal Global Law School (India), presents a critical overview of India’s legislation after the amendment of the Criminal Law (Amendment) Act of 2013 and the gaps still remain in accordance with *the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. The book is helpful to understand the various limitations of India’s laws that do not explicitly recognise and penalize all forms of trafficking to the level required by the *UN Trafficking Protocol*. The book is also useful that it provides the various measures that should be adopted by India in order to comply with the *UN Trafficking Protocol*. Similarly, *The Human Trafficking Assessment Tool Report for Nepal* (2011) presented by American Bar Association, Kathmandu Nepal, is also a useful study to analyze Nepal’s efforts to combat human trafficking in compliance with *UN Trafficking Protocol*. The Report has

highlighted responsibilities of national anti-trafficking laws, efforts of government and NGOs with the possible proposals to encourage states to criminalize human trafficking, prosecute human traffickers, protect victims, and develop measures to prevent this phenomenon from occurring.

The article “Women Trafficking from Nepal in India: Uncontrolled Problem and Helpless Victims” by Vinod K. Bhardwaj (2011), provides background, mechanism and destinations of human trafficking from Nepal to India. The article is helpful to the study that it presents remedial efforts and challenges of human trafficking giving special attention on rehabilitation strategy of both India and Nepal. The Report prepared by Dr. Jyoti Sanghera and Ms Ratna Kapur, *An Assessment of Laws and Policies for the Prevention and Control of Trafficking in Nepal*, (The Asia Foundation, Nepal) assess Nepal’s policies and laws that address the trafficking of women and children in terms of effectiveness, human rights, international obligations, and the relationship between trafficking and HIV. The Report is helpful to evaluate the strengths and weaknesses of the Nepal’s policies and laws and the recommendations it offers for improving them.

The book *Trafficking in Women and Children in India* (Orient Blackswan, 2005) by PM Nair and Sankar Sen, presents the research findings of Action Research on Trafficking in Women and Children in India (ARTWAC) in collaboration with the United Nations Development Fund for Women, the National Human Rights Commission and the Institute of Social Sciences. Hence, the book is helpful that it provides detail analyses of legal framework to issues of trafficking in women and children of India including responses of the Government, Police officials, judicial intervention, community participation, and international responses to trafficking. The book is useful that the author have described caused and consequences of trafficking along with the gaps in the success of various related measures being implemented for combating human trafficking.

The report *Human Trafficking in India: Dynamics, Current Efforts, and Intervention Opportunities* (2010), The Asia Foundation Report by Sadika Hameed et.al, is an important study that outlines the background of human trafficking in India, and also evaluates the current Government and NGOs efforts

to fight against trafficking and has also helpful to understand the gaps within the existing legal frameworks. The background note prepared by Fiona Samuels et.al, *Vulnerabilities of Movement: Cross-border Mobility between India, Nepal and Bangladesh* (2011), Overseas Development Institute, is crucial to understand the reasons, patterns and conditions of migration, and the risks and vulnerabilities associated with migration and HIV/AIDS. The paper helps to understand the situation of vulnerabilities related to migration that occur from source, through transit to destination countries taking the case of Nepal, Bangladesh and India.

The report of *UNGIFT* (2011) explained the cross border trafficking from Bangladesh and Nepal to India. The report is useful to this study as it provides details account of illegal movement of persons from Nepal and Bangladesh to India and other countries through the borders that these countries have with India which are porous and very long. Since India has an open border policy with Nepal, trafficking may be difficult to identify. The report is also helpful to understand in-country trafficking and explained number of factors operate influencing trafficking within the country. The report also helpful to point out weaknesses in the laws meant to prevent trafficking and express the need for the ratification of international covenants as anti-trafficking frameworks for tackling cross border trafficking.

The report *On Investigating Crimes of Trafficking for Commercial Exploitation*, UNODC, Kiran Bedi et al. (2005), examined the existing law enforcement and identified some of the important gaps in law enforcement scenario like improper investigation, lack of organized crime perspective in investigation, lack of comprehensive data base, lack of mutual action among the various departments of government, lack of coordination with NGOs, lack of rehabilitation process etc.

There are many official reports available with useful data on issues under study like *Data and Research on Human Trafficking: A Global Survey* (published by IOM), *Combating Trafficking in Persons: A Handbook for Parliamentarians N 16-2009* (published by UNDOC), *Trafficking in Human Being: A guidance Note* (published by UNDP), *Guiding principles on Memoranda of Understanding Between Key stakeholders and Law Enforcement Agencies on Counter-*

Trafficking Cooperation (published by UNGIFT), *Combating Human trafficking: Handbook for Parliament 2005* (published by UNICEF), *Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka* (published by UNDOC) are some of the important reports which has been used under study since they provide information on various aspects of human trafficking.

As it is clear in the survey, most of the prior research done on human trafficking is dealing with the general aspects of the issue. There is a major knowledge gap exists in this regard as hardly any research has been done on the socio-legal frameworks/aspects of human trafficking in/between India and Nepal. This study/research is an effort to fill this knowledge gap by looking at the reasons behind the lack and insufficiency of legal institutions/mechanisms to prevent human trafficking, especially the cross border human trafficking, in/between Nepal and India. The study also examines how far stricter and speedy legal provisions based on more effective policy implementation strategies can reform institutions and strengthen legal frameworks in both countries to curtail the magnitude of this crime. In this context, this study would add to the existing knowledge by filling the gap as identified here in the issue of human trafficking, especially its legal dimensions, from the disciplinary framework of International Relations. The study would also develop a micro understanding of human trafficking in South Asia in general and the region of Eastern Himalayas in particular. It would also provide a road map for how governments of the region could go ahead with policy framing to address the need of human trafficking. The previous discussions lead to the following research questions, which guides the focal issues of this study

1.8 Research Questions

- a. Are the existing legal mechanisms are sufficient to tackle the increased Human Trafficking between India and Nepal?
- b. What are the possibilities of developing new common legal frameworks and institutions to address the issue of Human Trafficking between India and Nepal?

1.9 Objectives of the Study

- a. To examine the major legal aspects of human trafficking in India and Nepal
- b. To explore the ways to strengthen legal frameworks and institutions to address human trafficking between India and Nepal

1.10 Methodology

At base, this study follows a descriptive method substantiated by both quantitative and qualitative techniques. The data were gathered through semi-structured interviews with victims, key informant of different NGOs both in India and Nepal. Similarly, information on governmental legislations and organizational perspective on the issue of human trafficking was gathered through concerned officials of Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs, Ministry of Women, Child and Social Welfare, Ministry of Home Affairs, of Nepal and Ministry of Home Affairs, Ministry of Women and Child Welfare Department of India.

Information on the status of human trafficking was gathered through institutions like National Human Right Commission of both countries and National Commission for Women of India. A questionnaire was used with series of questions associated to legal framework, root causes and different dimensions of human trafficking and related crimes to each Ministry, NGOs, Institutions and victims to understand and examine their own perspectives.

The study is based on both the primary and secondary sources and historical analytical method is followed to examine the sources. The primary sources used in this research were obtained from various original documents, International Conventions/Acts, the Constitutions and various related legislations of both India and Nepal. Similarly published data and Reports from concerned Departments, international agencies, National Human Rights Commission, National Commission for Women, documentary films and movies on the issue of human trafficking have also been used as primary source of information. The secondary sources incorporated in this study were the available books of human trafficking particularly on laws and legal perspective, articles in journals, news paper coverage, un-officials documents etc.

1.11 Organisation of the Study

Chapter I: Introduction

The chapter presents a note on the concept of human trafficking and its various forms. It also deals with various definitions of human trafficking. The chapter gives an overview of the human trafficking related crimes in South Asia with a focus on the background/historical context of emergence and expansion of human trafficking in India and Nepal. A brief on existing legal frameworks has been included here. The last part of the chapter reflects on the organization of the study; methodology, objectives, research questions, chapter scheme etc.

Chapter II: Legal Regimes, Institutions and Human Trafficking: An Overview

This chapter starts with a discussion of the conceptual aspects of human trafficking with an explanation of the definitions provided by various international and regional organizations. The chapter also includes root causes of human trafficking by exploring the demand and supply sides of it. The concept of human trafficking and human smuggling has been described to understand the basic differences. The focal point of discussion in this chapter is the existing international legal regimes and institutions of human trafficking with a reference to the countries under study, i.e., India and Nepal.

Chapter III: Human Trafficking in/between India and Nepal: Socio-Legal Dimensions

This chapter analyses the National Legal Frameworks of India and Nepal in connection with human trafficking such as all important Constitutional provisions, Laws, Acts, and Legal Regimes related to human trafficking and its implications in the current scenario. The Chapter also discusses all major institutional mechanisms (both governmental and non-governmental) on human trafficking in India and Nepal in detail. The role of various Departments/Ministries in the Governments, the role of Non Governmental Organizations (NGOs) and various State Government and Central Government

Agencies, and the activities of the Anti Human Trafficking Units in combating human trafficking is analysed/explained in this chapter.

Chapter IV: Legal Frameworks on Human Trafficking in/between India and Nepal: A Critical Examination

This chapter discusses the major loopholes or gaps that are linked with the weak enforcement of laws and legal framework in India and Nepal. The chapter examines human trafficking operations in India and Nepal and the efforts of both the governments, non-governmental organizations, and various international organizations to stop human trafficking by preventing and protecting victims and prosecuting traffickers. It also investigates the causes of human trafficking which makes India and Nepal- source, transit and destination of human trafficking. An examination of the gaps in the Legal Framework of Trafficking in India and Nepal is a major aspect of this chapter

Chapter V: Addressing Human Trafficking between India and Nepal: Reform of Legal Frameworks and Restructure of Institutions

This chapter focuses on the issues of reforming institutions and legal frameworks related to human trafficking in both India and Nepal. Chapter also discusses the different measures to address human trafficking by establishing new or reforming bilateral, multilateral, regional and international agreements or initiatives to tackle with the problem. Government, NGOs and INGOs, Police, and Court etc. responses, cooperation, coordination are also included in this chapter. Various Prevention, Protection and Prosecution measures are discussed in this chapter like rehabilitation programme; better data, strategy and reporting to enhance anti trafficking efforts; strengthen the capacity of law enforcement, immigration, education, social welfare, labour and other relevant officials to prevent trafficking.

Chapter VI: Conclusion

This chapter makes the concluding remarks of the study by giving short overview on cross border human trafficking and the legal frameworks of India and Nepal to deal it. The key findings of the study have been elaborated in this chapter.

Chapter II

Legal Regimes, Institutions and Human Trafficking in India and Nepal: An Overview

2.1 Introduction

Over the past few decades, human trafficking has become an increasingly severe problem in the world. In this regard, to enhance an individual's access to justice is fundamental in fight against this crime. Hence, a great range of international legal regimes and institutions has emerged which sought to prevent and combat the exploitation of an individual.

This chapter looks at the conceptual aspects/side of human trafficking. The Chapter analyses the definitions provided by various international and regional organizations to Human Trafficking. The chapter also examines the root causes of human trafficking and explores the impact of demand and supply side. It also described the concept of trafficking and smuggling to distinguish the differences between these two. Important existing legal regimes and institutions of human trafficking at the international level has been analyse in this chapter. This has exposed the major limitations of law enforcement in the existing regimes and institutions.

2.2 Human Trafficking: The Concept

Human trafficking through trading in human beings or slavery existed in the world for last few centuries. The word 'slavery' got popular attention with the Transatlantic Slave Trade or White Slavery. The discussion of slavery from the point of view of exploitation was started with the White Slavery. In fact, human trafficking for sexual purposes was first legally recognised by the term 'white slavery'¹. White

¹"Trafficking" as it relates to human beings came into international use in the early twentieth century in connection with white slavery: a term that was initially used to refer to forcible or fraudulent recruitment to prostitution (Gallagher, 2010).

slavery means the procurement by use of force, deceit or drugs of a white woman or a girl against her will for prostitution (Doezema, 2000). The white slavery movement combined the aspirations of the national movement against prostitution with the movement against slavery. It has been argued that the discussion on white slavery and sexual exploitation of white women is closely connected to the fight against the exploitation of black slaves (Leppanen, 2007).

The Transatlantic Slave Trade began around the mid 15th century when Portuguese interests in Africa moved away from the fabled deposits of gold to a much more readily available commodity called slaves (Behrendt, 2010). By the 17th century, the trade was in full swing reaching a peak towards the end of the 18th century with its triangular trade. All three stages of the triangular trade proved profitable for European merchants.²

The international definition of trafficking as a distinct phenomenon has emerged only in recent years. Until the mid-1990s, trafficking was often viewed as a form of human smuggling and a type of illegal migration. A clear and distinct global definition of trafficking has only been available since the December 2000 signing of the *United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children*. According to this protocol “trafficking in persons” has been defined as:

(a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

²The first stage of the triangular trade involved taking manufactured goods from Europe to Africa: cloths, spirit, tobacco, beads, cowrie shells, metal goods, and guns. These goods were exchanged for African slaves. The second stage involved shipping the slaves to the Americas. The third stage involved the return to Europe with the produce from the slave-labor plantations like cotton, sugar, tobacco, molasses and rum (Behrendt, 2010).

(b) The consent of the victim of trafficking in persons to the intended exploitation set forth in the subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harboring, or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth; and

(d) Child means any person under the age of 18 (UN Trafficking Protocol, 2000)

This definition is only legal instrumental that advances international law by providing a working definition to tackle with human trafficking and related practices.

*Global Alliance Against Traffic in Women*³ (1999) defines Trafficking in persons as “All acts involved in the recruitment and/or transportation of a woman within and across national borders for work or services by means of violence or threats of violence, abuse of authority or dominant position, debt bondage deception or other forms of coercion” (GAATW, 1999) . GAATW have provided significant issues in the definition of trafficking by incorporating various forms of trafficking especially for women victims.

*Coalition Against Trafficking in Women, 1999*⁴ defines Sex trafficking as ‘the recruitment, transportation within or across borders, purchase, sale, transfer, receipt or harbouring of a person for the purpose of prostitution or exploiting the marriage relations for the same (CATW, 1999).

According to EUROPOL⁵ (1997) “Trafficking in human beings means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children. These forms of exploitation also include ‘the production, sale or distribution

³ The Global Alliance Against Traffic in Women (GAATW) is a network of non-governmental organizations from all regions of the world, who share a deep concern for the women, children and men whose human rights have been violated by the criminal practice of human trafficking.

⁴ Coalition Against Trafficking in Women (CATW) is a non-government organization that works to end human trafficking and the commercial sexual exploitation of women and children worldwide.

⁵The European Police Office (Europol) is the law enforcement agency of the European Union that handles criminal intelligence and combating serious international organized crime.

of child pornography material’. As per this definition, ‘any illegal transport of migrant women and/or trade in them for economic or other personal gain is human trafficking’. This include

- Facilitating illegal movement to other countries, with or without their consent or knowledge;
- Deceiving migrant women about the purpose of migration;
- Physically or sexually abusing them for the purpose of trafficking them; and
- Selling women into, or trading in women for the purposes of employment, marriage prostitution or other forms of profit-making abuse” (Europol, 2007).

The *International Organization for Migration* (IOM) states that, “Trafficking occurs when a migrant is illicitly recruited and/or moved by means of deception or coercion for the purpose of economically or otherwise exploiting the migrant, under conditions that violate their fundamental human rights” (IOM, 2000).

According to *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002*, ‘trafficking means moving, selling, or buying women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking (SAARC, 2002).

These various definitions provided by International Organizations, Regional Organization and NGOs broadly emphasises on different forms of trafficking. In the above mentioned definitions, some of the organizations emphasis only on sex trafficking by giving importance to women and girl child whereas some has included more forms of trafficking but no one has defined human trafficking comprehensively. However, the definition given by the UN Trafficking Protocol is a worldwide accepted definition that comprises of all forms of trafficking.

The various purposes for which people are moved to their destinations is for bonded labour, forced labour, child labour, sexual exploitation etc. Hence, human trafficking is a complex and multidimensional form of exploitation. It has been further accentuated that, exploitation may take various forms including violations of human

rights and fundamental freedoms, forced or bonded labour (e.g. in brick-kilns, mining or as camel jockeys), sexual exploitation (e.g. forced prostitution or forced marriage), the removal of organs, violence and discrimination against women, sexual, labour and other forms of exploitation of women and children etc (Lepcha, 2016).

The victims are trapped into trafficking by various means. In some cases, false promises are made regarding job opportunities or marriages, false promises of new and luxurious life and in some cases, physical force is used to lure the victims. Thus the purpose of human trafficking is the exploitation of human beings which is a high profit and relatively a low-risk business with ample demand (UNODC, 2008).

2.3 Causes of Human Trafficking

There are two side of human trafficking, the supply and the demand side (Kara, 2011). In the supply side, conflict and post conflict situations, unstable economies as well as significant disruptions in socio-economic conditions due to natural disasters make many victims vulnerable to trafficking (Gupta, 2010). Further, poverty, gender and caste discrimination, human right violations, corruption and unemployment etc. are typically the result of unstable economic and political environments and are likely to increase the supply of trafficking victims. In South Asia, women and girls are more vulnerable to human trafficking because of their subordinate positions in the society. Therefore, they are inclined to be more prone to seemingly attractive promises of economic opportunities.

Another factor is the demand side which take place in the destination areas. The demand for trafficking victims is higher in countries that are more open to globalization or economically prosperous that can support the commercial sex industry. It is also to be observed that globalization led to the large-scale migration of women and children within countries that indirectly contributed into the expansion of human trafficking. Therefore, socio-economic factors are important in motivating people to migrate or in making them easy targets of trafficking. India and Nepal are two countries where the vast majority of people are directly dependent on agriculture

and other unorganised sectors for their livelihood. However, the problems such as loss of land/crops and other problems like improper infrastructure, insufficient productivity, drought, unseasonably heavy rains and hailstorms like situation in villages compelled farmers to move to other jobs/places (Lepcha, 2016). Most of the farmers have been forced to sell or to send their children to work as labourers to repay their debts. Hence, constant fall down of agriculture and other unorganised sectors make it easy for perpetrators to convince the villagers. This ultimately led to large scale trafficking of women and children⁶.

It has been argued that the practice of slavery is widespread even in the twenty-first century, but in a more hidden and secret forms. Hence, human trafficking or modern day slavery reflects the dark side of globalization (Ramo, 2011). Human trafficking has inextricably linked to globalization with the cross border transportation of women/girl child for the purpose of exploitation. Globalization has generally created inequalities both across countries or regions and between social strata within them (Letschert and Dijk, 2011). Such inequalities become one of the major reasons behind the increasing crimes against humanity.

The process of globalisation has further accentuated the volume of trafficking for multiple reasons. It is a process of transnational flow of capital, technology, goods and services, ideas and knowledge, the sharing of culture, labor and so on. Intensification of networks, global consciousness, human or social interactions, social nobleness and social changes are some of the characteristics of globalization (Scholte, 2000). Globalisation promotes the intensification of the world-wide social relations which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice-versa (Giddens, 1990). It is further intensified by two important features of globalisation; the new technology of communication for the easy availability of information and new forms of transportation system which

⁶Activists claim the drought-like situation in trafficking-prone Jharkhand is working in favour of the local agents who sell young Jharkhand girls and boys to other parts of the country as slaves. At least 30,000 children are trafficked from Jharkhand to other parts of India every year (*The Hindustan Times*, 2015)

facilitated cross-border mobility of people across the world. Thus, the process of globalization has strengthened the movement of individual from the countries of origin to country of transit and to its final destination for the purpose of exploitation.

Globalization makes it very easy to facilitate trafficking because of many modern technologies and communication such as the internet that make trafficking more efficient and accessible. Globally, Information and Communication Technologies (ICT) have been accompanied by an increase in illegal exploitation and abuse of technology for criminal activities. Internet is used as a tool and medium in the transnational organised crime. It is assumed that human trafficking is an obvious form of organised crime that has been heavily affected by the use and misuse of ICT.

In the words of Breau, legal and policy aspects like inadequate national and international legal regimes, poor law enforcement, poor immigration or migration laws and policies, inadequate partnership between government and NGOs etc. are the major weaknesses that caused human trafficking (Breau, 2009). Though, there are different laws that touch upon the issue of trafficking, it is not only the issue of human rights but also the issue of criminal law, social justice, labour laws, laws relating to immigration and public health etc. Further, migration and trafficking are another indivisible issue where migration contributes to a situation of vulnerability in which anyone can become a victim of trafficking.

Although, trafficking and migration are connected issues and are not only national but an international problem too. Thus it must be addressed through various means like national, regional and global collaboration and cooperation that is essential in fighting against this problem. Similarly, bilateral and multilateral arrangements may require coping with this problem. Effective legal regimes and institutions, reform in the existing laws, ensuring adequate law enforcement response are crucial to deal with it.

2.4 Distinctions between Human Trafficking and Human Smuggling

At the outset, it is important to note that human trafficking is different from human smuggling, though both are part of international crime activity. Human Trafficking and Human Smuggling are differed in three key elements: movement across borders, consent, and purposes of exploitation (Social Development Reports, World Bank, 2009). Firstly, human smuggling involves the crossing of national borders which always involves illegal border crossing whereas Human Trafficking involves the crossing of international borders as well as within the borders of one country as internal human trafficking (Pacific Immigration Director's Conference, 2010).

Secondly, Human Smuggling occurs with the consent of the persons being smuggled (Social Development Reports, World Bank, 2009). The victims of human smuggling willingly agrees to cross the border by paying money to smugglers and are free to go anywhere in the destination country. But the victims of human trafficking have to work and travel out of their own choices or it could be the consent was obtained under lure, deceit, intimidation, blackmail, coercion or force because of socio-economic conditions (Nair, 2010: 22). Hence, smuggling as an offence, has an end whereas trafficking is a continuing offence.

Lastly, the difference between trafficking and smuggling is on the purpose for which a person is recruited. Human trafficking is characterised by exploiting another human being. That exploitation can come in many forms including sexual exploitation, forced slavery, slavery servitude, or removal of organs etc. The relationship between the smuggler and the migrant involves a commercial transaction, where a fee is charged to facilitate the illegal entry of the migrant into a country. The relationship ends when the migrant arrives at their destination. Trafficking involves the ongoing exploitation of the victim to generate profit/income for the trafficker. Hence, human smuggling involves illicit entry of a person into a country for financial and other material benefit only, whereas trafficking occurs for the purpose of exploitation (Batsyukova, 2012).

Other differences between human trafficking and human smuggling relates to their legal status in the country of destination⁷. Once the trafficked victims come to the attention of NGOs or enforcement agencies, they are provided special protection whereas the illegal migrants or smuggled persons are considered violators of immigration law, unless they are granted asylum, and subject to arrest and deportation (Aronowitz, 2009:7).

It is possible that a person being smuggled may at any point become a trafficking victim. In many cases, the victims are told that they would be given jobs as nanny or model with high wages, but later they are forced to work in the sex industries. Person being smuggled willingly enter into contracts with the smugglers to work off a smuggling debt. The people smuggling refers to a case where migrants enter a transaction with full consent and are free to leave at the end of the process (Aas, 2007).

Similarly, a person who is smuggled into a country may be working in violation of that country's domestic laws, but she or he is free to accept or reject job offers. On the other hand a person who is trafficked into a country is forced to work without compensation and has no freedom of choice in his job selection (Claude, 2013).

Unlike smuggling, trafficking specially targets the person as an object of criminal exploitation to make profit. It is reasonable to expect that the criminalisation of smuggling will increase the risk of trafficking insofar as it will inflate the cost of assisted movement across borders, leaving the poor with no choice but to mortgage their futures in order to pay for safe passage (Pickering, 2011). Thus there is a difference in understanding human trafficking and human smuggling, as the former used coercion, force, fraud and deception for the purpose of exploitation and latter

⁷ Article 3(a) in the Protocol Against the Smuggling of Migrants by Land, Sea, and Air, defines "smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident.

falls under the full consent of the victims. The following table 1.1 clarifies the differences between human trafficking and human smuggling.

Table 1.1 Differences between Human Trafficking and Human Smuggling

Human Trafficking	Human Smuggling
Must contain an element of Force, Fraud, or Coercion (actual, perceived or implied), unless under 18 years of age involved in commercial sex acts.	The person being smuggled is generally cooperating.
Forced Labor and/or Exploitation.	There is no actual or implied coercion.
Persons trafficked are victims.	Persons smuggled are complicit in the smuggling crime; they are not necessarily victims of the crime of smuggling (though they may become victims depending on the circumstances in which they were smuggled).
Enslaved, subjected to limited movement or isolation, or had documents confiscated.	Persons are free to leave, change jobs, etc.
Need not involve the actual movement of the victim.	Facilitates the illegal entry of person(s) from one country into another.
No requirement to cross an international border.	Smuggling always crosses an international border.
Person must be involved in labor/services or commercial sex acts, i.e., must be “working”.	Person must only be in country or attempting entry illegally.

Source: Adapted from U.S Department of State (2014), www.state.gov/j/tip/rls/tiprpt/

2.5 Legal Regimes/Institutions and Human Trafficking

Human trafficking as an organised crime has been an issue of international concern since last few decades. With the initiatives taken by the League of Nations and United Nations, the responses to address the problem of human trafficking became more refined and have gained importance at the international level.

The first concern of human trafficking was raised date back to the nineteenth century in response to the growth of cases of ‘white slavery’⁸. Even though the reports of white slave trade were abundant, the amount of cases was in fact, diminutive (Borges, 2009). This means, at that time, the international community, only very narrowly, addressed the issue of trafficking.

The concept of ‘white slavery’ was originally developed by activists intent on abolishing systems of regulated prostitution in Europe (Gallagher, 2010). By the second half of the nineteenth century, the concept of ‘white slavery’ was associated with recruitment to prostitution by force or fraud. The sensationalized image of young and innocent white women being coerced into prostitution in foreign lands was at least partially responsible for the internationalization of the abolitionist movement and the resulting emphasis on trafficking of women for purposes of sexual exploitation (Nadelmann, 1990). It has been argued that the discussions on white slavery and sexual exploitation of white women are closely connected to the fight against the exploitation of black slaves. It means that attention to white slavery happened at the time of the legal abolition of black slavery.

Between 1904 and 1933, four different international conventions dealing with the (White slave) traffic in women and girls were concluded. They are: *International Agreement for the Suppression of White Slave Traffic, 1904*⁹; *International*

⁸ The term “white slave trade” was derived from the French term “Traite des Blanches”, which related to “Traite des Noirs”, a term used in the beginning of the nineteenth century for the African slave trade (Derks, 2000).

⁹International Agreement for the Suppression of the White Slave Traffic, 1 LNTS 83, done in May 4, 1904, entered into force July 18, 1905.

*Convention for the Suppression of White Slave Traffic, 1910*¹⁰; *International Convention for the Suppression of Traffic in Women and Children, 1921*¹¹; and *International Convention for the Suppression of the Traffic in women in Full Age, 1933*. The 1904 Convention covered only situations in which women were forced or deceived into prostitution in foreign countries (Gallagher, 2010). The focus was on the social obligations of the State- particularly as these related to the welfare of victims.

The 1904 Convention also emphasized the centralization of information as a means of facilitating cross-border cooperation (ibid). The 1910 Convention extended its scope to situations of enticement and procurement not necessarily involving force, and within as well as across national boundaries toward the criminalization of procurement and related acts, as well as the prosecution and punishment of offenders (ibid).

With the creation of League of Nations in 1920, the two other agreements attempted to address the issue of human trafficking with a focus on women and children. The 1921 Convention also further enhanced the scope of its protection to include non white women (Borges, 2009). The 1921 agreement avoided any references to ‘white slavery’ and applied a new notion of ‘immoral trafficking’ to individuals of both sexes under the age of twenty-one, as well as women over twenty-one years if they had been constrained or deceived (Gallagher, 2010). The 1921 Convention continued the earlier emphasis on emigration and immigration controls, as well as on the prosecution of all those involved in the trafficking process (ibid).

The 1933 Convention expanded the concept of trafficking that included all sexual and immoral purposes, not just prostitution. Under Article 1 of 1933 Convention, described the offender as a person who “in order to gratify the passions of another person, has procured, enticed or led way even with her consent a women or

¹⁰ International Convention for the Suppression of the White Slave traffic, 3 LNTS 278, done in May 4, 1910, entered into force August.8,1912

¹¹International Convention for the Suppression of Traffic in Women and Children, 9 LNTS 415, done Sept.30, 1921

girl of full age for immoral purposes to be carried out in another country” (*International Convention, for the Suppression of Traffic in Women of Full Age*, 1933).

In the Article 2 of the Convention state signatories “agree to take the necessary steps to ensure that these offences shall be punished in accordance with their gravity”¹². Under this Convention, the offense of trafficking involved the procuring, enticing, or leading away of any women of any age across an international border for immoral purposes (Gallagher, 2010).

With the creation of the United Nations, the international community became more conscious and committed to address the issue of human trafficking. United Nations and its constituent organisations/instruments have launched the global initiative to prevent and address human trafficking. Similarly, human rights and dignity of persons are protected by a number of international instruments. Such international instruments provide powerful tools to combat trafficking in persons. The Charter of the United Nations is “at the pinnacle of the human rights system”¹³. In the United Nations Charter, Preamble and Article I recognizes “fundamental human rights... the dignity and worth of the human person...the equal rights of men and women” and “fundamental freedoms for all”. As it is evident, human trafficking violates fundamental human rights, basic freedoms and the dignity and worth of the equal rights of women and therefore goes against the very objectives of UN.

2.6 Human Trafficking as a Human Rights Issue

Human trafficking is considered as a severe violation of human rights as it involve illegal recruitment, transport, and sale of human beings for exploitative

¹² The Article 1 of this Convention described the offender as a person who “in order to gratify the passions of another person, has procured, enticed or led way even with her consent a women or girl of full age for immoral purposes to be carried out in another country.” In Article 2 of the Convention state signatories “agree to take the necessary steps to ensure that these offences shall be punished in accordance with their gravity. Available from: http://www.oas.org/Juridico/mla/en/traites/en_traites-inter-women_1933.pdf

¹³ Available at Combating Human Trafficking in Asia: A Resource Guide to International and Regional Legal Instruments, Political Commitments and Recommended Practices (United Nations, 2003) www.unescap.org/uni/press/2003/dec/n35.asp

purposes such as forced or bonded labour, slavery like conditions, and sexual exploitation. Hence, various forms of human rights violations occur at different phases of trafficking. Firstly, human trafficking often takes place where already many human rights deprivations are prevalent (OECD, 2008). As mentioned earlier, the main causes for trafficking include poverty, social discrimination, violence and the general insecurity often related to armed conflict. In such circumstances, relevant groups include women, children, migrants and migrant workers, refugees and asylum seekers, internally displaced persons, and persons with disabilities may fall victim to human trafficking.

Secondly, the experience of human trafficking included a range of human rights violations. The most common ones are the right to personal freedom, the right to liberty and security of person, the right to be free from cruel and inhumane treatment, the right to safe and healthy working conditions and the freedom of movement (ibid).

Thirdly, trafficked persons face serious human rights violations after rescuing from the situation both from the Government as well as from society regarding their rehabilitation, assistance, prosecution, detention etc (ibid). Once the trials are over, the victims are sent to their home countries without further support for their reintegration in the society. All these incidents arise with the victims make themselves particularly vulnerable to being re-trafficked.

Significantly, the human rights framework for human trafficking draws upon international human rights standards and principles which have been set in international Treaties, Covenants and Protocols. The *Universal Declaration of Human Rights* (UDHR) 1948, is the primary international human rights instrument. The UDHR enshrines fundamental human rights enjoyed by all persons. It is a “common standard of achievement for all peoples and all nations to promote respect for these rights and freedoms to secure their universal and effective recognition and observance (UDHR, Preamble)”. Article 4 of UDHR states that “no one shall be held in slavery or servitude; slavery and the slave trade be prohibited in all their forms” (UDHR, 1948).

The *International Covenant on Civil and Political Rights* (ICCPR), 1966 and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), 1966 are multilateral treaty adopted by the United Nations General Assembly. The ICCPR commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial¹⁴. The ICESCR works toward the granting of economic, social, and cultural rights to the Non-Self-governing and Trust Territories and individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living¹⁵. Both the treaties constitute an important step towards the promotion and protection of human rights of every individual.

The United Nations General Assembly and the Human Rights Council¹⁶ have advocated rights-based approach to address human trafficking as have relevant human rights mechanisms including special procedures¹⁷ and treaty bodies¹⁸. A human rights-based approach is a conceptual framework for dealing with a phenomenon such as trafficking that is normatively based on international human rights standards and that is operationally directed in promoting and protecting human rights.

Adopting a human rights-based approach implies that national, regional, and international responses to trafficking be anchored in the rights and obligations of international human rights law (Haddadin and Alexander, 2013). Empowerment, self-representation and participation of rescued victims are fundamental principles for

¹⁴International Covenant on Civil and Political Rights, U.N.T.S. No.14668, vol. 999 (1976), p.171

¹⁵International Covenant on Economic, Social and Cultural Rights, U.N.T.S No. 1453, Vol. 993 (1976)

¹⁶ The Human Rights Council is an intergovernmental body within the United Nations system made up of 47 States responsible for the promotion and protection of all human rights around the globe. For more details, see *United Nations Human Rights Council*, UN HUMAN RIGHTS, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx>

¹⁷ Special procedures is the general name given to the mechanisms established by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. For more details, see UN HUMAN RIGHTS, <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

¹⁸ The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. For more details, see *Monitoring the Core International Human Rights Treaties*, UN HUMAN RIGHTS, <http://www2.ohchr.org/english/bodies/treaty/index.htm>.

human rights based approach. It provides assistance and support for trafficked persons to regain control over their lives and reduce the risk of re-trafficking. It also contributes to an effective prosecution of traffickers, as the recognition and protection of the rights of trafficked persons (OECD, 2008).

A human rights-based approach opposes anti-trafficking measures that adversely affect or violate human rights of trafficked persons or other affected groups (OECD, 2008). This approach necessitate that human rights are at the core of any anti-trafficking strategy. It integrates the principles of universality, indivisibility and non-discrimination of human rights into legislation, policies and programs (ibid).

2.7 Important International Conventions on Human Trafficking and its Related Crime

Human trafficking as a social evil is one of the complex and transnational problems that every state addresses. There are various international tools or approaches in the fight against human trafficking. Some of the important international Conventions that deals with human trafficking and its related crime are described below:

2.7.a. United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949

This Convention was adopted by the United Nations on December 2, 1949, one year after the Universal Declaration of Human Rights¹⁹. This Convention is believed as the “most comprehensive treaty addressing trafficking till date” (Bruch, 2004: 4). The Convention is one of the international human rights instruments of the United Nations that addresses ‘slavery and slavery like practices’ (ibid). According to article 1, the Convention aims to prohibit and control the (undefined) practices of

¹⁹ The 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of others sought to (Article 1) “punish any person who, to gratify the passions of punish any person who, to gratify the passions of another: (1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; (2) Exploits the prostitution of another person, even with the consent of that person”. Available from: <http://www.unhchr.ch/html/menu3/b/33.htm>

trafficking, procurement, and exploitation, whether internal or cross-border, and irrespective of the victim's age or consent. The Convention declares both trafficking and prostitution to be "incompatible with the dignity and worth of the human being" and a danger to "the welfare of the individual, the family and the community"²⁰. The Convention not only aimed at complementing the previous agreements but it also underlined the anti prostitution and law enforcement approach and made prostitution or trafficking governable by international law.

States that have ratified this Convention must take measures for the prevention, protection and rehabilitation of victims. Countries are encouraged to use both public and private social, economic, health and other related services to facilitate these goals (Article 16). Similarly, protection of victims of trafficking is a key provision of the Convention and each State should adopt strict measures to fight trafficking and the exploitation of others for purposes of prostitution (Article 18).

However, like its other predecessors, the Convention also has many weaknesses. Most importantly it did not have any monitoring or enforcement mechanisms (Gallagher, 2010). In spite of the provisions of Convention requiring States to communicate to the Secretary General of the United Nations their laws and regulations relating to the Convention, as well as measures taken by them concerning the application of the Convention, and the obligation of the Secretary General to publish "periodically" "the information received" (Article 21), these provisions have not been followed at all. Thus, many States which have signed the 1949 Convention are not adhering to its provisions, and some have even changed their laws, in opposition to the principles of the Convention. Even many human rights activists and States have criticised the Convention for not focusing sufficiently or solely on the more serious, coercive forms of sexual exploitation and for failing to distinguish between consensual and forced prostitution (Coomaraswamy, 2000).

²⁰The 1949 Convention was the result of an abolitionist and feminist struggle in England, begun and led by Josephine Butler in 1866. She not only abolished in most of the European countries but considered the system of prostitution to be a contemporary form of slavery that oppressed women and was injurious to humanity in general.

Both India and Nepal have signed/ratified this Convention but in general this law is not implemented properly to protect the interest of the victims²¹. This Convention was not stick to its own provisions and it does not have any monitoring or enforcement mechanisms that result in weakness in its implementation and effectiveness (Deane, 2010).

2.7.b. United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

In 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)²² was adopted by the General Assembly of the United Nations, which requests States Parties to take all appropriate legislative and other measures to “suppress all forms of traffic in women and exploitation of the prostitution of women²³.” Articles 11 and 12 of CEDAW also recognize conditions essential to women’s livelihood such as the right to work, the right to the free choice of profession and promotion, job security, the right to receive training, equal remuneration, social security and protection of health (Corrigan, 2001). Thus it has been examined that the victims of trafficking are deprived of these rights. As far as enforcement part of this law is concerned, article 18 states that States Parties on the legislative, judicial, administrative and other measures taken to give effect to the Convention’s provisions and the progress they have made.

It is assumed that the CEDAW Convention is different from the earlier treaties including the 1949 Convention in several respects. For instance, this Convention shows a new path by requiring States to address not just the phenomena of trafficking and exploitation of prostitution, but also the underlying causes of human trafficking. According to reference provided by the CEDAW Convention, it covers ‘all forms of traffic’ that expands from the meaning provided by the 1949 Convention to other

²¹ India has signed the convention on 9 May 1950 and has ratified on 9 Jan 1953. Nepal has ratified on 10 Dec. 2002.

²² Convention on the Elimination of All forms of Discrimination Against Women, done on Dec. 13, 1979, entered into force Sept. 3, 1981

²³ Article 6 of CEDAW stipulates that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

typical end purposes including forced labour or forced marriage as well as forced prostitution (Gallagher, 2010).

Nepal signed CEDAW on 5th February, 1991 and ratified on 22nd April, 1991 and India has ratified on 9th July, 1993. CEDAW has been used by both States to strengthen laws to protect women from violence, sexual exploitation, forced marriage and child trafficking. For both States, CEDAW has become one of the important mechanisms for women's rights that eliminate discrimination in the field of education, economic and social life and enhanced equality before law.

2.7.c. The Convention on the Rights of the Child (CRC), 1989

The Convention on the Rights of the Child (CRC), 1989²⁴ and its Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, 2000²⁵ adopted by General Assembly is the only contemporary international human rights treaty apart from the CEDAW to refer explicitly to trafficking. The CRC is considered as a tool for understanding and responding to the trafficking and related exploitation of children. The CRC provides a complete overview for the protection of the rights and dignity of children as well as of their empowerment.

A critical feature of CRC conventions is that they promote the rights of children throughout the life cycle. Hence, the CRC gives importance for the implementation of the basic education as a right that facilitates children and adults access many of their other rights throughout their lifetimes²⁶. In this regard, education has an important role to play in empowerment because it promote child rights and social rights, and can equip individuals and groups with skills to move on in their lives.

²⁴ Convention on the Rights of the Child, 1577 UNTS 3, done on Nov. 20, 1989, entered into force Sept. 2, 1990 (CRC).

²⁵ This is introduced through, GA Res. 54/263, Annex I, 54 UN GAOR Supp. (No. 49), 7, UN Doc. A/54/49, Vol. III (2000), done on May 25, 2000, entered into force Jan. 18, 2002 (CRC Optional Protocol).

²⁶ Basic education as a right to children has been implemented by CRC supported by UNICEF, 1995.

Paragraph 3 of Article 24 of the CRC on health with special importance to the girl child recommends that, ‘States Parties shall take effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children’. A child should avail a proper health care system within concerned areas that ensures attainable standard of health care with the necessary infrastructure and environment.

Paragraph 4 of the same article goes on to state that that, “States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article” (CRC, 1989). Article 19 of the CRC calls on States Parties to take measures to: “Protect the child from physical or mental violence, injury abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child”. An important measure like educational awareness should be there to deal with such forms of violence against child. Such protective measures have effective procedures to support child and prevent them from other forms of exploitation.

Similarly, Article 35 of CRC addresses that States Parties shall take “all appropriate national, bilateral and multilateral measures to prevent the abduction of, sale of or traffic in children for any purpose or in any form”. Under Article 32, States Parties “recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development” (ibid). Likewise, Article 34 states that State must also undertake to protect the child from all forms of economic exploitation, sexual exploitation and sexual abuse. Thus the CRC as a useful tool comprehensively deals with the well-being of children for the protection of children victims of trafficking

CRC, however, addresses the well-being of children, and recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous. More so, CRC also addresses the rights of the

child's education, child's health or physical, mental, spiritual, moral or social development that makes it a very useful instrument for the protection of children from being trafficked. As per the provisions of CRC, to deal with the rights of the child, States Parties should take all appropriate national, bilateral, and multilateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of children in prostitution or other unlawful sexual practices; the exploitative use of children in pornographic performances and materials; and the illicit transfer and non return of children abroad (Article 34 of CRC). This provision in the Convention has been extended by the Optional Protocol to CRC on the sale of children, child prostitution child pornography.

India has ratified this Convention on 1992 and the Juvenile Justice Act, 2000 of India, has emerged as a commitment to this Convention. The Act protects a trafficked child, or a child vulnerable to trafficking, as a child in need of care and protection (UNODC, 2011). Nepal has also ratified this Convention on 1990 and on the basis of this Convention Nepalese laws related to rights of the child; particularly Children's Act 1992 was introduced.

2.7.d. An Optional Protocol to CRC on the Sale of Children, Child Prostitution and Child Pornography, 2000²⁷

An Optional Protocol to CRC was concluded through the United Nations Commission on Human Rights in 2000, regardless of some opposition, including from the CRC Committee itself. According to the preamble, the protocol is intended to achieve the purposes of certain articles in the CRC, where the rights are defined with the provision that parties should take "appropriate measures" to protect them (Protocol to CRC, 2000). The Protocol to CRC has included several aspects beyond the CRC, such as the Sale of Children, Child Prostitution and Child Pornography by recognizing several activities as offences that must be punishable under domestic law,

²⁷ Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002

whether committed domestically or at a transnational level including child prostitution and the sale of children for sexual exploitation, organ transfer or forced labour (Article 1).

For this protocol, the sale of children means any act or transaction whereby any person or group of persons transfers a child to others for remuneration or any other consideration (Article 3 a). This protocol further define that, child prostitution means use of a child in sexual activities for remuneration or any other form of consideration (Article 2 b). Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes (Article 2 c).

The CRC Protocol deals much in criminal justice instruments, for instance States Partied required to prohibit, criminalize, and appropriately punish the relevant acts (Article 1,3); to establish appropriate jurisdiction over offenses; and to extradite offenders (Article 4-5). It also locates specific obligations with regard to prevention and international cooperation, legal assistance and confiscation of proceeds, rights of child victims and witnesses in the criminal justice process and the protections to be afforded them (Gallagher, 2010). Therefore, the primary aim of this instrument is to eliminate child prostitution, the sale of children and child pornography for the promotion and protection of the rights of the child.

Nepal became the signatory of this Protocol on 2000 and has ratified on 2006 and India has signed this Protocol on 2004 and ratified on 2005. There are two more Optional Protocol to Convention on the Rights of the Child (i) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000. This protocol emphasis on the special protection of children who are disturbed by the harmful and widespread impact of armed conflict and it also provide continuous improvement of the situation of children without distinction, as well as for their development and education (OHCHR, 2016). (ii) The Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, 2014. It is a

treaty which establishes an international complaints procedure for violations of child rights directly to the UN Committee if they have not found a solution at national level (Child Rights Connect, 2013). Both India and Nepal has ratified these Protocols.

2.7.e. Conventions of International Labour Organization (ILO) on Human Trafficking

It has been assumed that, labour trafficking is one form of human trafficking where different types of forceful works are exercised to an individual that may be dangerous to the physical, mental, spiritual, moral or social development. To tackle with the issue of labour as the fastest growing activities, International Labour Organisations has formulated several Conventions.

International Labour Organization (ILO) is the UN specialized agency dealing with work and workplace issues, and related rights and standards. The four strategic objectives of ILO are: to promote and realize standards, and fundamental principles and rights at work; to create greater opportunities for women and men to secure decent employment; to enhance the coverage and effectiveness of social protection for all; and to strengthen the relationship between workers, employers and governments, and encourage social dialogue (ILO, 2016). ILO supports its member states to develop their own set of labour legislations and the preservation of their rights through its resolutions and recommendations. Resolutions include international treaties and instruments; and recommendations are non-binding treaties, both helps in guiding legal issues related to labour of the ratified states (Singh & Singh, 2014).

India has been a permanent member of ILO since 1922. The first ILO office in India started in 1928 with its two directional focuses i.e socio-economic development and overall strategies and ground-level approaches (ILO, 2016). Nepal became a member of ILO in 1966 and ILO office was established in 1994 which focuses on promoting employment-centric inclusive growth, improving labour market governance and industrial relations, and promoting fundamental principles and rights at work (ILO, 2013).

International Labour Organizations (ILO) Conventions applicable to trafficking are the Forced Labour Convention (No.29) adopted in 1930; the Abolition of Forced Labour Convention (No.105) and the International Labour Organization (ILO) Convention No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999). Under these Conventions, States Parties undertake to suppress the practice of forced labour.

The Forced Labour Convention is one of eight ILO fundamental conventions of the International Labour Organization. The Convention commits parties to prohibit the use of forced labour. Its objective and purpose is to suppress the use of forced labour in all its forms irrespective of the nature of the work or the sector of activity in which it may be performed. Article 2 of the Convention defines forced labour ‘as all work or service which is done from a person under the threat of a penalty and for which the said person has not offered himself voluntarily’.

The Convention was supplemented by the Abolition of Forced Labour Convention, 1957 (not revised the 1930 Convention) which cancels certain forms of forced labour under Forced Labour Convention of 1930, such as punishment for strikes and punishment for holding certain political views. As a result, and due to the obligations which State Parties have undertaken within the 1957 Convention to secure the immediate and complete abolition of forced or compulsory labour as specified in article 1 of this Convention, States which are party to both instruments are obliged to end forced or compulsory labour as set out in the 1957 Convention. Article 1 of the 1957 Convention required the immediate and complete abolition of forced or compulsory labour;

- (a) As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- (b) As a method of mobilising and using labour for purposes of economic development;
- (c) As a means of labour discipline;

- (d) As a punishment for having participated in strikes;
- (e) As a means of racial, social, national or religious discrimination (Article 1, Abolition of Force Labour Convention, 1957).

The 1930 Forced Labour Convention and the 1957 Abolition of Forced Labour Convention are the two organisational frameworks or an infrastructure that has allowed the ILO to champion the cause of the eradication of forced labour over time.

The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, known in short as the Worst Forms of Child Labour Convention, was adopted by the International Labour Organisation in 1999 as ILO Convention No 182. In the provision of this Convention No.182, a country commits itself to taking immediate action to prohibit and eliminate the worst forms of child labour which include all forms of slavery or practices similar to slavery including trafficking²⁸.

Among these Convention on International Labour Organizations which are related to human trafficking, Nepal has ratified all three Conventions. As an impact, Nepal was successful input a ban on *Kamaiya* system of bonded labour which involved children as well as adults (UNDOC, 2011).Whereas, India has ratified the Forced Labour Convention, 1930 (C029) and the Abolition of Forced Labour Convention, 1957 (C105) and it has not ratified the Worst form of child Labour Convention, 1999 (C182).

It is important to note that there is a contradiction in the set rules and policies of child labour between Indian legislation and ILO Convention. The Child Labour (Prohibition and Regulation) Act of 1986 states that persons above 14 years can work in hazardous occupations and processes, but the Convention No. 182 states that employment of all the children below the age of 18 years should be prohibited as

²⁸ The worst forms of child labour includes: the sale of a child, trafficking of children, debt bondage, forced or compulsory labour, commercial sexual exploitation of children, the production of pornography, etc.(Article 3 (a) of Worst Forms of Child Labour Convention).

these constitute the worst forms of child labour. However, the process to ratify the ILO Convention is in progress that a Bill to amend the Child Labour (Prohibition and Regulation) Act, which is named as the Child and Adolescent Labour (Prohibition and Regulation) Act has been passed by both the houses of Parliament that prohibits employment of children up to 14 years of age (The Economics Times, 2016).

2.7 .f. United Nations Convention against Organized Crime, 2000

As it is a well known fact that, human trafficking is considered as an organised crime. According to National Crime Agency (NCA)²⁹, organized crime is a serious crime planned, coordinated and conducted by people working together on a continuing basis. Human trafficking as an organized crime affects millions of victims worldwide which violates dignity and basic rights of an individual.

The United Nations Convention against Organized Crime, 2000³⁰ is an instrument of international cooperation, with a purpose to promote interstate cooperation in order to combat transnational organized crime more effectively (Article 1). The Organised crime Convention is supplemented by three additional treaties (Protocols): Protocol against the Smuggling of Migrants by Land, Sea and Air³¹; Trafficking in Persons, Especially Women and Children; and the Protocol against the Illicit Manufacturing of and trafficking in Firearms, Their Parts and Components and Ammunition³².

The goal of Organized Crime Convention is to enlarge the number of States taking effective measures against transnational crime and to forge and strengthen cross-border links (Gallagher, 2010). More specifically, the Convention seeks to eliminate “safe havens” where organized criminal activities or the concealment of

²⁹ The National Crime Agency (NCA) leads UK law enforcement’s fight to cut serious and organized crime.

³⁰ 2225 UNTS 209, done on Nov. 15, 2000, entered into force Sept. 29, 2003 (Organized Crime Convention).

³¹ Done on Nov. 15, 2000, GA Res. 55/25, Annex III, UN GAOR, 55th Sess., Supp. No. 49, at 62, UN Doc. A/45/49 (Vol. I) (2001), entered into force Jan. 28, 2004 (Migrant Smuggling Protocol).

³² This supplementing the United Nations Convention against Transnational Organized Crime GA Res. 255, Nov. 15, 2000, UN Doc. A/RES/55/255 (2001), done May 31, 2001, entered into force July 3, 2005 (Firearms Protocol).

evidence or profits can take place by promoting the adoption of basic minimum measures (UNODC, 2000).

According to Article 26 of the Convention a range of measures was adopted by States Parties to enhance effective law enforcement against transnational organized crime through improving information flows and enhancing coordination between relevant bodies (Article 26). The Convention contains several important provisions on victims of transnational organized crime. Such provisions of the convention that the state parties should follow include; endeavour to take certain legal and financial steps to prevent transnational organized crime (Article 30), and to take appropriate measures within their means to provide assistance and protection to victims, particularly in cases of threat of retaliation or intimidation (Article 25 (1)). Further, states that ratify this instrument commit themselves to taking a series of measures against transnational organized crime, including the creation of domestic criminal offence like money laundering, corruption and obstruction of justice; the adoption of new and comprehensive frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities (UN Convention on Organised Crime, 2000).

The Convention has also establishes a Conference of the state parties to promote and review its implementation as well as to improve more generally the capacity of States Parties to combat transnational organized crime. The Conference of States Parties is envisaged to have a special role in facilitating several cooperative measures visualized under the Convention, including: the provision of technical assistance; information exchange; and cooperation with international and non-governmental organizations (Article 32(3) (a)-(c)).

However, there are ample of reasons behind the non implementation of the Convention and its protocols. For instance, lack of communication and cooperation between national law enforcement authorities has been identified as one of the

principal obstacles to effective action against transnational organized crime, including both human trafficking and migrant smuggling.

Both India and Nepal has ratified the Convention against Transnational Organized Crime 2000 on the 5th of May 2011 and 23rd of December 2011 respectively. Ratification of the Convention gives both India and Nepal an opportunity to enhance the level of international co-operation among the various State parties in the fight against various forms of the organized crime human trafficking (UNODC, 2016).

2.7 .g. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially of Women and Children, 2000³³

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially of Women and Children also known as Palermo Protocol was adopted in 2000. The document appeared at a time when the international community was of the opinion that the actual human rights framework did not respond adequately to the problems of child and women's trafficking and therefore requires increased international efforts within the context of international organised crime (Gallagher, 2001). The Purposes of this Protocol are; (a) to prevent and combat trafficking in persons, paying particular attention to women and children; (b) to protect and assist the victims of such trafficking, with full respect for their human rights; and (c) to promote cooperation among States Parties in order to meet those objectives (UN Trafficking Protocol, Article 2). This trafficking Protocol is the first international instrument to define trafficking in a comprehensive manner (Hyland, 2001). Under the Protocol, Article 3 (a) defines trafficking as

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of

³³See Appendix I

others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (UN Trafficking Protocol, 2000).

It has been assumed that, this Protocol reflects the first international consensus on the definition of trafficking, which is the first step toward an intensive international effort to combat trafficking. Under this Protocol, trafficking comprises three separate elements: an action, a means and a purpose. The definition includes a provision to the effect that the consent of a victim to the intended exploitation is irrelevant where any of the means set out above have been used (Article 3 (b)). The intention behind this definition is to facilitate common national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting human trafficking cases (Fredette, 2009). Hence, the major objective of the Protocol is to protect and assist the victims of human trafficking with full respect for their human rights.

Basically, the Trafficking Protocol has three important purposes; first, to prevent and combat trafficking in persons, paying particular attention to the protection of women and children; second, to protect and assist victims of trafficking; and third, to promote and facilitate cooperation among States Parties to this end (Gallagher, 2010).

The protocol has given special emphasis to the victims of trafficking by establishing mandatory provisions for them. For example, Article 9 addresses mandatory prevention measures, specifically citing mass media information campaigns, close cooperation with NGOs, and the creation of social and economic incentives. In addition, States Parties also must undertake measures to alleviate factors that contribute to the vulnerability of women and children to trafficking such as “poverty, underdevelopment and lack of equal opportunity” (Article 9 (4)).

Provisions for victims also includes such as State Parties are required to include provisions within their domestic legal frameworks regarding victim compensation and information on legal proceedings (Article 6). State Parties can also

facilitate the repatriation of citizens or nationals with due regard for the safety of the victim by providing necessary travel documentation and a return without unreasonable delay (Article 8).

Part Two of the Trafficking Protocol, deals with protection of the trafficked person, contains several important protective provisions. According to this, State Parties are required to;

- Protect the privacy and identity of trafficking victims in appropriate cases and to the extent possible under domestic law, including by making legal proceedings confidential to the extent that this is also possible under domestic law (Article 6 (1)).
- Ensure that in appropriate cases, victims receive information on relevant court and administrative proceedings as well as assistance to enable their views to be presented and considered during criminal proceedings (Article 6 (2) (a, b)).
- Endeavour to provide for the physical safety of trafficking victims within their territory (Article 6 (6)).
- Ensure that domestic law provides victims with the possibility of obtaining compensation (Article 6 (7)) (UN Trafficking Protocol, 2000).

In the Trafficking Protocol, the section of Law enforcement provisions comprises the true force that has been elaborated in detail. The true force of this document lies in the. Article 5 obliges States Parties to criminalize trafficking, attempted trafficking, participating as an accomplice, and organizing and directing trafficking. Additionally, in the area of law enforcement, States Parties accept a general obligation to cooperate through information exchange aimed at identifying perpetrators or victims of trafficking, as well as methods and means employed by traffickers (Article 10). States Parties are also to provide or strengthen training for law enforcement, immigration, and other relevant personnel aimed at preventing trafficking as well as prosecuting traffickers and protecting the rights of victims (Article 10 (1)). Moreover, Article 11 and 12 also has provision to strengthened

border control measures, such as checking travel documents, boarding vehicles for inspection, and increasing the quality of travel documents to reduce fraud.

Hence, the purpose of the protocol focus that the each countries have to adopt measures to prosecute and punish international traffickers; boost co-operation among countries to combat trafficking more effectively; protect the victims of trafficking and help them return safely to their own or another country (Gallagher, 2001). The protocol also emphasises on the measures of prevention by informing and making aware to public about the negative consequences of trafficking (ibid).

India has ratified this Protocol on 5th May 2011 and this Protocol is the major instrument dealing with all forms of trafficking in India. Ratification of the Protocol has helped India in combating and preventing cross border human trafficking and speed repatriation of the rescued victims (UNODC, 2016). But this Protocol is yet to be ratified by Nepal. A ratification of this Protocol by Nepal would have helped to enhance mutual legal assistance and bilateral cooperation between India and Nepal as this Protocol makes the definition of trafficking broad and comprehensive consisting all forms of trafficking. Besides, as the Protocol is victim centric, that could have helped to ensure rights of the victims of human trafficking as most of the existing trafficking laws of Nepal are perpetrators perspective.

The Protocol has some weaknesses, though it has been possibly an effective human rights tool if State Parties adopt enhanced victim protection measures. The Protocol outlines victim services that are meant to assist and protect victims of trafficking. Despite this commitment to assisting and protecting trafficking victims, the provisions providing for implementation are weak (Hyland, 2001). Each of these provisions begins with the permissive language that State Parties ‘shall endeavour to’, ‘shall consider in appropriate cases’, and ‘to the extent possible’ implements various victim protection measures (ibid). For example, Article 6 specifies that for their ‘physical and psychological recovery’, victims require medical care, housing, mental health counselling, job training, legal assistance, and physical safety. This provision, however, requires that State Parties only ‘consider implementing’ such measures.

Article 7 requires State Parties only to consider providing temporary or permanent residence for victims.

The other shortcomings/weaknesses of the protocol include; first, there is no explicit protection from prosecution for the acts victims are forced to perform (Hyland, 2001). Therefore, a victim could be prosecuted for a crime they were coerced into committing, such as prostitution, working without a permit, or having false identification documents. Moreover, it is possible that victims will be summarily deported for these violations. According to Piotrowicz, the Protocol is an instrument aimed at tackling human trafficking through fighting the traffickers, with limited acknowledgement of the rights of the victims, who may need protection and assistance (Piotrowicz, 2008:245). The problem or limitation of the Protocol is that it is aimed primarily at tackling the perpetrators of human trafficking (ibid: 224). However, the Protocol offers only limited assistance from the victim's perspective. This then put the burden of attending to the concrete rights of and assistance for the victims in the hands of the individual states. Consequently, there is not a uniform standard for the rights and reparations of victims.

The second points highlighted by Hyland is that, because victim assistance is discretionary, victims who remain in a country in order to be witnesses for the prosecution could be detained for months without critical services or employment (Hyland, 2001:3). Many victims may be unwilling to offer testimony without these provisions, which works to the detriment of the prosecutor and undermines the law enforcement objectives of this Protocol. Victims who are not witnesses are still at risk of physical harm from their traffickers.

Thirdly, there is no mention of "reintegration," or providing services upon repatriation to ensure that a victim is able to re-enter society (ibid). Victims of human trafficking face major problems being reintegrated into their home or society when they are freed from the situation into which they were trafficked. The victims of trafficking require an immediate support to recover from their exploitative experience. Hence, the ultimate aim of reintegration programs is to ensure the overall social and

economic recovery of the trafficked person by minimising the problems they face in reintegrating into their communities (Ezeilo, 2009:17). The Protocol only refers to cooperation between State Parties to ensure safe repatriation of victims to their countries of origin. The victims are, in effect, and then delivered back into the same conditions from which they were trafficked and are at risk of revictimization.

As revictimization or re-trafficking has become a wide spread trend despite of increasing occurrence of human trafficking laws both internationally and domestically (Pandey, 2013). This is because the conventions largely focus on crime control rather than on victims' rights. Failure to support victims and to provide safety in their reintegration process causes many victims to be re-trafficked.

Despite all limitations, the Protocol is a significant law enforcement that is considered as successful instrument. The Protocol provides comprehensive definition of trafficking in persons and offers an effective framework for combating it through various measures such as effective law enforcement, prevention, protection, and repatriation of victims (Rhoten, 2015). Thus, it is the first international agreement to provide some mandatory and many detailed provisions for victims of crime. With 81 signatories, the Protocol's wide acceptance promises for the number of countries that will be drafting and implementing their own trafficking laws (Hyland, 2001). However, the provisions of protocol will be functions well to combat trafficking and its related crimes if the State Parties choose to implement the Protocol in their domestic laws.

2.7 .h. The Protocol against the Smuggling of Migrants by Land, Sea and Air

The purpose of the Migrant Smuggling Protocol³⁴ is to “prevent and combat migrant smuggling, to promote international cooperation to that end, and to protect the rights of smuggled migrants” (Article 2). According to Article 3 (a), Smuggling of migrants is defined as “the procurement, in order to obtain, directly or indirectly, a

³⁴ The Protocol Against the Smuggling of Migrants by Land, Sea and Air, General Assembly Resolution 55/25.

financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.

The Migrant Smuggling Protocol requires the adoption of general measures to prevent migrant smuggling with a particular focus on prevention through improved law enforcement. As with the Trafficking Protocol, great emphasis is given to the strengthening of border controls. States Parties are required to strengthen border controls to the extent possible and necessary to prevent and detect migrant smuggling (Article 11 (1)).

Unlike the Trafficking Protocol, States Parties to the Migrant Smuggling Protocol are not required to consider the possibility of permitting victims to remain in their territories temporarily or permanently (Gallagher, 2010). Under Article 18 (1), States Parties of origin are to facilitate and accept, without delay, the return of their smuggled nationals and those who have a right of permanent abode within their territories once the nationality or right of permanent residence of the returnee is verified.

There is no requirement for either the State of origin or the State of destination to take account of the safety of smuggled migrants in the repatriation process (Article 18 (5)). However, the Protocol also includes a number of provisions aimed at protecting the basic rights of smuggled migrants and preventing the worst forms of exploitation that often accompany the smuggling process.

India has ratified this Protocol on 11th May 2011 but Nepal has not ratified this Protocol yet. Ratification of this Protocol by India has helped in addressing irregular migration in the country by strengthening border controls and through efforts undertaken against transnational organized crime (UNODC, 2011). Nepal also needs to ratify this Protocol to enhance bilateral mutual legal assistance between Nepal (origin) and India (destination).

2.7 .i. Trafficking Victims Protection Act, 2000³⁵

On 28 October 2000, the Trafficking victims Protection Act of 2000 (TVPA) (Public Law 106-386) was enacted by United State Congress. The purpose of this Act is to combat trafficking in persons, who are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims (TVPA, 2000). This law is comprehensive in addressing the various ways of combating trafficking, including prevention, protection and prosecution. The prevention measures include the authorization of educational and public awareness programs. Protection and assistance for victims of trafficking under the law include making housing, education, health care, job training and other Federally-funded social service programs available to assist victims in rebuilding their lives (TVPA, 2000).

The TVPA also created new law enforcement tools to strengthen the prosecution and punishment of traffickers, making human trafficking a Federal crime with severe penalties. For example, if a trafficking crime results in death or if the crime includes kidnapping, an attempted kidnapping, aggravated sexual abuse, or an attempt to kill, the trafficker could be sentenced to life in prison (ibid). Traffickers who exploit children (under the age of 14) using force, fraud or coercion, for the purpose of sex trafficking (a commercial sex act) can be imprisoned for life. If the victim was a child between the age of 14 and 18 and the sex trafficking did not involve force, fraud or coercion, the trafficker could receive up to 20 years in prison.

There were three main components of the TVPA, commonly called the three P's- Protection, Prosecution and Prevention to “ensure just and effective punishment of traffickers, and to protect their victims” (TVPA, 2000). Consequently, there has been significant progress of TVPA to combat and prosecute trafficking in persons. As a result, United States congress adopted various Acts under TVPA as Trafficking Victims Protection Reauthorization Act (TVPRA) in 2003, 2005, 2008, and 2013 with the different provisions to combat the issue of trafficking. Some of such provisions are to provide severe punishment including up to life imprisonment for persons

³⁵Victims of Trafficking and Violence Protection Act of 2000, Public Law No. 106-386 (2000)

convicted of operating trafficking enterprises; assists and protects victims; authorizes grants to shelters and rehabilitation programs and provides provisions for relief from deportation for victims; enhances law enforcement capacity to combat sex tourism by extending jurisdiction; establishes an Interagency Task Force to monitor and combat trafficking, which would facilitate and evaluate progress in trafficking prevention, victim assistance, and the prosecution of traffickers etc. (Alliance to End Slavery and Trafficking (ATEST), 2014).

India and Nepal are the countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards. TVPA has set up a project called 'Free the Slave' with a focus on India and Nepal. It has a mission liberating slaves and changing the conditions that allow slavery to persist by transforming the political, economic, cultural, and social circumstances³⁶ (Free the Slave, 2016).

2.8 International Institutions and Human Trafficking

Various international institutions were established with the aim to eliminate the issue of human trafficking and its related forms of trafficking. The following are some of the major institutions in this regard;

2.8 .a. United Nations Global Initiative to Fight Human Trafficking (UN.GIFT)

UN.GIFT is a multi-stakeholder³⁷ initiative providing global access to expertise, knowledge and innovative partnerships to combat human trafficking (UNODC, 2009). The main purpose of UN.GIFT is global fight on human trafficking, on the basis of international agreements. It was established in March 2007 by the UN Office on Drugs and Crime (UNODC), in collaboration with other major international organisations like the International Labour Organisation (ILO), the

³⁶The various programmes to Free the Slave initiated by TVPA includes survivor friendly police training, rescuing women and children from slavery, Debt-Free weddings to prevent slavery, and bringing Freedom, equality and Justice to victims and vulnerable.

³⁷ UN.GIFT works with stakeholders comprises of governments, business, academia, civil society and the media- to support each other's work, create new partnerships and develop effective tools to fight human trafficking (UN.GIFT, 2016).

International Organization for Migration (IOM), the UN Children's Fund (UNICEF), the Office of the High Commissioner for Human Rights (OHCHR), and Organization for Security and Co-operation in Europe (OSCE) (UN.GIFT, 2016).

Major goals of UN.GIFT are: (i) to foster awareness, global commitment and action to counter human trafficking in partnership with different stakeholders including governments, the international community, non-governmental organizations and other elements of civil society and the media; and (ii) to assist countries in creating and strengthening support structures for victims of trafficking (ibid).

Within South Asia, UN.GIFT has aimed to organized state and non-state actors to eliminate human trafficking by imparting knowledge and awareness on human trafficking. The UN.GIFT also emphasises on promoting effective rights based responses, building capacity of State and non-State actors, and foster partnerships for joint action against human trafficking. More prominently, it analyses on legal and policy review of domestic laws to understand the gaps in standard with the UN Protocol (UNDOC, 2011). In India and Nepal, the UN.GIFT helped in their investigation and prosecution process to curtail human trafficking.

2.8 .b. Amnesty International³⁸

Amnesty International was founded in 1961 by Peter Benenson. It is a world-embracing movement working for the protection of human rights. The movement works for the release of women and men who have been arrested for their convictions, the colour of their skin, their ethnic origin or their faith provided that they have not themselves used force or exhorted others to resort to violence (Amnesty International, 2011). The vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international rights standards. The major aims and objectives of amnesty international based on Universal Declaration of Human Rights and other international rights instruments are: stopping violence against

³⁸Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

women, defending the rights of people living in poverty, abolishing the death penalty, opposing torture and terror with human rights, freeing prisoners of conscience, protect the rights of refugees and migrants, and last but not the least, regulating the global arms trade (Amnesty International, 2015).

Amnesty international as an institution considers that the trafficking of women into forced prostitution is one of the most widespread and pervasive forms of violence against women. The institution identifies trafficking as a series of abuses and violations of the human rights of trafficked women and girls, both at the hand of their traffickers and subsequently, within the criminal justice system (ibid).

Initiatives projected by Amnesty International comprises; to promote cooperation and partnership among the governments, NGOs, international organizations, private sector, and civil society organizations in prevention, protection, reintegration and prosecution aspects of trafficking in persons. It was also suggested that countries should build regional cooperation networks, including cooperation through the internet, to combat the issue of human trafficking.

The Amnesty International has got its centres in India and Nepal to create awareness on human rights related issues especially violence against women. For e.g, it has created several measures or campaign access to justice for survivors of sexual violence. 'Ready to report' is one campaign in India, aims to change the perception people have about reporting by addressing different challenges survivors of sexual violence face (Amnesty International, 2014). This organisation has an effort to ensure that women who choose to report sexual violence can do so safely, with dignity and without facing prejudice³⁹ (ibid).

Amnesty International also works against discrimination on the basis of gender, caste, class, ethnic origin and religion persisted in Nepal and India. The

³⁹ Surveys show that an estimated 30.53% of women who experience sexual violence actually tell someone about the incident, but only 1% out of these end up reporting to the police, due to concerns of security, social stigma & discrimination (Amnesty International, 2014).

institution provides legal assistance to women from marginalised groups continued to face multiple level of caste based discrimination and violence, and sexual violence.

2.8 .c. Coalition Against Trafficking in Women (CATW)

Coalition Against Trafficking in Women (CATW) is an international non-governmental organization opposing human trafficking, and other forms of commercial sex. CATW was founded 1988 as the outcome of a conference titled "Trafficking in Women" organized by several American feminist groups. CATW was the first International Non-governmental Organization (INGO) working against trafficking and gained consultative status with Economic and Social council ECOSOC (UN) in 1989.

The organization consists of regional networks and affiliated groups. It is an umbrella organization that is directed by the regional networks. The following is a list and brief description of some of CATW's global campaigns:

- (a) Measures to Combat Trafficking in human beings- addresses perceived gaps in current anti-trafficking programs and policies with a focus on gender equality, demand and the links between trafficking and prostitution,
- (b) The Prevention Project-multi-tiered project to prevent sex trafficking and sexual exploitation by developing standard practices
- (c) Project to Curb Male Demand for Prostitution-
- (d) Human Rights Documentation Project- conducts training sessions that instruct women's organizations in what the organization describes as "feminist research methods" (CATW, 2013).

The important campaigns, programs and projects of CATW include:

- a). Measures to combat trafficking in Human Beings- by addressing perceived gaps in current anti-trafficking programs and policies with a focus on gender equality, demand, and the links between trafficking and prostitution.
- b). Aiding victims of trafficking and sexual exploitation- by providing multi-level services, financial aid, psychological support, housing, and legal advocacy for victims of sex trafficking and commercial sexual exploitation.
- c). The Prevention Project- multi-tiered project to prevent sex trafficking and sexual exploitation by developing standard practices.
- d). Human Rights Documentation Project- conducts training sessions that instruct women' organizations in feminist research methods (CATW, 2015). CATW is one of the oldest organization to fight human trafficking and the commercial sexual exploitation of women and girls internationally (CATW, 2013).

In India and Nepal CATW carries out a Survivors Empowerment Program to support survivors of commercial sexual exploitation and the CATW- *Apne Aap* organizes educational camps for survivors to equip them with knowledge on women's human rights, realities of trafficking and prostitution, leadership, counselling and organizing (CATW, 2011).

2.8 .d. End Child Prostitution and Trafficking (ECPAT)

ECPAT (End Child Prostitution and Trafficking) is a non-governmental organization and a global network of civil society organizations exclusively dedicated to end the commercial sexual exploitation of children. It focuses on ending four main manifestations of CSEC: child pornography (child sex abuse materials), the exploitation of children in prostitution, the trafficking of children for sexual purposes and the sexual exploitation of children in travel and tourism (ECPAT, 2015).

ECPAT international has a mission to seek to encourage the world community to ensure that children everywhere enjoy their fundamental rights free and secure

from all forms of commercial sexual exploitation. ECPAT as a global non-governmental organization is mandated to monitor the commitments of governments around the world in their legal obligations to protect children from sexual exploitation.

The “Stop Sex Trafficking of Children and Young People” campaign, launched by ECPAT International and the Body Shop⁴⁰, engaged the public as advocates and called on governments to safeguard the rights of children and adolescents to protect them from sex trafficking. The campaign has three main advocacy goals: community-based prevention programmes to stop child trafficking for at-risk populations; incorporating international legal standards for protecting children from trafficking into the national legal framework; and integrating specialised government services for child victims of trafficking into national policies (ibid). This campaign aims to provide immediate relief to child victims and create long-term changes through public awareness raising and to lobby decision makers to strengthen concerted action against child trafficking for sexual purposes.

The goals were selected in response to the various calls to action found in human rights instruments, such as the United Nations Convention on the Rights of the Child (UNCRC), its Optional Protocol on the sale of children, child prostitution and child pornography, and other relevant treaties and commitments, such as the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* and the 2008 Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children (ECPAT, 2010).

ECPAT has a global network that provides planned or multi-layered approach to deal with commercial sexual exploitation of children by providing shelters for survivors with the help of multinational companies and Heads of States. This organization has an aim to bring national laws and policies into alignment with international child rights conventions and to assist governments to meet the

⁴⁰The Body Shop, which positions itself as the original natural and ethical beauty company, has an established record of campaigning on many important social and environmental issues.

commitments they have made (ECPAT, 2015). The ECPAT also collaborate with global law enforcement agencies such as INTERPOL⁴¹ and local authorities to improve identification and rescue of child victims and to arrest and prosecute offenders (ibid). The ECPAT gives first priority to the issue of children and are at the heart of everything.

Nepal and India are the part of ECPAT's Youth Partnership Project (YYP) for Child Survivors of Commercial Sexual Exploitation in South Asia which includes young survivors of commercial sexual exploitation and at-risk youth (ECPAT, 2011). Maiti Nepal from Nepal and SANLAAP from India are the NGOs that actively participate in this Project through raising awareness from the grassroots to the policy level.

2.8 .e. Global Alliance Against Traffic in Women (GAATW)

Global Alliance Against Traffic in Women (GAATW)⁴² is a network of more than 100 Non-Governmental Organizations from all regions of the world, who share a deep concern for the women, children and men whose human rights have been violated by the criminal practice of trafficking in persons. GAATW is committed to work for changes in the political, economic, social and legal systems and structures which contribute to the persistence of trafficking in persons and other human rights violations in the context of migratory movements for diverse purposes, including security of labour and livelihood.

GAATW aims at improving legal frameworks, policies, practices and venues for trafficked persons to access the justice system focusing on compensation avenues for trafficked persons. GAATW applies a human rights approach to trafficking, which means centring the human rights of trafficked persons and those in vulnerable situations, in all anti-trafficking activities; acknowledging the equality of all persons

⁴¹INTERPOL is the world's largest international police organization, with 190 member countries with a role to enable police around the world to work together to make the world a safer place.

⁴²It was founded in 1994 as a result of the international workshop on migration and traffic in women (GAATW, 2010).

to exercise, defend and promote their inherent, universal and indivisible human rights; non discrimination on any grounds, including ethnic descent, age, sexual orientation or preference, religion, gender, nationality and occupation (UNGIFT, 2013).

GAATW made significant contributions to the anti-trafficking movement. It has conceptualised trafficking as both a consequence and cause of human rights violations. GAATW's *Human Rights Standards in the Treatment of Trafficked Persons* (1999) and *the Human Rights and Trafficking in Persons* (2000) were ground-breaking applications of human rights to the trafficking context and were instrumental in expanding the concept of trafficking in the *United Nations Trafficking Protocol* (GAATW, 2015).

GAATW advocated for change at the national level to implement the UN Trafficking Protocol, and continues as a group to review, analyse, propose, and monitor changes in the anti-trafficking scene from human rights based perspective (ibid).

GAATW has three thematic strategic issues to deal with human trafficking:

1. Accountability: increasing the accountability of all anti-trafficking stakeholders involved in the design or implementation of anti-trafficking responses, towards the persons whose human rights they purport to protect.
2. Access to justice- broadening spaces for trafficked persons and migrant workers to practice their human rights by improving access to justice and combating all forms of discrimination that impact women's ability to exercise their human rights as they relate to trafficking.
3. Power in migration and work- centring an analysis of women's power in their labour and migration to better assess migration and labour policies impact on women, and to work towards labour and migration processes that reflect migrants' needs, aspirations and capabilities (ibid).

GAATW in collaboration with ILO and local NGOs have raised their voices on misguided, ineffective and discriminatory border control measures between India

and Nepal. In this project the Institutions has been working with women and girls in India and Nepal to support them in making informed decisions about their labour migration. The institution organizes different programmes like country/district level trainings, field visit, training for peer workers, conduct workshops and collect feedback, prepare and publish a Community Workers' Handbook on Women, Work and Migration (GAATW, 2015).

2.9 Conclusion

This chapter explored the international legal frameworks of human trafficking by identifying a series of legal regimes/institutions of special relevance to current debates and practice and subjecting each forms of trafficking into detailed analysis.

To combat human trafficking as a multidimensional problems or contemporary forms of exploitation will require not only legal regimes and institutional framework about trafficking but international criminal law, international humanitarian law, labour law, migration law, are all relevant to a greater extent to the issue of trafficking. As noted above, treaties on drug trafficking and corruption, the Organised Crime Convention and its Protocol on trafficking in persons also has relevance in the field of trafficking. The international laws, Covenant, Acts, Human Rights system and Institutions adequately revealed that they are capable of taking serious steps toward eliminating trafficking and other forms of exploitation. The legal instruments developed over the past decade have been effective, relevance and resilience tools to tackle with the issue of human trafficking. The above mentioned Acts, Laws, Covenants and institutions added additional measures to prevent and deter human trafficking and other forms of exploitation.

All the international legal frameworks, Conventions, Acts and Institutions together confirm the existence of a strong if not fully formed body of relevant primary rules of human trafficking. Hence, there are both successes and failures in the existing international human trafficking laws and institutions.

Above mentioned Human rights laws are created to prevent human trafficking from its earliest days to the present. Human rights law has curtailed the issues like discrimination on the basis of race and sex; it has demanded equal or at least certain key rights for all; it has criticized and outlawed arbitrary detention, forced labour, debt bondage, forced marriage, and the commercial sexual exploitation of children and women; and it has championed freedom of movement and the right to leave and return to one's own country etc.

India and Nepal are party to maximum of above Conventions/Acts and Institutions that deals with human trafficking and related crimes. To eradicate all forms of trafficking from India and Nepal, India should ratify ILO Convention No.182 to curtail worst forms of child labour and Nepal should ratify both Protocols of Organized Crime, Protocol to Trafficking and Protocol to Migrant smuggling. The Protocol to Trafficking gives the first comprehensive definition of human trafficking and ensures to protect victims of trafficking and promote cooperation among State Parties.

Chapter III

Human Trafficking between India and Nepal: Socio-Legal Dimensions

3.1 Introduction

Human trafficking has been viewed with rampant concern in India and Nepal. The prime instruments exercised in India and Nepal to deal with human trafficking are the domestic legislations. There is a wide range of Laws, Acts and Institutions that are important to trafficking in both India and Nepal. This chapter presents an overview of those important Laws, Acts, Legal Regimes and Institutions related to human trafficking between India and Nepal. The chapter also discusses the provisions in the Constitution and Judicial Laws, and also the measures taken by Departments and Ministries that deal with human trafficking. Hence, this chapter helps in identify and understand the major Legal Acts and Institutions of both India and Nepal that would be significant for the crime of human trafficking.

3.2 Major Acts on Human Trafficking in Nepal

The important Acts of Nepal on human trafficking and related crimes are discussed in detail here with an observation on the major limitations of such Acts and also the law enforcement mechanism under these legal regimes.

3.2 .a. *Muluki Ain* (National Code) 1963

The *Muluki Ain* (National Code) is the first unified law in Nepal which is enacted in 1963 (2020, Bhadra 1st) with the objective of maintaining peace and fostering good relations among people irrespective of class, caste or region. It has contained provisions like procedural, criminal, civil and penal and has been amended many times due to changing social, political and economic situation of Nepal. It was the old legal code first enforced by Rana Oligarch Jung Bahadur Rana during in 1854.¹ He had taken many steps to eliminate all opposition within the country and he

¹The 1854 *Muluki Ain* was based on the traditional approach of the Hindu Dharma Shastras or legal treaties called 'Manu Smriti'. As time went by, the *Muluki Ain* went through numerous revisions or amendments in context to people's needs due to changing times. This old version of *Muluki Ain* was replaced by the new *Muluki Ain* of 1963. This contains both substantive and procedural laws covering criminal and civil matters. www.jica.go.jp/Nepal/English

was careful to maintain good relations with the British. He visited England in 1851 and familiarised himself with the efficient administration there. He set up an official Council (Kausal) to codify Nepal's Laws consisting of 230 persons, including the state pundits of law and religion, important civil and military officials, and experts in medical science and astronomy. The deliberations of this council continued for nearly three years. The outcome was that law in Nepal till then merely composed of commands and occasional promulgation by the rulers was now embodied in a huge and comprehensive document which came to be known as the *Muluki Ain* (Kumar, 1964).

The main objective of Jang Bahadur's *Muluki Ain* as declared in its introduction was to eliminate discrimination in punishments to people of different ranks for the same offence. All officers of the state were enjoined to adhere strictly to the provisions. Jung Bahadur's Ain codified Nepali Civil and Criminal Law for the first time in the country and made it uniformly applicable to the whole country and to all ranks of people. Jang Bahadur's Ain was thoroughly revised in 1886 during the rule of Prime Minister Bir Shamsher (1885-1901) who polished and made it more compact and precise. Subsequently the Ain was reprinted a number of times without any major change during the rule of Prime Ministers such as Chandraa Shamsher (1901-29), Bhirri Shamsher (1929-32) and Juddha Shamsher (1932-46).

The old version of *Muluki Ain* was replaced by the new *Muluki Ain* of 1963. The main objective of this revision was to ensure easy and quick comprehension of the laws by everyone (Kumar, 1964). It is also aimed that every citizen of the country should know their legal rights and also the procedure of attaining those rights from the court. The *Muluki Ain* 1963 is the first unified law of modern Nepal. The chapters in the *Muluki Ain* comprises Acts for human trafficking, maintaining gender equality, women rights, etc. with the procedural, criminal, civil, and penal provisions for ensuring rights of women in Nepal.

The amendment in *Muluki Ain* is considered as a landmark one in ensuring the rights of women in Nepal as the *Muluki Ain* 1963 contains several provisions to address inter-state and domestic trafficking. For instance, Chapter 11 of the *Muluki Ain* contains provisions on human trafficking. According to this, nobody is allowed to take anybody else outside the borders of Nepal or sell him/her there, enticing him/her

with the purpose of selling a human. If the one who does so is arrested, than he/she will be prosecuted and will be imprisoned for a period of twenty years (Section 1). Similarly, nobody is allowed to separate or entice to separate a minor under sixteen years of age or a mentally disturbed one of any age from his/her guardianship without permission of the legal guardian; the one who does so will be fined an amount up to five hundred rupees and imprisoned up to three years or both (Section 2). Similarly, nobody is allowed to make anybody else his/her servant, slave or bonded labour. The one who found guilty will be imprisoned for 3-10 years and the court will also be able to have the one convicted pay appropriate compensation to the one concerned (Section 3). Hence, the *Muluki Ain* criminalizes person who make another person slave, or bonded labourer; the arranging of or causing of forced or child marriage; as well as many acts which tend to be committed within the trafficking context (e.g., kidnapping and rape) (American Bar Association, Nepal, 2011).

3.2 .b. The Human Trafficking (Control) Act (HTCA), 1986

This was enacted on November 28, 1986 and attempted to provide specific redress to persons who were trafficked. As defined in Article 4 of the Act, human trafficking includes to sell a person for any purpose; to take a person abroad with an intention of selling her/him; to have a woman engage in prostitution by persuasion, enticement, deception, fraud, pressure, or to encourage anyone to be engaged in such acts; to make attempt to commit any acts mentioned above, or to render assistance to commit such acts or to encourage anyone to be engaged in such acts. HTCA establishes territorial jurisdiction for offences committed outside Nepal. Anybody with information that human trafficking is about to take place or is in progress can file a complaint at any police post with whatever evidence is available (Section 5(1), *The Human Trafficking (Control) Act*, 1986).

Similarly the Section 7(1) of Human Trafficking Control Act 2043 (1986) provides that in the case of a woman being taken outside of Nepal by any person other than a close relative or guardian, and any person who files a complaint (under Article 5) alleging that she is being taken away to be sold or with the intent of having her engage in prostitution, the accused will have to prove that he or she is not transporting the woman for such purposes.

The Penalties imposed on traffickers range from ten to twenty years imprisonment (Section 8(1)). If a person takes a person to a foreign country with the intention of selling and forcing women into prostitution, it is considered as punishable offence with imprisonment for up to 20 years. Section 4 of the Act prohibits the activities such as trafficking with any objective, trafficking with the purpose of selling women and forced prostitution. This Act explicitly criminalizes the selling and buying of human beings and established provisions for rehabilitation and integration for victims with 20 years imprisonment for them.

However, enforcement of this Act seems to be very weak. This law is widely considered insufficient to deal with the problem of trafficking and the rights of vulnerable persons. It is criticised that the procedural requirements for filing a complaint are too complex, prolonged and largely impractical (Sanghera, 2000).

3.2 .c. The Children’s Act, 2048 (1992)

The Children Act, 2048 (1992) provides legal provisions to protect the rights and interests of the children and promote the physical, mental and intellectual development of the children².

In its section 17, Restriction on employment states that i) a Child who has not attained the age of 14 years shall not be employed in any works as a labourer, ii) a child who has attained the age of 14 years or above shall not be employed in work as a labourer during the period from 6’O clock in the morning to 6’O clock in the evening, iii) a child who may be employed in work as a labourer shall not be made to be engaged in work against his will, iv) every child-labourer shall be provided equal remuneration for the equal work without discrimination of any kind, irrespective of the child’s sex religion, race or color, caste and community (*The Children’s Act, 1992*). Similarly, Article 18 of the Act declares protection from engaging in hazardous work³.

²It defines “child” as every human being below the age of 16 years.

³That no child shall be engaged in work that is likely to be harmful to the child’s health or to be hazardous to the child’s life.

In short, *The Children's Act of 1992* contains provisions to prevent the use of any child in an immoral profession as also other forms of sexual exploitation, begging, and sale of girl children as religious offerings to temple deities, or for child labour.

Children are often trafficked, employed and exploited because compared to adults, they are more vulnerable, cheaper to hire and are less likely to demand higher wages. They are trafficked for forced labour, domestic work, circus, begging, work on construction sites and plantations. However, in most cases, children are trafficked for sexual exploitation. Girl children are mainly trafficked for forced labour and domestic work that often end up in sexual exploitation. The Act provides a protection order for child victims of human trafficking and victims of child sexual exploitation.

Nepal is one of the pioneer states that adopted the Children Act, which is the inclusive legal document for the protection of the rights of children. However, number of challenges such as lack of commitment or implementation, lack of awareness, lack of facilities (e.g. juvenile courts, rehabilitation centres, free legal aid etc.), lack of training for enforcement officials are the impediment with regard to the rights of the child in Nepal (Pattnaik, 2004)

3.2 .d. Labour Act, 2048 (1992)⁴

This Act is related to labour by making provisions for the rights, interests, facilities and safety of workers and employees working in enterprises of various sectors (The Labour Act, 2048 (1992)).

This Act defines 'worker' as a person employed on the basis of obtaining remuneration to work in connection with production process or providing service or to work in any building, premises, machinery or any part thereof used for the purpose of same works or any act relating to such works or any work incidental to such works and this works shall also include any workers working at piece-rate, contract or agreement (Chapter I, Section 2 (d)).

⁴Date of royal Seal of Assent: 2049/2/26 (16th May 1992); first Amendment: Date of Publication in the Nepal Gazette and enforcement 2054/10/15 (28th January, 1998)

The Labour Act lays down the legal framework and the basis for the rules, regulations and guidance on the proper management of employment. It deals with matters relating to security of employment, working hours and minimum wages, welfare of employees, employer employee relations and the settlement of labour disputes. Labour Regulation, 1993 complements the Labour Act with further clarification in issues such as security of profession and service, remuneration and welfare provision, health, cleanliness and safety, etc.

The Act has a provision for punishment for violating the Act. The Department of Labour is the authority and they punish, according to the gravity of such offense with a fine of up to ten thousand rupees, and in case committing of such offense is continued even after establishing of such offense, the culprit may be punished with an additional fine of one hundred rupees per day for continuing to commit such offense (Section 57).

Labour trafficking as a form of human trafficking exists all over the world which includes debt bondage, forced labour, and other forms of coercion using violence, threats, and to force people to work against their will. Victims of labour trafficking can be men, women and children. Immigration status, poverty, unemployment, illiteracy etc. are some of the vulnerabilities that can lead to labour trafficking.

One important aspect of this Act is that, it comprises provisions on the employment and security services of the workers. It includes the classification of jobs, the appointment of workers and employees, the nature and engagement of work, working hours, overtime, remuneration, health and safety and welfare and gratuity. The management of disputes and legal punishment are also included in the Act.

The provisions and features of this Act also emphasises on the good relations between employer and employees with an intention to evade discriminatory or exploitative purpose, one of the aspect of human trafficking.

3.2 .e. Bonded Labour (Prohibition) Act, 2058 (2002)⁵

Bonded Labour (Prohibition) Act, 2058 (2002) was made in order to put a ban on bonded labour (*Kamaya shram*), to rehabilitate the freed bonded labourers and to uplift their livelihood from the perspectives of social justice.

According to the Act Bonded labour (*Kamaya shram*) means the labour or service to be rendered for a creditor for the following reasons without wages or with nominal wages

- i). To pay back the debt obtained by him/her or family and to pay the interest thereof.
- ii). To pay the debt obtained by his/her ascendant and to pay back the interest thereof.
- iii). To pay back the bonded debt of bonded labourer by a person who has given a guarantee before the creditor on behalf of a bonded labourer (Chapter 1, Article 2).

If a person employs any one as a bonded labourer, the adjudicating authority shall impose a fine minimum of Fifteen Thousand Rupees and maximum Twenty five thousand rupees; and shall provide the two- fold amount of the minimum wage as determined pursuant to this Act for the each day of employment to the victim from such employer (Article 16(1)). In addition, the Act also states that if a person hinders or obstructs to anyone in the course of investigation of any act committed contrary to this Act, the Adjudicating Authority can impose a fine on him/her not less than Three Thousand Rupees and not exceeding Ten Thousand Rupees (Article 16 (4)).

The Act explicitly prohibits all forms of forced and bonded labour. The Government of Nepal abolished traditional practices of bonded labour such as *Haliya* and *Kamaiya* in 1993. The Government of Nepal has been implementing various schemes such as distribution of plots of land, micro-credit loan service, income generation activities, and rehabilitation and employment for the restoration and rehabilitation of freed bonded labourers (Covenant on Civil and Political Rights (CCPR), 2014). According to the Act any person who practices bonded labour is liable to be punished.

⁵Date of Authentication and publication 2058.11.15 (2002-4-20).

The Government of Nepal has taken important step by drafting a bonded labour Act that address all forms of bonded labour. Still the practices of bonded labour persist in an alarming scale affecting many regions of Nepal and the world in general.

3.2 .f. The Human Trafficking and Transportation Control Act, 2064 (2007)⁶

This is one of the most important Acts in Nepal to deal Human Trafficking. The Human Trafficking and Transportation Control Act defines the acts of buying and selling of people for whatsoever purpose, forcing people to engage in prostitution, with or without deriving any benefit, removing a human organ for purposes other than those specified in an existing law, and visiting prostitutes as human trafficking.

The Parliament of Nepal has enacted this Act to control the acts of human trafficking and transportation, and to protect and rehabilitate the victims of such act by enacting law.

Section 4 (1) of this Act considers the following as human trafficking:

- a) To sell or purchase a person for any purpose
- b) To use someone into prostitution, with or without any benefit,
- c) To extract human organ except otherwise determined by law,
- d) To go for in prostitution. (Human Trafficking and Transportation (Control) Act, 2064 (2007): 2)

Besides, if anyone commits any of the following acts that shall be deemed to have committed human transportation:

- a) to take a person out of the country for the purpose of buying and selling,
- b) to take anyone from his/her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostage, allurement, influence, threat, abuse of power and by means of inducement, fear, threat or coercion to the guardian or custodian and keep him/her into ones custody or take to any place within Nepal or abroad or handover him/her to somebody else for the

⁶See Appendix II

purpose of prostitution and exploitation (Human Trafficking and Transportation (Control) Act, (2064) 2007: 3).

Part 4 of this Act deals with provision of punishment and compensation as any person who commits an offence as prescribed under section 4 shall be punished as follows:

- a) Twenty years imprisonment and a fine of Two Hundred thousand Rupees for selling or buying a human being,
- b) Five years to ten years imprisonment and a fine of Fifty thousand rupees to one hundred thousand rupees for forcing into prostitution, with or without financial benefit,
- c) 10 years imprisonment and a fine of Two Hundred to Five Hundred Thousand for extracting human organ except otherwise determined by law,
- d) One month to three months imprisonment and a fine of Two Thousand Rupees to Five Thousand Rupees for a person engaged in prostitution,
- e) For a person who is involved in transportation of human being for the purpose of buying, selling and engaging someone in prostitution:-
 - i) Ten years to Fifteen years imprisonment and a fine of Fifty thousand Rupees to One Hundred thousand Rupees for taking a person out of the country.
 - ii) Fifteen years to Twenty years imprisonment and a fine of One Hundred Thousand Rupees to Two hundred Thousand Rupees for taking a child out of the country.
 - iii) Ten years of prison and a fine of Fifty Thousand Rupees to one Hundred Thousand Rupees for taking a person from one place to another place within the country (Human Trafficking and Transportation (Control) Act, 2064 (2007): 6- 7).

This Act contains a number of provisions to provide stronger protection for trafficking victims such as right to act in self-defence to the victims, provisions for the rescue and rehabilitation of trafficking victims etc. The Act also considers illegal organ transplant as an act punishable under trafficking on human being.

Although the Act is very progressive that ensures compensation with security and protection of the identity of the victims, but its implementation is very weak. Victims are given less importance in the investigation process though provisions allowing victims to participate are included in the Act. The Act has extended definition of trafficking that includes the offense of organ transplantation for the purpose of trafficking, but still it does not cover all forms of trafficking.

3.2 .g. Foreign Employment Act, 2064 (2007)

This Act was made to amend and consolidate laws relating to Foreign Employment in order to make foreign employment business safe, managed and decent and protect the rights and interests of the workers who go for foreign employment and the foreign employment entrepreneurs, while promoting that business. Chapter 4 of this Act deals with the Prohibition on sending a minor for employment: Any minor who has not completed eighteen years of age shall not be sent for foreign employment (Chapter 4:7).

Provision on gender discrimination: No gender discrimination shall be made while sending workers for foreign employment pursuant to this Act. Provided that where an employer institution makes a demand for either male or female workers, nothing shall prevent the sending of workers for foreign employment according to that demand (Chapter 4:8).

In relation to law enforcement, the Foreign Employment Act makes provisions of more than 15 categories of offences and punishments in case of contravention of the Act, such as punishment to be imposed in the event of carrying on foreign employment business without license, punishment to be imposed in the event of sending workers by licensee without obtaining permission, punishment to be imposed in the event of sending minors for foreign employment etc. The Act recognizes cheating, fraud or exploitation of a person in relation to foreign employment as a crime against the state.

Despite of such severe measures, human trafficking channel are active in the name of facilitating foreign employment in Nepal. Thus, coordination or correlation

between human trafficking and foreign employment Acts would be effective measures to deal with the cases of human trafficking.

3.2 .h. The Constitution of Nepal, 2015⁷

The Constitution of Nepal contains a provision prohibiting trafficking in human beings, slavery, serfdom or forced labour in any form. Part 3 of the Constitution deals with fundamental rights which includes rights like right to freedom, right to equality, right relating to employment and social security, right to women, right of the child, right relating to justice, right against exploitation etc.

The right against exploitation states (Article 29):

1. Every person shall have the right against exploitation.
2. No person shall be subjugated to any kind of exploitation on the basis of religion, custom, tradition, culture, practices or any other bases.
3. No person shall be subjugated to human trafficking or bonded labour, and such an act shall be punishable by law.
4. No person shall be subjugated to forced labour (The Constitution of Nepal, 2015: 10-11).

The right against exploitation is one of the most vital rights of Nepal. The provision of Article 29 is to eradicate the problems of human trafficking, forced labour, slave trade and declares it as a punishable offence. Human trafficking is the employment of men, women and children in various forms of exploitation like labour trafficking, sex trafficking, organ transplantation etc. depriving them from their basic human rights. Such practices are considered exploitative by the Constitution of Nepal.

Article 38 of the Constitution illustrates the Rights of Woman that;

- (1) Every woman shall have equal right to lineage without any gender discriminations.
- 2) Every woman shall have the right relating to sage motherhood and reproductive health.

⁷Draft of the Constitution of Nepal 2015, Unofficial English Translation by International Institute for Democracy and Electoral Assistance (IDEA), Nepal Law Society and UNDP

3) There shall not be any physical, mental, sexual or psychological or any other kind of violence against women, or any kind of oppression based on religious, social and cultural tradition, and other practices. Such act shall be punishable by law and the victim shall have the right to be compensation as provided for in law.

4) Women shall have the right to access participate in all state structures and bodies on the basis of the principle of proportional inclusion.

5) Women shall have the right to special opportunity in the spheres of education, health, employment and social security on the basis of positive discrimination.

6) Both the spouses shall have equal rights in property and family affairs (The Constitution of Nepal, 2014: 12)

Rights to women refer to equality between women and girls in favour of men and boys. Women shares equal rights as compare to men in various activities like to vote, to hold office, to work, to fair wages or equal pay, to own property, to education, to enter into legal contracts, to have marital and parental rights etc. Sex trafficking is a violation of human rights and a form of violence against women that violates women's right to life, liberty and security of person. This article provides for the right of women to be free from all forms of violence specifically from violence of human trafficking.

Article 39 describes the Rights of the Child that every child shall have the right against physical, mental or any other form of exploitation. Such exploitative act shall be punishable by law; and any child so treated shall be given such compensation as may be determined by law (Article 39, 7). No minor shall be employed to work in any factory, mine or engaged in any similar other hazardous work or used in army, police or conflict (Article 39, 4).

Rights of the child includes right to free and compulsory elementary education, right to protected from any hazardous employment, right to be protected from being abused, right to equal opportunities and facilities to develop health, etc. (Article 39, 1).

Article 34 includes the Rights relating to Labour:

- 1) Every labourer shall have the right to proper work practices. (“labourer” means a worker or labourer who offers physical or mental work for an employer for remuneration).
- 2) Every labourer shall have the right to appropriate remuneration, facilities and contribution-based social security.
- 3) Every labourer shall have the right to form trade union, participate in it, and organize collective bargaining (The Constitution of Nepal, 2015: 12).

Hence, The Constitution of Nepal enshrines the principles of equality and justice to every citizen without any discrimination on the basis of race, caste, sex, creed, etc. and safeguards the human rights of all citizens. Further, part of the Constitution of Nepal is designed to protect the rights of women returned from trafficking and to prevent them from being exploited. Nepal has banned human trafficking directly in its new Constitution. The Constitution states that every person has right to be protected from trafficking and slavery. The Constitution also ensures the right to compensation for trafficking survivors. The new Constitution has become one of the progressive legal foundations to combat trafficking in Nepal.

Similarly, provisions have been made for fundamental rights from Article 16 to Article 39 of the Constitution, which maintains special legal arrangements made for women, like provisions on employment and social security, provisions on the rights of women and provisions on rights against exploitation of women and children. With the special protection of the rights of women and children the Constitution stop all types of violence against women and children including child labour and sexual exploitation and abuse of children who are below 18 years.

3.3 Institutional Mechanisms on Human Trafficking: The Case of Nepal

It has been marked continues increase in human trafficking day by day. In addressing this problem, many Laws/Acts as an arrangement have been initiated and found that such actions are insufficient to halt the flows of trafficked persons. However, in response to this, institutional mechanisms have been instigated by

concerned departments or government as an important means to combat human trafficking from the region.

Ministry of Women, Children and Social Welfare, Ministry of Home Affairs, National Human Rights Commission, reputed NGOs are the major Institutional mechanisms of Nepal that extensively deals with the issue of human trafficking. The major functions of such institution include: coordination, investigation, rescue and rehabilitation, judicial support, cooperation and research training etc. to combat human trafficking from the region.

3.3 .a. Ministry of Women, Children and Social Welfare (MoWCSW)

MoWCSW has been working as the focal agency for controlling trafficking in and transportation of women and children since its establishment in 2052 B.S. (1995)⁸. United Nation's agencies, national Non-Governmental Organizations (NGOs) and International Non-Governmental Organizations (INGOs) have been helping the Ministry in this task. After the Human Trafficking and Transportation [control] Act 2064 (2007) and Regulations 2065 (2008) were enacted, a Human Trafficking Control Committee has been formed at the national level. Similarly, district committees have also been formed in all districts.

After its establishment in 2052 B.S. (1995), the Ministry formulated and implemented a policy against trafficking of girls and flesh trade. To control crime against humanity and to ensure the rights of victims and survivors, the National Plan of Action against Trafficking in Persons, Especially Trafficking in Women and Children has been formulated by the Ministry to translate the legal provisions into action and to control such criminal activities by ensuring its strong, effective and timely implementation in the changed context.

Under MoWCSW, several bodies have been set up to deal with activities related to women, children and social welfare in the country such as Department of Women Development, the Women Development Offices in 75 districts, the Central Child Welfare Board, the Central Child Welfare Committee, District Child Welfare Committees, and National Centre for Children at Risk (American Bar Association,

⁸Interviewed Under Secretary of MoWCSW Sunita Nepal on 25th May, 2014

Nepal, 2011). The MoWCSW as the nodal agency to lead anti-trafficking efforts is working effectively by implementing the policies and programs for overall development and coordination of all activities related to combating human trafficking. The ministry is working in close collaboration with civil societies, international development partners, and other relevant government stakeholders to deal with the problems of human trafficking.

The various Action Plan of MoWCSW, to prevent and protect women and children from human trafficking are: capacity building training to national and district level committees, raising awareness about trafficking and safe migration, training for trainers about safe migration, making and distributing information, education and communication material of anti-human trafficking (MoWCSW, 2016).

3.3.b. National Plan of Action against Trafficking in Persons, Especially Trafficking in Women and Children 2056 (1998)

This plan of Action has been formulated to control the acts of human trafficking and transportation by complying with the commitments made by Nepal in the conventions on human rights, including Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and effectively implementing the provisions made in the Human Trafficking and Transportation [Control] Act 2064 (2007) and Rules 2065 (2008).

The objective of this Plan of Action is to perceive the problem of human trafficking within or outside of the country from a broader perspective. The Plan of Action has adopted/conducted programs to make effective legislation and enforcement system to strengthen the mechanisms and structures to control human trafficking (Timalsena, 2012). It also gives importance to research, policy and institutional development to enhance the professional capacity of the focal agencies involved in controlling human trafficking.

The Plan of Action emphasises on health and education of high risk and vulnerable communities to protect them from risk of human trafficking. It also enhances awareness, advocacy, networking and social mobilization to promote cooperation, coordination and collaboration among stakeholder agencies standard

with the international and regional commitments against human trafficking. The Plan of Action also include employment and income generation and reintegration and rescue of victims to provide justice to survivors by ending impunity through the criminal justice system and appropriate legal measures for controlling human trafficking and to ensure good governance by addressing the problem of human trafficking (National Plan of Action, 2012:2-3).

This Plan of Action, 2056 (1998) has been reviewed as National Plan of Action against Trafficking in Persons, Especially Trafficking in Women and Children, 2068 (2012) on the basis of various recommendations made by the review committee. Several guiding principles have been taken into consideration while formulating it; like-concept of human trafficking and special priority to women and children; definition of human trafficking and ratification of Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially women and Children 2000 (Palermo Protocol); gives priority to five thematic areas like prevention, protection, prosecution, capacity building and coordination, cooperation and collaboration; addressing both internal and external trafficking; trafficking connected with Labour Migration for Foreign Employment; identification of Linkage between trafficking and domestic violence; good governance for addressing human trafficking problem; importance of women development programme and economic empowerment etc.(National Plan of Action, 2068 (2012): 5)

The National Plan of Action against trafficking persons, especially trafficking in women and children, monitors the issues with regard to prevention, rescue, rehabilitation, reintegration and repatriation of victims of trafficking. The Government of Nepal has introduced new National Plan of Action against Trafficking in Persons 2011-2016 that takes into account the current socio-political context of trafficking in persons and new trafficking patterns, such as those associated with foreign labour migration (NHRC, 2011). The National Plan of Action identifies the five broad areas for interventions: prevention, protection, prosecution, capacity building, and cooperation.

In addition to National Plan of Action, the MoWCSW adopted Operation Guideline of Rehabilitation Centre 2068 (2011), National Minimum Standards for the

Protection and Care of Victims/Survivors of Human Trafficking 2068 (2011), and Operational Guideline for Rehabilitation Fund 2068 (2011) (NHRC, 2012).

3.3 .c. National Human Rights Commission (NHRC) of Nepal

The National Human Right Commission (NHRC) of Nepal was established in 2000 as an independent body. The NHRC has been paying special attention in dealing with the problem of trafficking in person, especially women and children. The strategic plans of NHRC stresses on Combating Trafficking of Persons and regulating the immigration of populations as strategic objectives of the Plan. The Office of the Special Reporters on Trafficking in Women and Children, established under the agreement between Government of Nepal (GoN) and NHRC is to conduct activities and studies which help to combat trafficking in women and children. On fulfilling this task, NHRC has been annually publishing the National Report on Trafficking in Person, especially women and children since 2005 along with recommendations.

The objectives of the Report are:

- To assess the status and emerging trends of trafficking in Nepal
- To examine the situation of internal migration and vulnerability of the women trafficked into entertainment sector/industry
- To study the situation of foreign labor migration and vulnerability associated with it, including trafficking
- To gauge the level of legal enforcement in prosecuting traffickers
- To coordinate the responses from national, regional and international figures on combating trafficking with reference to regional and international perspectives
- To recommend policies and programs for combating trafficking (NHRC National Report, 2011: 12)

The Report presents overall situation of trafficking in women and children in the country with special focus on internal migration and trafficking. Efforts have also been made to monitor the impacts of the initiatives taken in combating Trafficking in Persons, and recommendations for mitigation of the problem. The Report has also reviewed the program implemented by the Government of Nepal, NGOs and INGOs

and has come out with the findings that the program has to be conducted on the holistic mechanism to empower women by engendering development in policy and implementation. The Report has been prepared by collecting data and information from the concerned ministries and departments of Government of Nepal and NGOs working in the area.

Table 1.2 Number of Trafficked survivors or persons at risk of trafficking provided protection services by NGOs

	2013/14	2014/15	After Earthquake of April 25, 2015	No. of NGOs involved in
Interception	9057	8997	3864	9
Rescue and repatriation	1551	1971	955	14
Rehab centres/drop-in centres	1438	1801	698	11
Reintegration and skills oriented work	1467	1140	306	9
Referral for counselling and medical purposes	3673	3627	970	11
Missing persons application received	1858	1906	261	4
Missing persons found	421	493	96	4
Legal support (FIR and prosecution)	988	1355	382	11

Source: NHRC, 2015 www.nhrcnepal.org/nhrc/Trafficking_in_Persons_National_Report_2015

The above table presents the activities of leading NGOs⁹ that provide protection and legal aid services to the rescued victims. The different activities they carried out include interception of women and children from the border areas, and also rescued several vulnerable from rescue operation. Further, some NGOs provide

⁹ The NGOs included are: Maiti Nepal, Shakti Samuha, SAATHI, CWIN, Tiny Hands Nepal, CAP Nepal, Biswas Nepal, Chhori, Nepal Good Weave Foundation, Change Nepal, WOREV, Peoples Forum, Pourakhi Nepal, Women Creation Center etc.

rehab or drop in centres for rescued victims which provide safe haven for them. Reintegration with skill oriented works, counselling and medical facilities are also provided to the victims. NGOs are also active to deal with issues of missing/found cases and providing legal assistance services to the victims.

Accordingly, the table presents activities of NGOs during the fiscal year 2013/14, 2014/15 and after earthquake of 2015. It is reported that after the earthquake of 2015 trafficking cases have been increased many fold in the region. As the table shows that half of the cases have been recorded only after the earthquake.

Hence, the NHRC of Nepal has an objective to control and elimination of Trafficking and social integration of victims with the help of Governmental institutions and NGOs. The NHRC Annual Report provides details about inquiries and investigations on the issue of human rights violation, yet the role of NHRC remained irrelevant due to limited facilities and resource constraint.

3.3 .d. Anti Trafficking Efforts by NGOs in Nepal

Various NGOs in Nepal are dedicated to combat trafficking, some of the most well-known and well-established ones include *Maiti Nepal*, *ABC Nepal*, and *Shakti Samuha*. Their major areas of work include research and documentation of trafficking; advocacy and lobbying for policy reform; awareness raising in the community; establishment of helpline services; establishment and operation of community surveillance system; empowerment of vulnerable groups such as girls and women; legal services for survivors; facilitation of cross-border rescue, raids, and repatriation; and establishment of rehabilitation centres for rescued survivors where they can have safe shelter, receive medical and legal aid, counselling, and learn other trade skills (American Bar Association, Nepal, 2011).

NGOs of Nepal are working efficiently in Nepal than Government agencies to prevent human trafficking, providing resources to victims, raising public awareness, arresting and prosecuting criminals and in rehabilitation and reintegration to the rescued victims. NGOs of Nepal also play an important role which help a great extend in reducing the number of women and girls being trafficked form the region. For example, it serve as border surveillance to provide awareness on safe migration,

provides informal education, looks the issues of health and nutrition, provides counselling to rescued victims, provides special training for police personnel etc. (Maiti Nepal, 2015).

Maiti Nepal

Maiti Nepal was born in 1993 out of a crusade to protect Nepali girls and women from crimes like domestic violence, trafficking for flesh trade, child prostitution, child labor and various forms of abuse, exploitation and torture (*Maiti Nepal*, 2016). It was formed with special focus on preventing trafficking for forced prostitution, rescuing victims of the flesh trade and rehabilitating them. This social organisation also actively works to provide justice for the victimized girls and women through criminal investigation and waging legal battles against the criminals (ibid). *Maiti Nepal* as an organisation has highlighted significantly the issue of trafficking with its strong advocacy from the local to national and international levels. It has a vision of “a society free from sexual and other forms of exploitation against children and women”.

The major objectives of *Maiti Nepal* are:

- a) Advocate, conduct awareness campaigns, seek public support, and create social pressure against trafficking of children and women
- b) Provide counselling, support and life skills to children and women at risk of being trafficked
- c) Rescue trafficked children and women from exploitative conditions abroad and repatriate them
- d) Provide legal services, health counselling, and assistance to destitute women, survivors of girl trafficking and victims of domestic violence
- e) Rehabilitate survivors by providing them with education, counselling, and a safe home (*Maiti Nepal*, 2015).

Maiti Nepal is one organization which is patrolling the borders of India and Nepal to ensure and curb the illegal transportation of human beings (men, women and children) and have effectively dealing with issues of human trafficking and related crimes. *Maiti Nepal* has emerged as a vital non-profit organisation with anti-

trafficking initiatives focussed towards the prevention from trafficking, protection of post trafficked victims and prosecution of criminals.

ABC Nepal

Agro forestry, Basic health and Cooperative Nepal (ABC Nepal) is a non profit organization working in Nepal with a focus on the promotion of women and children's rights with special reference to human trafficking in Nepal and rights of women. It is one of the very first NGOs in Nepal which was established in 1987.

It works to prevent trafficking in women and children by promoting several initiatives such as income generating training to vulnerable and victims of trafficking to alleviate them from poverty, social awareness by imparting formal and non-formal education. It focuses on health providing facilities with medical facilities and gave special focus on HIV/AIDS prevention and awareness. ABC also provides knowledge on safe migration to women and enhances leadership in grass root level women and increase the participation of women in local, regional and national decision levels (ABC Nepal, 2011).

ABC Nepal renders legal protection to the victims in their legal processes and procedures. This NGO also operates rehabilitation home to provide shelter to the victims of trafficking and violence against women.

Shakti Samuha

Shakti Samuha began in 1966 and was registered in the Kathmandu District Office of HMG in 2000. The organisation has been organizing and empowering returning trafficking survivors by providing shelter, legal and vocational training and counselling. This organization has given more importance to survived victims in their rehabilitation and reintegration process. Organization believe that survivors should have the same rights and freedoms as any other member of society and should lead the movement against trafficking, ensuring their own rights and those of others (*Shakti Samuha*, 2013).

Shakti Samuha has following objectives:

- a) To establish income generating and skills based programs that create a sustainable livelihood for trafficking survivors
- b) To advocate and lobby for necessary changes to the law
- c) To organize meetings and campaigns to raise awareness and minimize the risk of trafficking
- d) To establish safe house and emergency support for the rehabilitation and reintegration of trafficking survivors
- e) To manage and update data on trafficking survivors
- f) To assist trafficking survivors with legal, employment and counselling services.
- g) To coordinate with local, national and international organizations.
- h) To protect vulnerable girls and women from trafficking
- i) To organize the development of staff-members for effective program implementation (ibid).

Shakti Samuha is working hard on rescuing, repatriating, rehabilitating and reintegrating girls and women who have trafficked by raising awareness, and conducting educational programmes with adolescent and at risk population to prevent from trafficking (*Shakti Samuha*, 2014). It works with a large network of women survivors within community to speak out against human trafficking by sharing their own experiences to spread awareness (ibid).

3.4 The National Legal Frameworks of India on Human Trafficking

3.4 .a. Constitution of India

Indian Constitution has addressed, both directly and indirectly, trafficking through various provisions¹⁰. Provisions on Trafficking in the Constitution of India present in Article 23 that prohibits trafficking in human beings and forced labour. It states that Traffic in human beings, beggars and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. This right is enforceable against the State and private citizens.

¹⁰There are three Articles spread over Fundamental Rights in Part III and Directive Principles of State Policy in Part IV which address trafficking related issues.

Article 24 provides prohibition of employment of children in factories, etc. that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment (Part III Fundamental Rights).

Other fundamental rights enshrined in the Constitution relevant to trafficking are Article 14 relating to equality before law. Equality before law under Article 14 ensures that every citizen or person shall be protected by the laws of the country. This makes it essential for the State to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity to all including the victims of human trafficking.

Article 15 that deals with prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, are an integral part of fight against human trafficking. However, people in India are still vulnerable to discrimination in their workplace, including sexual harassment. Article 21 pertaining to protection of life and personal liberty has been assumed as right to live with human dignity and provide assurance against torture or cruel activities (Vikram, 2010). India has a written Constitution, and the above provisions make it clear on the issues like penalizing or legalising of human trafficking.

The Directive Principles of State Policy incorporated in Part IV in the Constitution are also significant in this regard, particularly Article 39 (e) directed at ensure that health and strength of individuals are not abused and that no one is forced by economic necessity to do work unsuited to their age or strength. This Article categorically states that men and women should have the right to adequate means of livelihood and equal pay for equal work; that men, women and children should not be forced by economic necessity to enter unsuitable avocations; and that children and youth should be protected against exploitation. Further, Article 39A directs that the legal system should ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities. Article 39 (f) of the Directive Principles of State Policy states that childhood and youth should be protected against exploitation. In addition to this, Article 43 states that all workers should have a living wage and there should be appropriate conditions of work so as to ensure a decent standard of life.

Consequently, the Constitution of India discusses provisions on trafficking at two levels- one, at the level of Fundamental Rights which are basic rights available to all, irrespective of caste, creed, sex, place of birth, etc., and two, at the level of Directive Principles of State Policy. The fundamental Rights and the Directive Principles of State Policies provides provisions that deal with all attribute of trafficking in human beings like forced labour, exploitation of any kind, health and strength of workers etc. All these make it clear that the Constitution of India is dedicated to the basic human rights including prohibition of all forms of human trafficking.

3.4 .b. The Immoral Trafficking Prevention Act (ITPA), 1956¹¹

The ITPA¹² was originally introduced in 1956, originally known as Suppression of Immoral Traffic Act (SITA), passed by Parliament as part of India's accession to United Nations *International Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others*, 1949. The Convention mandated State parties to punish persons profiting from the prostitution of others especially women and children. SITA imitated the UN Convention. It was enacted with a view to give effect to Article 35 of the Indian constitution with the object of inhibiting or abolishing the immoral traffic in women and girls. The Act aimed to rescue exploited women and girls, to prevent deterioration of public morals and to stamp out the evil of prostitution, which was rampant in various parts of the country. In 1978, SITA was amended by the Amendment Act 46 of 1978, which took effect from 2 October 1979. In 1956, SITA was amended further and renamed the Immoral Traffic (Prevention) Act, 1956 (Patel, 2013). The Act was again amended in 1986.

The Immoral Trafficking Prevention Act (ITPA) 1956 is the main legislative tool for preventing and combating trafficking in human beings in India. This Act brings out specific offences of sex trafficking and address human trafficking for commercial sexual exploitation. This Act was supplemented by the Indian Penal Code (IPC) that prohibits trafficking in human beings including children and lays

¹¹See Appendix III

¹²It is an Act to provide in pursuance of the International Convention signed at New York on the 9th day of May, 1950, www.Tcw.nic.in/Acts/Immoral_Traffic_Prevention

down severe punishments especially for offences in respect of a child or a minor. The amendment was made for the commercial sexual exploitation and provided enhanced penalties (Nair, 2010).

Section 2(f) ITPA defines 'prostitution' as 'the sexual exploitation or abuse of persons for commercial purposes, and the expression 'prostitute' shall be construed accordingly' (ITPA:1). Section 3 of the Act provides that any person, who keeps or manages or acts or assists in keeping or management of a brothel, shall be punishable on first conviction with rigorous imprisonment for a term not less than one year but not more than 3 years and also with fine which may extend to 2000 rupees and in event of a second or subsequent conviction with rigorous imprisonment for a term of 2 years to 5 years and also with fine which may extend to 2,000 rupees. This means keeping or managing a brothel or allowing premises to be used as a brothel is an offence.

Section 4 of the act provides for the punishment of those persons living on the earnings of prostitution by anybody, such persons acting as procurers or pimps are liable to punishment with a fine. And where such earnings relate to prostitution of a child or minor, they shall be punishable with imprisonment for a term of not less than 7 years and not more than 10 years. Procuring, inducing, trafficking or taking persons for the sake of prostitution, even an attempt to procure or take would constitute the offence (Section 5). Anybody who carries on prostitution or anybody with whom such prostitution is carried on, in the vicinity of public places such as hotels, vehicles, etc. is an offence (Section 7). Seducing or soliciting for the purpose of prostitution in any public place or within sight of a public place is an offence. It may be noted that the list of offenders who can be charged for soliciting includes pimps, agents, contractors, managers proprietors etc. (Section 8). Seduction of a person in custody for prostitution, including causing or assisting seduction is also an offence as per the Section 9 of this Act.

It is important to note that, India's Immoral Traffic Prevention Act 1956 is the only legislation specifically addressing trafficking (UNODC, 2011). Some of the major elements of trafficking are covered by this enactment. These include procuring, inducing or taking a person for prostitution; detaining a person in premises where prostitution is carried on (Section 6(1)); even an attempt to procure or take and seduction and soliciting of a person for the purpose of prostitution would constitute

the offence (Nair, 2010). It penalizes trafficking of women and children for commercial sexual exploitation and keeping a brothel is a punishable offence. The Acts also has provisions on rescue and rehabilitation of victims. The Act also empowers Central and State Government to establish special courts for speedy justice for the victims and strict punishments for the criminals.

3.4 .c. Bonded Labour System (Abolition) Act, 1976¹³

Bonded labour is one form of force or coercion where a person is subjugated with the use of bondage or debt. According to *UN Trafficking Protocol*, such forms of exploitation are related to human trafficking in which people are enslaved from generation to generation. This is an Act to provide for the abolition of bonded labour system with an aim to prevent the economic and physical exploitation of the weaker sections of the people and for matters connected there with or incidental thereto.

In this Act ‘bonded debt’ means an advance obtained, or presumed to have been obtained, by a bonded labourer under, or in pursuance of, the bonded labour system. ‘Bonded labour’ means any labour or service rendered under the bonded labour system (Chapter I Section. II (e)). Section I (g) defines ‘bonded labour system’ as the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor (The Bonded Labour System (Abolition) Act, 1976: 2).Chapter VI of the Act deals with offences and procedure for trial, Section 16 provides punishment for enforcement of bonded labour that whoever, after the commencement of this Act, compels any person to render any bonded labour shall be punishable with imprisonment for a term, which may extend to three years along with a fine, which may extend to two thousand rupees.

The Act provides punishment for advancement of bonded debt (Sec.17), punishment for extracting bonded under the bonded labour system (Sec.18), punishment for omission or failure to restore possession of property to bonded labourers (Sec.19) etc. One form of force or coercion is the use of a bond, or debt, to keep a person in subjugation.

¹³Act No. 19 of 197 introduced on 9th February, 1976.

Bonded labour is included as a form of exploitation related to trafficking in the *UN Nations Protocol on Trafficking in Persons*. Many individuals fall victims to debt bondage when they assume an initial debt as part of the terms of employment, or inherent debt in more traditional systems of bonded labour (UNGIFT, 2010). In India, this phenomenon exists in huge numbers as traditional bonded labour in which people are enslaved from many decades in the areas like agriculture, brick kilns, mills and factories (ibid).

3.4 .d. Indian Penal Code 1860

The Indian Penal Code (1860) is a substantive Penal law of the country which is relevant in the context of human trafficking. The offences under the Indian Penal Code include the displacing of a person from her community by coercion or deceit or lure or force, which is tantamount to kidnapping/abduction (Nair, 2010)¹⁴. Section 361 of IPC defines whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship. Section 362 defines abduction as whoever by force compels, or by any deceitful means induces any person to go from any place, is said to abduct that person. Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purpose of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine (363 A, 1).Whoever hurts any minor in order that such minor can be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine (363 A, 2).

Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging (363 A, 3). It is clearly examined that Section 363 of IPC is for alleged offence committed relating to

¹⁴Sections 361,362,365,366 of IPC

the minor. As to abduct a minor on the pretext to provide them employment is the case of human trafficking, in which a child is exploited without their consent.

The Section 366 (A) includes procure of minor girl that 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. Procuration of minor girl is a crime where a minor are targeted in human trafficking trade. Hence, this section has provisions of punishment for procuration of minor girl for kidnapping, abducting or inducing her.

Section 367 defines kidnapping or abducting in order to subject person to grievous hurt, slavery, etc. as whoever, kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subject 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.

Section 372 deals with the selling a person under the age of 18 years and Section 373 deals with buying minor for the purposes of prostitution. Various other sections of IPC such as wrongfully restraining a person (Section.39), wrongfully confining a person (Section. 340), causing physical torture/injury (Section.327,329), subjecting a person to criminal force (Section.350), causing mental torture/harassment/assault (Section.351), and criminal intimidation of a person (Section.506), outraging the modesty of a woman of any age (Section. 354), rape/gang rape/repeated rape of a woman (Section.375), subjecting any person to perverse sexual exploitation, legally termed as ‘unnatural offences’ (Section.377), defaming a person (Section.499), subjecting any person to unlawful compulsory labour (Section. 374), and/ or criminal conspiracy to commit any crime (Section.120 B) are associated to human trafficking and its related crimes. The above mentioned sections of IPC under Chapter XVI also dealt with the different aspects of human trafficking. The trafficked person is essentially a victim of one or more of the violations listed above (Nair & Sen, 2004).

There are more than 20 provisions in the IPC which deal with various aspects of human trafficking. These include penalizing acts such as procuring, buying and selling of human beings, importing or exporting human beings, buying and selling minors, coercing or forcing marriage of minors, kidnapping/abducting and using force for the purpose of trafficking, slavery and slavery like conditions, servitude, bondage and unacceptable forms of labour, and others (Patel, 2013). However, it was only in Criminal Law (Amendment) Act, 2013 wherein provisions have been made for punishment for traffickers under new sections 370 and 370A of IPC. According to 370 A, Trafficking of persons comprises whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by- using threats, or using force, or any other form of coercion, or by abduction, or by practising fraud, or deception, or by abuse of power, or 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 (IPC, Section 370A). Under this, whoever commits the offence of trafficking of person or persons and minor shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine (ibid).

3.4 .e. The Child Labour (Prohibition and Regulation) Act, 1986¹⁵

Child labour is one of the major reasons/outcome of human trafficking where children are employed in a hazardous work that deprives them of their child rights. Children are trafficked for various purposes like domestic work, sexual exploitation, hazardous child labour, begging, and other illegal activities such as stealing, early marriage etc. (Human Trafficking Search, 2016).

The Child Labour (Prohibition and Regulation) Act outlines where and how children can work and where they cannot. The Act lays down the conditions of work of the children¹⁶. For example, catering at railway establishments, construction works on the railway or anywhere near the tracks, plastic factories, automobile garages etc.

¹⁵Act No. 61 of 1986 introduced on 23rd December, 1986
[www.labour.gov.in.TheChildLabourProhibition](http://www.labour.gov.in/TheChildLabourProhibition)

¹⁶Here child means a person who has not completed his 14 years of age. The Act has following four parts, Part I- Preliminary, Part II- Prohibition of employment of children in certain occupations and processes, Part III- Regulation of conditions of work of children, Part IV- Miscellaneous.

(Part II). The Act also prohibits children from working in places where certain processes are being undertaken, for e.g. *beedi* making, tanning, soap production, brick kilns and roof tiles units etc. These provisions do not apply to a workshop where the occupier is working with the help of his family or in a government recognised or aided school (Part II).

Part III of the Act outlines the conditions in which children may work in occupations/processes not listed in the schedule. As per the Act, no child shall work for more than three hours before he or she has had an interval of rest for at least one hour (Part III). No child is allowed to work overtime or work in more than one place in a given day (Part III). Other provisions like weekly holidays, notice to inspector, health and safety, etc. are included in Part III. Part IV of the Act outlines various remaining aspects such as penalties.

Since human trafficking keeps someone in an exploitative situation for profit. It is driven by the demand for cheap goods, services and labour and the supply of vulnerable people. Children are the most vulnerable for the purpose of services and labour. Child labour is the work that deprives children of their childhood, their potential and their dignity. It is work that is mentally or physically dangerous and harmful to children, and interferes with schooling. Child labour as a form of human trafficking has been internationally recognized as a major human rights violation, one that exists in every region of the world. Hence, the Child Labour (Prohibition and Regulation) Act provides potential solutions for the victims like protection, prevention, law enforcement and victim assistance. The Act also provides for penalties to the employer if children are proved to be employed in prohibited employments.

3.4 .f. The Transplantation of Human Organ Act, 1994¹⁷

Organ transplantation is a situation where a person is exploited by a trafficker for the purposes of obtaining profit in the organ market. The victims of such crime would be vulnerable categories of persons include migrants, homeless, illiterate persons etc. it is an organized crime where the recruiter who identifies the vulnerable

¹⁷Act No. 42 of 1994, introduced on 8th July 1994, Ministry of Law, Justice and Company Affairs (Legislative Department) www.health.bih.nic.in/Rules/THOA-1994.pdf

person, the transporter, the staff of the hospital/clinic and other medical centres, the medical professionals, the middlemen and contractors, the buyers, the banks where organs are stored are all involved in the racket (UNGIFT, 2016).

Human trafficking takes place not only for commercial sexual exploitation or for forced labour, but trafficking in fact takes many forms such as trafficking for organ transplantation. According to *United Nations Global Initiative for Trafficking* (UNGIFT), trafficking in organs is a crime that occurs in three broad categories. Firstly, there are cases where traffickers force or deceive the victims into giving up an organ. Secondly, there are cases where victims formally or informally agree to sell an organ and are cheated because they are not paid for the organ or are paid less than the promised price. Thirdly, vulnerable persons are treated for an ailment, which may or may not exist and thereupon organs are removed without the victim's knowledge (UNGIFT, 2016). In Article 3 of the UN Trafficking Protocol that defines trafficking in persons, clearly includes trafficking for the purpose of removal of organs.

The Transplantation of Human Organ Act deals with criminal responsibility in cases of harvesting of organs and trafficking of persons for this purpose includes traffickers, procurers, brokers, intermediaries, hospital/nursing staff and medical laboratory technicians involved in the illegal transplant procedure (UNODC, Govt. of India, 2008).

The two-fold objectives of this Act are:

- i) To provide for the regulation of removal, storage and transplantation of human organs for therapeutic purposes, and
- ii) To prevent commercial dealings in human organs (Jassal, 2007).

The Act also provides for regulation and registration of hospitals engaged in removal, storage and transplantation of human organs. The Transplantation of Human Organ Act provides for the regulation of the transplantation of human organs. The main purpose of the Act is to regulate removal, storage and transplantation of organs for therapeutic purposes and to prevent commercial dealings in human organs. The Act also contains detailed provisions relating to the authority for removal of human organs, preservation of human organs and regulation of hospitals conducting the removal. Storage or transplantation of human organs, functions of appropriate

authority, registration of hospitals and punishment/penalties for offences relating to aforesaid matters (National Network of Lawyers for Rights and Justice (NNLRJ), 2009).

3.4 .g. Juvenile Justice (Care and Protection of Children) Act, 2000¹⁸

The Juvenile Justice (Care and Protection of Children) Act, 2000 commonly called as JJ Act, also has a few penal provisions. This is an Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care, protection and treatment by catering to their development needs. It deals with the legal issues of procurement of a child under the age of 18 years for the purpose of exploitation (Deane, 2010).

The Act defines, “juveniles” or “child” as a person who has not completed eighteen years of age (Section 2 k). Under the Act, the State Government have been empowered to constitute for every district or group of districts one or more Child Welfare Committees (Section 29) for exercising the powers and discharge of duties in relation to child in need of care and protection under the Act. The Committee shall have final authority to dispose of cases for the care, protection, treatment, development, and rehabilitation of the children and as well as to provide for their basic needs and protection of human rights (JJ Act, 2000).

3.4 .h. Immigration (Carrier’s Liability) Act, 2000

Immigration Act has provisions to prosecute the persons who are involved in the illegal transport of human being from other countries (Hameed, 2010). In its definition, ‘Carrier’ means a person who is engaged in the business of transporting passengers by water or air and includes any association of persons, whether incorporated or not, by whom the aircraft or the ship is owned or chartered. This Act applies only to carries by air or by sea (ICLA, 2000). The carrier may be punished by the competent authority under the Passport Act by imposing a penalty of one hundred thousand rupees.

¹⁸Act No. 56 introduced on, 30th December 2000, *The Gazette of India Ministry of Law, Justice and Company Affairs (Legislative Department)*.

Trafficking is the recruitment and transportation of persons within or across boundaries by force, fraud, or deception for the purpose of exploiting them economically. Victims are lured with false promises of good jobs and better lives, and then forced to work under brutal and inhuman conditions. The Act protects victims of human trafficking and other crimes by providing immigration relief.

3.4 .i. The Prohibition of Child Marriage Act, 2006

Child marriage can be referred to as slavery, where mostly girls are suffering from these inhumane practices. It has become widely accepted practice in many corners of the globe. Child marriage as slavery can be proved with these three elements:

- a) If the child has not genuinely given their free and informed consent to enter the marriage;
- b) If the child is subjected to control and a sense of “ownership” in the marriage itself, particularly through abuse and threats, and is exploited by being forced to undertake domestic chores within the marital home or labour outside it, and/or engage in non-consensual sexual relations;
- c) If the child cannot realistically leave or end the marriage, leading potentially to a lifetime of slavery (Anti-Slavery International, 2016).

The Prohibition of Child Marriage Act provides for the prohibition of solemnisation of child marriages¹⁹. It is important to note that this Act does not declare child marriage as void but it is voidable in nature as Section 3 of this Act specifically mentions that; ‘Child marriages to be voidable at the option of contracting party being a child.’

However, Section 12 provides that marriage of a minor child is said to be void in certain circumstances- where a child, being a minor (a) is taken or enticed out of the keeping of the lawful guardian; or (b) by force compelled, or by any deceitful means induced to go from any place; or (c) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the

¹⁹The Act under section 2(a) defines the term “Child” as: Child means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.

minor is sold or trafficked or used for immoral purposes, such marriage shall be null and void.

It is also very important to note that section 4 of this Act provides provision for maintenance and residence to female contracting party to child marriage. Child Marriage Prohibition Officers are notified by the State Government and such Officers have the duty of preventing child marriages as well as collection of evidence for prosecution (Sec.16). However, there is no specific section for the punishment in this Act.

Child marriage has now turned into a profitable trafficking enterprise or a business that one's family can get rich for selling a daughter to a wealthy man. Early marriage is almost a guarantee to make a profit in no time. In child marriage, the girl child is threatened or coerced into marrying someone against her will, and may suffer violence if she resists or refuses the marriage. In a situation where a bride is treated as a servant or slave by her husband/ his family, the situation could become a form of labour trafficking. The Prohibition of Child Marriage Act provides provisions in terms of awareness, advocacy, attention and resources. This Act works to prevent and protect Child marriages particularly girl child as a crime in India which is one form of human trafficking. Child or victim is sexually and physically abused after their marriages and also has no consent in the arrangement on their marriages.

3.4 .j. Protection of Children from Sexual Offences (POCSO) Act, 2012

The Protection of Children from Sexual Offences (POCSO) Act, 2012 was formulated to protect children from offences of sexual assault, sexual harassment and pornography. The Act provide for establishment of Special courts for trial of such offences and for matters connected therewith or incidental thereto (POCSO, 2012). It defines a child as any individual below 18years. Definition of child sexual abuse is comprehensive and encompasses the following: (i) penetrative sexual assault, (ii) aggravated penetrative sexual assault, (iii) sexual assault, (iv) aggravated sexual assault, (v) sexual harassment, (vi) using child for pornographic purpose, and (vii) abetment and attempt to commit an offence.

The Act also directs the Special Juvenile Police Unit or the local police in the role of child protectors during the investigative process. The Special Juvenile Police Unit or local police, without unnecessary delay but within a period of twenty-four hours, are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, and bringing the matter in front of the Child Welfare Committee (CWC) (Chapter V, POCSO Act, 2012).

To prevent misuse of the law, punishment has been provided for any person and to media against false complaint or false information with malicious intent. The punishment for breaching this provision would be six months to one year imprisonment with fine.

The Act further makes provisions for avoiding the re-victimization, child friendly atmosphere through all stages of the judicial process and gives paramount importance to the principle of “best interest of the child” (Moirangthem, et al., 2015). The Act also provides procedures for recording statement of the child, child friendly mechanisms for reporting, investigation and speedy trial of offences.

It also provides for Special Court that conduct trial in-camera and without revealing the identity of the child, in a manner that is as child friendly as possible. Hence the child may have parents or other trusted person present at the time of testifying and can call for assistance from an interpreter, special educator, or other professional while giving evidence (Chapter VIII, POCSO Act, 2012). The Special Court has responsibility that the evidence of the child is to be recorded within a period of 30 days and the case of child sexual abuse must be disposed of within one year from the date the offence is reported.

The POCSO Act also has many limitations that it only deals with post commission stage of offences and its punishments, post harassment intervention and does not include provision for prevention of child sexual abuse (Vivekanandan, 2012). In short, the POCSO Act is considered as a special law relating to human trafficking to protect children from sexual abuse/sexual exploitation.

3.4 .k. Criminal Law (Amendment) Act, 2013

The Criminal Law (Amendment) Act, 2013²⁰ is an Indian legislation and has amended various sections of the Indian Penal Code, the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012. Under this Act, changes are made in the crime like acid attack, sexual harassment, voyeurism, stalking, and trafficking of person incorporated in the above related laws (Criminal Act (Amendment) Act, 2013). This Act proposes laws that rapists stand to get sentenced to rigorous imprisonment for a term not less than 20 years and possibly extending for life with a fine. It proposes death sentence for offenders with a prior conviction for a similar crime. It defines stalking and voyeurism as non bailable offences if committed a second time and perpetrators of acids attack have to face 30 years in jail.

Further, Section 370 of the Penal Code has been substituted by new Section 370 and 370A by the Act that deals with trafficking of person. If a person (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person, by using threats, or force, or coercion, or abduction, or fraud, or deception, or by abuse of power, or inducement for exploitation including prostitution, slavery, forced organ removal, etc. will be punished with imprisonment ranging from at least 7 years to imprisonment for the remainder of that person's natural life depending on the number or category of persons trafficked (Section 7, Criminal Law (Amendment) Ordinance, 2013). Employment of a trafficked person will also attract penal provision (ibid).

It is believed that this Amendment Act has brought India into closer alignment with the *UN Trafficking Protocol* (Rhoten, 2015) as the Act provides comprehensive measures to counter the menace of human trafficking including trafficking of children for exploitation in any form including physical exploitation or any form of sexual exploitation, slavery, servitude, or the forced removal of organs. Human Trafficking has specifically been defined in the Act. The Act is believed to be one of the most important changes within existing legal framework or criminal laws of human Trafficking that have been made in Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act (Rhoten, 2015). However, there are several

²⁰It was originally an ordinance promulgated by the President of India, Pranab Mukherjee, on 3 April 2013, in light of the popular protests after the 2012 Delhi gang rape.

areas in which India's laws and policies including this Act do not comply with the *UN Trafficking Protocol's* requirements and recommendations.

3.5 Major Institutional mechanisms on Human Trafficking in India

India has set up several anti trafficking commitments to deal with human trafficking and punish traffickers. The government of India is committed to work effectively to prevent human trafficking in all its forms-prosecute the perpetrators, and protect and support victims. There have been several actions taken by government, NGOs and the judiciary to deal with the issue of human trafficking in India. All States/Union Territories have established State/District levels structures for anti-trafficking. There are Central and State Nodal Authorities in the States for preventing and combating offence of trafficking. Its functions include: coordination, investigation, rescue and rehabilitation, judicial support, cooperation and research training etc. (UNODC, 2014).

3.5 .a. Anti Human Trafficking Units (AHTUs)

Anti Human Trafficking Units (AHTUs) are comprehensive Task Force units set up with the initiative of UNODC in partnership with State Government, involving law enforcement officials, other government department officials and NGOs. Such units are set up to address human trafficking in a holistic and integrated manner, simultaneously attending to prevention, protection and prosecution (Nair, 2010). An AHTU is a special unit set up within the existing police machinery to deal with crimes of Human Trafficking.

The rationale for AHTU includes:

- a) Ensuring focused attention in dealing with offences of Human Trafficking
- b) Providing a multi-disciplinary approach and a joint response by all stake holders, such as police, prosecutors, NGOs, civil society and media
- c) Bringing about inter-departmental collaboration among the police and all other government agencies and departments, such as women and child, labour, health, etc
- d) Bringing about inter-agency collaboration among government agencies and non-state actors like, NGOs and corporate

- e) Bringing about effective networking among various civil society partners, especially those working on specialized aspects of anti human trafficking
- f) Ensuring a human rights approach in the response systems
- g) Ensuring a gender sensitive and child rights sensitive approach in dealing with trafficked victims
- h) Ensuring an ‘organized crime’ perspective in dealing with trafficking victims. (UNODC, 2007: 6-7).

The AHTUs have a comprehensive mandate for attending to the 3P’s that is Prevention, Prosecution and Protection²¹. The objective of AHTU includes dealing with all forms of human trafficking with rescue and rehabilitation of trafficking victims under the relevant legislations. AHTU are to be set up in locations that require focused attention. These places could be the source, transit and destination areas where trafficking is rampant (UNODC, 2007). The state police have an important role to play as one senior police officer is notified/earmarked as the Nodal Officer. He control and command over the AHTU to ensure effective functioning, best output and best performance (ibid). There should be adequate representation of women police officials and officials of different ranks. Public prosecutors also have important role to perform in the functioning of the AHTU at all stages, beginning with the drafting of the First Information Report (FIR) and culminating in prosecution/post-prosecution activities. Government agencies have various tasks to perform in AHTU which include officials of the Department of Women and Child Welfare, Labour, Health and Medical, and those running Children’s homes and shelter homes set up under the Juvenile Justice Act, as well as Protective Homes set up under the ITPA (ibid). Role of NGOs, local government/panchayati raj institutions and media in AHTU is equally important.

²¹Prevention- to prevent trafficking crimes; Prosecution-to prosecute all the offenders, conspirators and abettors; Protection-to ensure best care and attention to the survivors and ensure that they are not harmed further (UNODC, 2007).

3.5 .b. Role of Central Government Agencies

Central Government of India is in charge of ratifying the international, regional and national laws relating to human trafficking issues and conducts information and education campaigns against human trafficking. Under Central Government with its consultant Ministry of Women and Child Development, Ministry of Home Affairs, National Human Rights Commission and National Commission for Women have published Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women every year. The central government also allocates money to the Ministry of Home Affairs to create Anti-Human Trafficking Units across the nation and to train and sensitize law enforcement officials (Episcopal life, 2009).

Ministry of Home Affairs plays a coordinating role with the establishment of the Anti-Human Trafficking cells. MHA has cooperation and coordination internationally with UNODC and SAARC in joint project against human trafficking. MHA has a comprehensive scheme for strengthening law enforcement response to human trafficking in India which consists of Training of Trainers (TOT) programme and that led to the establishment of AHTU. Under this scheme, MHA also organises coordination meetings which is held with all State Governments and Union Territories Administrations for effective implementation.

In addition, there are number of national policies and plans initiated by Central government agencies and institutions. The Central Advisory Committee (CAC), formed in 1994 with the initiative of Ministry of Women and Child Development, seeks to combat trafficking for commercial sexual exploitation, particularly child trafficking. The CAC meets regularly to deliberate on various aspects on trafficking and advises the Government. The members of this committee include relevant Ministries/Departments of Central and State levels, law enforcement agencies, international organizations and reputed NGOs. The committee has developed a proposal for Action such as inter-state rescue, prevention, rehabilitation, health, legislation, management information system etc.

Similarly, the Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women initiated by Ministry of Women and Child Development, Ministry of Home Affairs, National Human Rights Commission and National Commission for Women is another important institutions framed to combat human trafficking. The objective of this Action Plan is to guide and facilitate uniform action on the part of all concerned so that trafficking can be eliminated from its roots and reintegration of all victims of trafficking in society is possible (Integrated Plan of Action, 2006).

Other related scheme that indirectly deals with the issue of human trafficking is National Child Labour Project (NCLP) initiated by Ministry of Labour and Employment. The objective of this is to suitably rehabilitate the children who are withdrawn from employment. National Policy for empowerment of Women and National Plan of Action for Child are other policies initiated by government that seeks to counter human trafficking.

3.5 .c. Role of State Government Agencies to Combat Trafficking

The Indian Federal System, State governments are responsible for ratifying national laws relating to human trafficking issues at the state level; moreover, they make their own state laws to prevent human trafficking in the state(s) (Hameed, 2010). State governments are in charge of law enforcement. State governments are the primary actors in the global effort to combat human trafficking. State government's efforts to combat trafficking through prevention, protection and prosecution measures have increased in India. State governments are creating stricter penalties and provisions for human trafficking which play a pivotal role in deterring trafficking.

The Ministry of Women and Child Development (MWCD) of each state works towards rescue, rehabilitation, and reintegration of the trafficked. The MWCD has taken several initiatives to combat trafficking of women and children. It has formulated a National Plan of Action (1998) to combat trafficking and commercial sexual exploitation of women and children with guidelines to the States. All States MWCD Secretaries have been requested for holding regular meetings of State Advisory Committee constitute under National Plan of Action, and to monitor initiatives being undertaken on prevention, rescue, rehabilitation, reintegration and

repatriation of victims of trafficking. The MWCD in collaboration with National Institute of Public Co-operation and Child Development (NIPCCD), NGOs, NHRC holds a series of workshops on issues relating to trafficking of children for commercial sexual exploitation. The State governments make efforts to combat human trafficking by running committee in collaboration with other key stakeholders such as NGOs, Police and Civil Society.

3.5 .d. Police and Courts

Police are the largest representative of government and are the vital instruments in combating human trafficking. Police can work closely with citizens and civil society organizations in their initiatives to prevent human trafficking such as education programs, community meetings, awareness program, medical and other social services. Police also strengthen the connection between rule of law, social services, civil society and local governance.

The Police are centrally accountable for law enforcement in human trafficking and, often, are the first individuals victims come into contact with after being rescued. They are obliged to protect victims until they are sent to their family or shelters. The police's willingness and efforts to combat human trafficking are essential to solve human trafficking problems.

In terms of prosecution, police are the important player for the investigation process. Thus police can play critical role in addressing human trafficking. However, issue of corruption within law enforcement system particularly within police personnel hamper the process of eradicating human trafficking from the society.

Similarly, Courts also deal with the legal cases of human trafficking as major law enforcement actors. Courts are obliged to protect victims in collaboration with police during the trials. In India, the Supreme Court and the High Court are superior judiciary that are responsible for the safeguard/protection of individuals.

3.5 .e. Role of Non Governmental Organizations (NGOs)

NGOs have contributed significantly to raise voice against the practice of exploitation of women and children from being victims of human trafficking in India. Many NGOs work to help the victims of trafficking by providing protection, prevention, prosecution, rescue, and rehabilitation programs. Every major anti trafficking initiatives in India have been taken by different NGOs. Organising awareness on human trafficking and related issues through camps and other programmes in the countries of origin is another major work of these NGOs. They also make it a point to formulate every effort to find methods in combating such organised crime in the countries of destination as well. Further, they provide rehabilitation centres, develop an integrated aid system, introduce different income generation schemes and giving training to the victims and even work to raise awareness concerning public opinion to garner further support base so that the issue could be dealt more effectively.

NGOs collaborate with the state government, other NGOs and law enforcement agencies to combat trafficking. They work extensively with police and border security officials to rescue victims from the brothels. The police and border security officials conduct raids in brothels and rescue victims on the basis of the information provided by the NGOs. After rescuing victims from brothels, NGOs try to reintegrate victims with the help of local authority, relocating them by providing shelter at their rehabilitation centres and then provide education to them, place in income generating avenues so that the rescued individuals do not lag behind. There is a greater involvement that the government to combat human trafficking particularly in rescue operations and rehabilitation process.

Some major International NGOs such as UNODC, UNIFEM and UNICEF also fund the projects or programs of anti-trafficking to the Indian State government and other NGOs. Some of the reputed NGOs of India in this area are Sanlaap, Child helpline, Prajwala, Rescue Foundation, Child in Need Institute (CINI) etc.

Sanlaap

Sanlaap (dialogue) is an Indian feminist non-governmental organisation, established by Indrani Sinha in 1987 in Calcutta. The objective of this organisation is to protect the rights of women and girls. Sanlaap is a developmental organisation that works towards correction of social imbalances which present themselves as gender injustice and violence against women and children. Their primary work is focused against trafficking of women and children for commercial sexual exploitation, sexual abuse and forced prostitution.

The organisation have 14 drop in centres²² in 11 red light districts and 3 *Sneha* “Affection” or shelter homes in Kolkata. They have Legal Aid Wing to provide assistance in cases of domestic violence, maintenance, child custody and women’s rights for all women. Sanlaap works by networking with NGOs of Nepal and Bangladesh for the safe repatriation of rescued girls in order to save the victims from re-trafficking.

Rescue Foundation

Rescue Foundation is a non-profit, government recognized and registered NGO working for rescue, rehabilitation and repatriation of victims for human trafficking from different parts of India, Nepal and Bangladesh and sold for forced prostitution. The organisation is involved activities for rescuing, rehabilitating, reintegrating and repatriating the unfortunate, under privileged girls and children from hell to human society (Rescue Foundation, 2014). Their activities include investigation and verification, rescue, care and protection, health care, vocational training, legal aid, psycho-social counselling, nutrition and repatriation etc.

Child in Need Institute (CINI)

CINI is an international humanitarian organisation aimed at promoting “sustainable development in health, nutrition and education of child, adolescent and women in need” (CINI, 2016). The India bases CINI has headquarter at Kolkata. CINI (India) have been partnering with central and state government, national and international donors, non governmental agencies and local communities to strengthen

²²Drop in centre is a place where women in prostitution find a safe place for their children.

the capacity of deprived children and women to improve their health, nutrition, education and protection conditions (ibid).The objective of CINI is to enable poor people, women and children to take control of their lives and have a share in sustainable development. CINI acts as a facilitator in engaging local development actors such as the community (women Self Help Groups, ICDS centres, health sub centres, police stations etc.), Service providers (teachers, health personnel and social workers), local elected representatives (Panchayat raj Institution and Municipal Corporation) in a process aimed to strengthen good governance with and for children and women (CINI, 2015).

Prajwala

Prajwala is an anti-trafficking organization of India, works under the supervision of the Department of Women and Child Development which believes in preventing women and children from forced prostitution and sex trafficking (Prajwala, 2016). The organization is founded by Ms. Sunitha Krishnan in 1966 which actively works in the area of prevention, rescue, rehabilitation, reintegration and advocacy to combat trafficking in every dimension and restore dignity to victims of commercial sexual exploitation (ibid). The organization aims at trafficking free society where no woman or child is exploited like a commodity and was supported by state and non-state agencies to ensure anti-trafficking mechanisms.

Prajwala regularly partners with Anti-Trafficking Units (ATHUs), State CID inspectors and Women Protection Cells across India to investigate and rescue women and child from human trafficking (Prajwala, 2014). The organization also creates initiative for the zero tolerance for commercial exploitation linkage with community members, police and district administration. Prajwala launched the survivor's movement *Aparajita* (meaning "those who remain undefeated against all odds"), which is a network for reintegrated survivors to access social support and a platform for advocacy (Prajwala, 2016).

3.6 Conclusion

The above mentioned Acts and institutions are the measures/provisions initiated by both the states to tackle with the problem of human trafficking and its

related crime like illegal migration, bonded and forced labour, child labour, organ transplantation, and early marriages etc.

The government of India and Nepal is committed with effort to combat human trafficking from the region and is working closely with international and regional law enforcement officials to detain and punish violators of human trafficking law. The domestic laws and Acts of India and Nepal provide the tools to combat trafficking. The existing laws and Acts of India and Nepal prohibits human trafficking, asserting that all citizens have the right to be protected from exploitation. However, rampant and ongoing cases of trafficking in both the states clearly violate the existing domestic anti-trafficking legislation and it simultaneously implicates their obligations under the many international treaties against trafficking in persons that India and Nepal has ratified.

Although India and Nepal has a number of laws and provisions prohibiting activities that are associated with human trafficking, the magnitude of trafficking continues to faster year after year and be seemingly unabated. While both the country's legal framework is found not to be very effective in protecting victims and punishing offenders, that is why there have been several actions took place by Government, the NGO community, stakeholders and the judiciary sections to lower down the magnitude of human trafficking in India and Nepal.

Similarly, the above discussed institutions are also playing important role against human trafficking. They use several effective anti-trafficking methods of prevention, protection and prosecution. Such institutions are found more strict and effective to implement their policies with new monitoring techniques to deal with human trafficking. As discussed in the chapter, the institutions also have initiated different programmes to foster information/awareness to combat human trafficking. Such institutions also help/support in monitoring law enforcement system in their investigation process. To conclude, what we see is that both countries have initiated significant amount of legal measures and established institutions to deal with human trafficking at individual level. What is missing in this regard is the collective means and measures.

Chapter IV

Legal Frameworks on Human Trafficking in/between India and Nepal: A Critical Examination

4.1 Introduction

Human trafficking is primarily for the purposes of forced labour, bonded labour, sex work and organs transplants. In South Asia, forced labour and sexual exploitation are the major reasons of human trafficking. In the region, government, law enforcement agencies and social organisations have been active in checking human trafficking. However, the deceitful agents continue to do the business by taking the advantage of the loopholes in the legal and administrative systems. It is also believed that there is a strong nexus between the brothel owners, brokers, politicians and criminal gangs who aid human trafficking. As a result, checking and eliminating human trafficking have become a great challenge.

Underlying the above mentioned factors, this chapter attempts to provide critical examination of the legal issues of human trafficking in the region. SAARC as a regional measure has been discussed in this chapter. The chapter gives details on the dimension of human trafficking of India and Nepal. It also investigates the root causes of human trafficking like poverty, gender discrimination, weak laws etc. which makes India and Nepal the source, transit and destination of this clandestine crime. The chapter also examines the issues of cross border trafficking through the open/unregulated border of India and Nepal. Role of NGOs has also included along with law enforcement agencies. Finally, the chapter discusses various gaps and limitations of existing laws and legal framework of both India and Nepal.

4.2 Understanding Legal Issues of Human Trafficking in the Region

In south Asia, human trafficking is often referred to as one of the fastest growing transnational organized crimes. Countries in South Asia serve as prominent origin, transit and destination countries for women, children and men being trafficked. Within South Asia every year, human being are trafficked for sex work, labour, forced marriages, organ trade etc. in which most of the trafficking occurs for commercial sexual exploitation where women and children are more vulnerable.

Despite the fact that there are number of International Instruments, Laws and Acts dealing with human trafficking, the most important tool used by governments in the South Asian countries to combat trafficking is their own domestic law. The domestic justice system like police, judiciary or prosecution tends to rely heavily on such domestic laws. The legal regime of South Asia is varied according to each country and has taken steps in the right direction to combat human trafficking with their specific laws.

Another important problem observed in South Asia is the lack of a common definition of trafficking within the domestic laws of nation states. All the countries have their own domestic laws but they follow different definitions of trafficking. Even though India has a specific law on trafficking, it does not define trafficking in a holistic sense. The Immoral Traffic (Prevention) Act, 1956 does not define trafficking, but defines ‘prostitution’ to have the usual attributes of trafficking for sexual exploitation (UNODC, 2011). Similarly, the laws of Nepal does include more forms of trafficking like removal of organs and also covers actions it considers immoral and punishable but not strictly speaking about trafficking (US Department of State, 2015).

In South Asia, though there are strong and effective existing laws, the implementation process is not that strict as a result, these laws are being misused. Further, every state in South Asia has signed or rectified international or regional treaties or forum but their own basic structure and infrastructure to combat trafficking is yet to be ready. For instance, the usage of the existing laws too is a big challenge. Theoretically, there are effective laws to combat trafficking but when it comes to practice there are lot of loopholes and this is mainly because the application of those laws and treaties hasn’t been that effective as it was intended. For example, according to The Asia Foundation¹ of Nepal, Nepal has brought best laws in whole South Asia but no doubt it is one of the major source countries for human trafficking where maximum of trafficking occur. Hence, the major hurdle to counter human trafficking is not only due to lack of proper implementation of laws but it is due to the changes in the destination and dimension of human trafficking itself. Many victims are lured into

¹The Asia Foundation is a nonprofit international development organization committed to improving lives across a dynamic and developing Asia. This organization addresses critical issues affecting Asia in the 21st century- governance and law, economic development, women’s empowerment, environment and regional cooperation.

being trafficked by prospects of jobs and better living opportunities in destination countries as everyone wants to earn easy money. Similarly, dimension of exploitation is also changing, as to have better jobs and living standards human beings are migrating but they are not reaching in the correct direction.

According to the South Asia Representative in the United Nations Office on Drugs and Crime (UNODC), every year, in South Asia, at least 150,000 people are trafficked across the international borders and of them 75% are women². Almost in all South Asian countries, the majority of the victims are from rural areas.

South Asia is also home for a huge number of people affected by HIV/AIDS. Female sex workers (FSWs) who have been trafficked are significantly higher risk of contracting HIV than other women. FSWs are some section of sex workers works outside the district of red light areas. Estimates show that many FSWs of Nepal who have been trafficked are at a higher risk than average women of contracting HIV (CAC-Nepal, 2010). Women and children as victims of sex trafficking in South Asia have a high occurrence of HIV and other sexually transmitted diseases. It is estimated by World Bank that approximately 2-3.5 million people in south Asia are living with HIV /AIDS (World Bank, 2008). In India alone more than 1.75-3.15 million people are estimated to be living with HIV/AIDS (UNGIFT, 2010). Among those HIV/AIDS infected a large section of them are the victims of human trafficking and are engaged in sex work (World Bank, 2008: 12).

From the South Asian countries, people are trafficked or sent across the countries and to other parts of the world, but the more common form is the movement of persons within the countries. South Asia remain as one of the most vulnerable regions for human trafficking because of its high population, poverty, internal displacement due to civil war in some countries, lack of employment opportunities, gender discrimination, migration and evidently weak enforcement of laws and legal institutions.

The major causes of human trafficking in South Asia include extreme economic disparities within the countries and different social groups, the rapid economic, political, demographic changes are occurring in the region which leads to

²See “India tops in South Asia’s human trafficking: UN”, published by IANS, 27 July, 2014

extensive migration, and poverty and lack of employment opportunities. South Asia comprises of almost one quarter of the world's population where millions of people lives below poverty line. Poverty and lack of employment opportunities lead to increasing number of population migrating to other region in order to seek alternative livelihood options, but landed as victims of trafficking. For example, maximum numbers of Nepali girls, in pursuit of healthy life standard, are sent to seek employment in urban areas or in neighbouring countries such as India and this make them more vulnerable to traffickers. This can be understood from the very fact that promises of employment remains as one of the most important aspect that attracts girls and women towards traffickers.

Civil war and other types of internal conflict in the regions are another issue that intensifies trafficking in South Asian countries. Like in these Asian Countries, Nepal and Afghanistan, thousands of young people flee to make their life better and end up in sex trade. In Afghanistan military and political oppression has created a situation of insecurity that lead to an increase in the numbers of people migrated to other region making women and children more vulnerable to trafficking for sex work. The armed conflict or the Maoist Movement in Nepal has created an extensive internal displacement of people that has increased the vulnerability of girls and women to trafficking (Chettri, 2009).

Other critical factors that influence human trafficking in South Asia are social discrimination based on race, ethnicity, gender and continued existence of caste system. In almost all South Asian countries, discrimination and violence against women and girl child has been continuing in the family, community and society at large. Patriarchal social systems and gender stereotypes predominant in the region reinforce women's lower status in the family and society and it leads to dependency, feelings of helplessness and low levels of self esteem. This ultimately create resilience in women and girls and making them most vulnerable to exploitation, and thus to trafficking (UNDP, 2007). Gender discrimination like women and girls are characterised in terms of their relationships to men as daughters, wives and mothers which ultimately determine their position in the family that is always lower to that of male. This unequal gender relation also makes women and girls more vulnerable to trafficking and other health issues like HIV/AIDS.

Forced and early marriages are another form of gender based violence in South Asia which is used as a tool of trafficking of women and girls. Caste and ethnicity play a crucial role in the exclusion and social marginalisation of women which also creates traps for women. The element of casteism which has been and still prevalent for unequal income distribution and marginalization of the lower caste people who aspire for a better lives becomes the victims of this racket.

4.3 Regional Measures on Combating Human Trafficking

Within South Asia, many promising initiatives have been undertaken to address human trafficking with a strong political commitment to prevent and address human trafficking. The *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002*³ is the first regional multilateral anti-trafficking treaty. The purpose of this treaty is “to promote cooperation amongst member states so that they may effectively deal with various aspects of prevention, interdiction and suppression of trafficking in women and children; the repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit and destination” (*SAARC Convention on Preventing and Combating Trafficking in Women and Children, 2002: 2*).

The SAARC Convention emphasise on the importance of establishing effective regional cooperation for preventing trafficking for sexual exploitation and for investigation, detection, interdiction, prosecution and punishment of those responsible for such trafficking. It also emphasise on the need to strengthen cooperation in providing assistance, rehabilitation and repatriation to victims of trafficking of prostitution.

Under Article VIII of the SAARC Convention, several measures have been identified to prevent trafficking of women and children. These include; i) training and assistance for the concerned authorities in effective investigation and prosecution, ii) sensitising law enforcement agencies and the judiciary, iii) setting up bilateral mechanisms, iv) regular exchange of information about agencies, institutions and individuals involved in trafficking, identifying the modus operandi and the routes used by the traffickers, sharing information such as fingerprints, photographs, police

³See Appendix IV

records, conviction records and methods of operation of those involved in trafficking, v) initiating necessary measures within the countries for supervising employment agencies that traffic under the guise of recruitment, vi) focused prevention and development efforts in the source areas of trafficking, and vii) promoting awareness through the media and other channels in the problems and causes of trafficking (*SAARC Convention on Preventing and Combating Trafficking in Women and Children, 2002:3-4*).

The definition provided by SAARC Convention on Trafficking doesn't visualise comprehensive definition of trafficking involving all types of exploitation as it is restricted to trafficking for commercial sexual exploitation⁴. Further, the definition provided by SAARC Convention has many limitations that it does not go with the definition of *UN Trafficking Protocol* of 2000⁵. Lack of awareness, weak enforcement of law, inadequate anti-trafficking legislation, lack of proper training to the police personnel, and the negligence or delay on the enforcement of existing laws and legislations etc. results in major failure of combating trafficking and such issues stand as major challenges before the nation states of South Asia. The loose provisions of such laws and institutions from top level would lead to the re- trafficking of the rescued victims. Hence, the response to combat the crime of human trafficking by the countries of South Asia has been found inadequate.

4.4 Examining Human Trafficking in India

As discussed in previous chapters, India is a source, destination, and transit country for men, women and children for the purpose of different types of trafficking be it labour trafficking (bonded and forced labour), child trafficking and sex trafficking. The forced labour of an estimated 20-65 million citizens constitutes India's largest trafficking problem (US Department State Report, 2014). Bonded labour is another crucial problem in India, where poverty, social discrimination or exclusion and inadequate implementation of legislations are the root causes behind it.

⁴The definition provided by SAARC convention on 'trafficking' and 'persons subjected to trafficking' as the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking.

⁵The UN convention visualizes a comprehensive definition of trafficking involving all types of exploitation; the SAARC Convention is restricted to trafficking for commercial sexual exploitation. Moreover, the SAARC Convention is yet to be implemented in reality by all the state parties concerned even though it has been signed and ratified by all countries (Nair, 2010: 78).

Victims become bonded labourers when their labour is demanded as a means of repayment for a loan or service, where the value of their work is greater than the original sum of money 'borrowed' (TVPA, 2000). A common characteristic of bonded labour in India is the use of physical and sexual violence as coercive means.

Similarly, child trafficking is another type of trafficking that exists in India. Children are subjected to forced labour as domestic workers, factory workers, beggars, agriculture workers, carpet weavers and so on. Under ILO Convention 182 following worst forms of child labour are prohibited:

- a) All forms of slavery or practices similar to slavery, such as sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labour
- b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- c) Illicit activities, such as trafficking of drugs; and
- d) Work that harms the health safety or morals of children (ILO Convention, 182. Article 3).

However, India has not yet ratified the ILO Convention 182 and the international community is extremely keen that India should abide by such international labour instruments.

Sex trafficking is the third form of trafficking in India where women and girl child are traded, bought and sold for the sole purpose of sexual exploitation. The major factors that fuels sex trafficking are poverty, gender inequality, false marriage proposal, promise of a good job in another country etc. Reports provided by different concerned institutions estimate that millions of women and children are victims of sex trafficking in India. Women and children are most vulnerable to this menace mainly due to ignorance, harmful traditional and cultural practices, greed, poverty and discrimination. The Ministry of Women and Child Development estimates that among the 3 million women have been trafficked in India, 40% are minors and 60% of the trafficked for sex work in the country, they are adolescent girls between ages 12 to 16 (Mishra, 2013).

The main targets for human trafficking are the people who look for job, who have been victim of social and regional discrimination, mentally disturbed, people

from marginalised or excluded communities or people caught in debt bondages. Poor people are the ones who are exploited the most.

Human trafficking has to be understood not only in the wider social context like poverty, social discrimination and economic deprivation within the states, but with the advent of globalisation or the era of time and space compression, factors which cause people to migrate or 'push' or 'supply' factors and factors that attract people of rural areas or 'pull' or 'demand' factors are the root mechanism behind this phenomenon (Dona, 2011). Generally, women migrate for better work to commercial cities and here the victims are employing for the demand for commercial sex industry. To fulfil the supply side, perpetrators used all sorts of efforts like abduction, luring, kidnapping etc. as women and girl child belonging to poor families are at higher risk.

Social inequality with the lack of reasonable and realistic prospects, situations of armed conflict and oppression, domestic violence and disintegration of the family structure are some of the major causes of human trafficking in India. Gender discrimination that contribute to lack of political, social and economic stability to female, lack of education and information where an individual did not concern about how important or precious is the life of another individual, since they are unaware of the dangers of trafficking. Widespread corruption among the persons capable or responsible to combat trafficking like border police personnel are another root cause for human trafficking in India.

Among all above factors of human trafficking, lack of effective anti-trafficking legislation contribute towards the limitations or obstacle in the fight against such heinous crime in India. Though India has several laws that deal with human trafficking and related crimes, lack of effective enforcement by the authority created major problems in India. Law enforcement conducted towards women and child trafficking is still ineffective. There is a lack of the Government's commitment to fight against the crime of human trafficking, where we are witness of ineffectiveness in utilization of prevailing laws and regulation. There is also a lack of designed procedure and effective integrated Plan of Action of concerned government to combat human trafficking.

In India both internal and external trafficking takes place, where the trafficking of women and girl child from Nepal to India for sex industry is one of the

busiest sex trafficking routes, with estimated 5,000-10,000 Nepali women and girls trafficked to India every year (Rahaman, 2014). According to United Nations, an estimated 100,000-200,000 Nepali trafficked persons are living in India (US Department of State Report, 2014). Trafficking in women and girls is easy because of open or unregulated border between India and Nepal. Trafficking of Nepalese women and girls is less risky than smuggling drugs and other goods into India. Even the police personnel or concerned officials are corrupted and are paid by the brothel owners or perpetrators to ignore the situation. Further, the US State Department report on trafficking also points to widespread corruption among law enforcement officials in India obstructing efforts made to combat trafficking. In addition, India being a destination encompasses also as a transit point for Nepalese and Bangladeshi women trafficked to other South Asian countries and Middle East/Gulf countries.

Though Government of India does not fully comply with the minimum standards for the elimination of trafficking, it is making significant efforts in this regard. There has been an increased attempt made by the Government of India to deal with India's trafficking problem and the measures to combat it. The Government of India in collaboration with international organizations, NGOs and state governments has taken several effective steps to train police, judges and lawyers on the handling of trafficking cases. The concerned institutes like Ministry of Home Affairs (MHA), Ministry of Women and Child Development (MWCD), National Human Rights Commission of India, National Council for Women etc. reported that every district across India, they conducted training for prosecutors and judges on trafficking, constituted an anti-trafficking cell, integrated plan of action to prevent and combat human trafficking with special focus made on women and children. In 2006, the Government created an anti-trafficking law enforcement 'nodal cell'⁶. The state government has established anti-trafficking police units and banned child labour in domestic work in 2007.

The constitution of India, from which all laws originate, guarantees equality and freedom to all citizens by virtue of fundamental rights vested in them⁷. These

⁶It is a central department comprising two officials responsible for accumulating and analysing data relating to trafficking in persons in the country. Its duty also includes the action taken by the central and state governments to combat the evil of trafficking.

⁷Article 23 under Part III (Fundamental Rights) of the Indian Constitution prohibits trafficking of human beings and all other forms of forced labour in the territory of India. Article 24 prohibits employment of children below 14 years of age in factories, mines or other hazardous jobs.

constitutional protections have been implemented by central as well as state legislations. The Suppression of Immoral Traffic Act of 1956 (SITA), amended as the Immoral Traffic (Prevention) Act (ITPA) in 1978 and later in 1986, was in response to the ratification of the International Convention on suppression of Immoral Traffic and Exploitation of Prostitution of Others in 1950.

ITPA is the most important legislative instrument to deal with the problem of human trafficking in India. The Government of India punishes trafficking for commercial sexual exploitation through the ITPA. The key object of ITPA is to abolish traffickers of women and girls with the intention to force them into prostitution as means of earning their livelihood. The provisions of ITPA provide penalty for immoral trafficking, punish traffickers, punish persons keeping a brothel (Section 3), punish persons who live off the earnings of a woman (Section 4), and provides welfare measures focussed towards rehabilitation of sex workers (Mishra, 2013: 6).

However, the Act has been criticised on ground that the ITPA only criminalises trafficking with the objective of prostitution but ignores other aspects of trafficking. The Act lack law enforcement in preventing the organization of trafficking in regard to part of raid, rescue, and repatriation or rehabilitation aspects.

Apart from ITPA, there are also more than 20 provisions in the Indian Penal Code, 1860 which deal with various aspects of human trafficking. Some of them are 366A (Procuration of Minor Girls Under 18 years of age), 366B (Importation of Girls under 21 years of age from a foreign country), 367 (Kidnapping and Abduction for Slavery, Unnatural Lust, etc.), 372 (Selling of Minor Girls for Prostitutions), 373 (Buying of Minor Girls for Prostitutions). Section 370 of IPC has been substituted by Section 370 and 370A by recently formed Criminal Law (Amendment) Act of 2013 that deals with human trafficking⁸. This sections has covered more forms of trafficking including sex trafficking, labour trafficking, organ transplantation etc. Penalties under these provisions are a maximum of 10 years imprisonment and a fine.

The other important legislations that attempt to prevent human trafficking in India are; The Bonded Labour System (Abolition) Act, 1976, The Transplantation of

⁸These aspects have been discussed in detail in Chapter III

Human Organs Act 1994, The Child Labour Act 1986, Juvenile Justice Act 2000, Offences against Children Act 2005 and local legislations like Goa Children's Act 2003 etc.⁹

Anti-Trafficking Units has been set up in certain places in India by UNODC, in partnership of state government agencies. These are comprehensive Task Force units, involving law enforcement officials, other government officials and NGOs that address human trafficking in a holistic and integrated manner, simultaneously attending to prevention, protection and prosecution.

India has also signed several international conventions and protocols that are made to curb human trafficking¹⁰. But despite all these laws and law enforcement agencies dealing with human trafficking, there is still a lack of clarity in existing policies with regard to human trafficking. The existing domestic laws have not been properly defined. Besides, there are several loopholes within those laws due to which the perpetrators of human trafficking are not getting proper punishment or even escaping from being punished. At the same time factors like corruption and lack of training and resources to the law enforcement officials make it difficult to ensure effective anti-trafficking laws.

There are many loopholes in the existing laws to prevent trafficking, consequently, the country needs to develop a comprehensive and more efficient anti-trafficking law to prevent, suppress and punish human trafficking. It is the duty of government to formulate more effective legislation to deal with human trafficking especially for the security of women and children.

Hence, the above accounts prove that there are continuing gaps in the existing laws, policies and practices of human trafficking in India. In India the legal measures like prevention and punishment of human trafficking prioritize sex trafficking and has

⁹All these Acts have been discussed in detail in Chapter III.

¹⁰Some of them are UN Convention on the Rights of the Child (CRC), 1989; Optional Protocol to CRC on Sale of Children, Child Prostitution, Child Pornography, 2000; Convention on the Suppression of Immoral Traffic and the prostitution of Others, 1950; ILO Convention 138 Minimum Age Convention, ILO Convention 182 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), SAARC Convention of Preventing and Combating Trafficking in Women and Children for Prostitution 2002 and SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia; UN Convention against Transnational Organized Crime; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially women and Children, 2000; Protocol against the Smuggling of Migrants by Land, Sea and Air.

given less importance to other forms of trafficking, though labour trafficking is very common in India. Amending or adopting national legislation in accordance with international standard laws of human trafficking and related crimes would provide comprehensive result with proper punishment. But the existing laws have given inadequate attention to the prevention, rescue and rehabilitation programmes for victims to lower down such clandestine crime of human trafficking.

Cross border trafficking is another problem of India where victims from neighbouring states are trafficked within India or via India to other countries. Therefore, more bilateral or regional laws to deal with cross border trafficking are required in the region. In addition, the existing laws or policies should be reviewed or reformed in harmony with International standards to provide efficient consequences to eliminate human trafficking from India.

4.5 Regulating Human Trafficking in Nepal

Human trafficking is one of the serious problems of the day in Nepal. Nepal is a source country for men, women and children trafficking for the purpose of exploitation. People of Nepal are trafficked for sexual exploitation, organ transplantation, forced labour in construction sites, factories, mines, domestic work, begging etc. within Nepal, India, the Middle East and several other states. As we have already seen, a number of factors like poverty, illiteracy, social discrimination or exclusion, open border, ineffective or inadequate law enforcement and policy implementation have been identified as main causes for the large scale human trafficking from Nepal.

There have been several efforts made in combating the problem of human trafficking in Nepal through various legislations over the period¹¹. All these laws guarantee various rights for the protection of human being and prohibit trafficking and other forms of exploitations. The concerns of every law are on prevention, protection and rehabilitation of the victims of human trafficking.

¹¹The major legal instruments of Nepal are the Constitution of Nepal, 2015, 1990; the Muluki Ain (National Code), 1963; the Human Trafficking (Control) Act, 1986; the Children Act, 1992; the Foreign Employment Act, 1985 etc. a detail discussion of these laws are done in Chapter III.

The new Constitution of Nepal, 2015 establishes basic human rights including the right to equality¹² and the right to freedom of exploitation¹³. The two important Laws against human trafficking in Nepal are The *Muluki Ain* 2020 (Code of Law 1964) and *Jiu Masne Bechane Karya* (Niyantaran) Ain 2043 (Human Trafficking (Control) Act, 1986). The *Muluki Ain* (Code of Law, 1964) states “No individual shall take any person by temptation out of the territory of Nepal with the intention of trafficking. If the individual is arrested before selling the person being taken to a foreign land, he or she will be imprisoned for ten years, but if the victim is already sold, the culprit will be imprisoned for twenty years. If the buyer of the victim is apprehended within the territory of Nepal, he or she will also receive a penalty equal to that of the seller. Accomplices in such criminal acts will receive half the penalty meted out to the main culprit”¹⁴. The Human Trafficking Control Act of 1986 was ratified and put into effect as a special Act. This Act provided a number of legal safeguards, including the provision of rehabilitation and integration of victims of trafficking, protection of victims and witnesses, compensation, and others (Deane, 2010).

The other related laws of human trafficking are Children’s’ Rights Acts 1992, Labour Acts 1992, Foreign Employment Acts 1985, and the National Human Rights Commission Act of 1993. Different policies and programs conducted by government against human trafficking also have significant role to counter trafficking and exploitation of women and children.

Despite the promulgation of above laws against trafficking of women and girls in Nepal, the trafficking and selling of Nepalese women and girl child’s in India and other states continues unabated. It is estimated that 5,000–7,000 women and girls from several districts of Nepal have been trafficked each year alone in or to India

¹²The Constitution of Nepal wide Article 10 enforce the basic provision that right to equality means-(1) All citizens are entitled to equal protection of law; (2)No discrimination shall be made against any citizen in the application of general laws on a ground of sex, religion, race, sex caste, tribe or any of them

¹³The Constitution of Nepal (Article 13) provides that “Traffic in human beings, slavery and forced labour are prohibited”.

¹⁴Muluki Ain, Section 11, Clause 1

(Maiti Nepal, 2014). Two of the high- risk districts are *Nuwakot* and *Sindhupalchowk* which contributes 20% of the trafficked girls¹⁵.

Poverty is one cardinal factor that make individual vulnerable to trafficking in Nepal. Traffickers tend to target the person who lack resources and are struggling to meet basic needs. In such situations, women and children are at high risk of human trafficking. In Nepal, women are trafficked to India and other gulf countries under various alleged reasons such as marriage, comfortable life, better job prospects, social security, and so on. Illiteracy and ignorance further augment their vulnerability. The parents, husbands, brothers, uncles and all other close relatives are deeply involved in this crime. Poor parents may send their child in exchange of money in a promise that their child will be educated, fed and treated well.

Sometimes children are sold for child labour to pay parent's debt. Girl child are sold for commercial sexual work in order to make money to feed the rest of the family. Child marriage or forced marriage is another issue to poverty where the poor and uneducated girls have to end their life in clandestine issue of modern slavery i.e. human trafficking. Hence, to end human trafficking and other related crimes the various contributing factors of poverty needs to be fundamentally addressed. Education and employment opportunities by establishing small scale industry or micro or small enterprise initiated by concerned departments would help to decrease both poverty and human trafficking from the society.

In recent scenario, poverty has led to migration of women to gulf and other countries as nannies and domestic workers which have become a trend in Nepal. For this, the process of migration or aspects going abroad for jobs has been misused from the grassroots (common people) to top (government) level people. For example, easy availability of passport is a big problem in Nepal related to this. According to an official of Maiti Nepal, the age group of 13-15 years old girl child are having 25 years age fake passport. People are making fake citizenship and there is no strict immigration rule to look on such issues. Hence, there is a clear weakness or

¹⁵According to the official of Human Right Commission of Nepal, Nuwakot and Sindupalchowk are the two district where maximum number of women and girl child are trafficked. Here to sell women or girl child has become a profession. It is impossible to spread awareness of human trafficking for NGOs and INGOs in these districts.

negligence in this regard due to lack of awareness among grassroots level and also the high level of corruptions in the concerned department and to government's policies.

In Nepal, there are very strong laws dealing with human trafficking but are not put into practice properly. The important reason behind it would be an absence of political commitment within the concerned government. Each political party should have included the issue of human trafficking in their memorandum to combat this social evil from society¹⁶. Though strong laws are existed in Nepal yet no political party addresses the issue of human trafficking in their manifesto. If human trafficking as a subject turn out to be a political issue there will be a speedy and strict reaction to fight against it. Nepal is in its developmental process of democratic form of government with its new Constitution. If human trafficking would be taken as political initiatives with effective legal procedures it would be more impactful to address the issue with proper punishment to the traffickers and proper reintegration and rehabilitation to rescued victims.

The existing laws are strict but are from the perspective of perpetrators only that no single laws are made from the victim perspective¹⁷. Every laws states to give punishment for traffickers but no laws articulate rehabilitation of a victim after they rescued. Victims should also get separate legal assistance. Due to negligence in such issues it is witnessed that the same persons are trafficked again and again and same perpetrators are trafficking them.

4.6 Gendered Laws, Practices and Human Trafficking

Gender discrimination is another major problem in most of the South Asian countries. Females are discriminated because of the accepted patriarchal form of society. Nepal as a Hindu majority state has given first preference to male member than female, because of which most of the laws that deal with the issue of women are not implemented yet. The other reason behind the lack of implementation of these kinds of laws is that the male member forms the majority in the prosecution process.

¹⁶To make laws more effective Maiti Nepal (NGO) had engaged programmes "Changing Dimension of Human Trafficking and Our Collaborative Commitment" with Government agencies where they took commitment from the leaders of all political parties to put human trafficking issue in the new constitution. Maiti Nepal also made a proposal that each political party should make human trafficking as a political issue in their manifesto in order to have speedy actions by the government.

¹⁷According to Official of Maiti Nepal, the existing laws of Nepal only emphasis on the procedure of punishment for those who have been involved in the crime but those laws gave less importance to the rehabilitation and reintegration of victims.

Dowry system as social institution is another factor that leads to gender discrimination in the societies of India and Nepal. Though, it is banned legally, but it has been employed as custom that without dowry no woman will be married. According to the official of Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs of Nepal, the practice of dowry is common in both the countries and similarly, dowry related violence is increasingly becoming a problem. There are ample cases where women are killed and burned for dowry in India and Nepal. In both the countries, women of rural area are more deprived than urban women¹⁸. According to the Chairperson of MoWCSW, “poorest of the poor are women” which means, in one poor family women members are the poorest as they have to divide their part of meal to other members.

Furthermore, the rural, excluded and ethnic communities belong to grassroots or bottom levels and therefore are more vulnerable to trafficking. Hence, people of such communities need to be educated and made aware of the issues regarding human trafficking in order to combat or control the crime.

As mentioned in the introduction of this chapter, poverty, lack of education and lack of awareness among the women of South Asian countries become the major factors for the rise in human trafficking and related issues. Migration and human trafficking are closely related as it is found that maximum number of trafficking happens in the name of job promises. Migration in search of jobs has been both push and pull factor in developing countries and it is more prominent in a country like Nepal where poverty is at its peak.

It is in this scenario, that women and girl child of this country tend to migrate in search of jobs and better living conditions. In many cases, women are migrating to gulf countries through illegal or undocumented channels and to travel abroad countries illegally has been denoted as human trafficking¹⁹. To address this, government of Nepal and the Immigration Department is trying to impart proper information on safe migration. They have taken several initiatives for this which

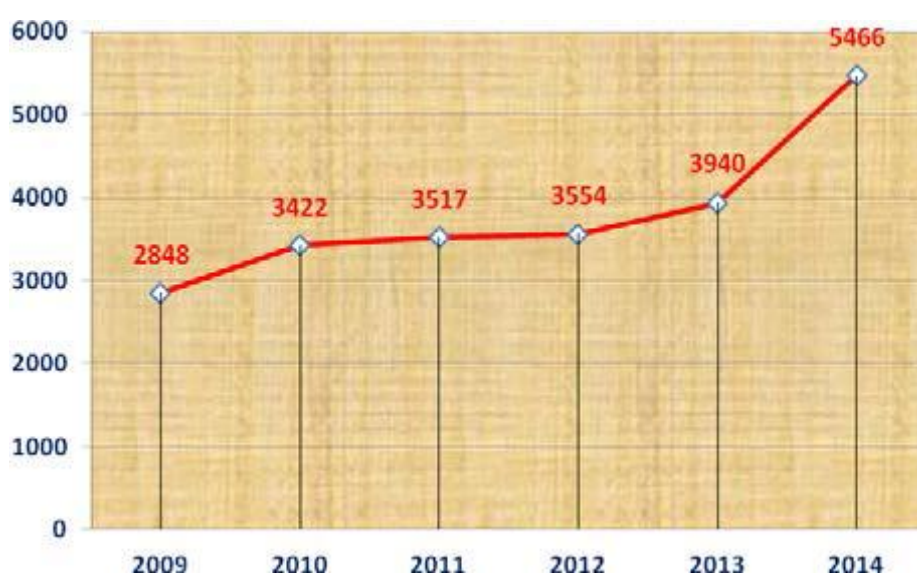
¹⁸According to chairperson of Ministry of Women and Child Welfare Department, in Nepal more than 80% women are economically active and earn themselves in a family but they do not have right to mobilize or utilize that income.

¹⁹Human Trafficking involves the crossing of international borders as well as within the borders of one country as internal human trafficking out of their own consent or choices and are compelled because of their socio-economic conditions.

includes: first, only through registration or proper procedure of government, the migrant worker are allowed to go abroad; second, a migrant should use route (airport) of Nepal; third, with the help of civil society organization, the concerned ministry are providing awareness on safe migration in every rural areas and in CDU office and in passport office. But to identify registered agent is very difficult in Nepal²⁰. Thus until and unless women realise or are aware about the issues related to trafficking, it is somehow difficult to control the magnitude of human trafficking. If women or girl child are well aware about the forms of trafficking then she would be able to defend herself from being trafficked effectively.

4.7 India and Nepal: Issues of Cross Border Trafficking

Trend of Incidents of Human Trafficking in India during 2009 – 2014



Source: National Crime Record Bureau, India 2014

²⁰According to the Chairperson of Ministry of Women, Child and Social Welfare Department in Nepal around 60,000 people are working as unregistered agents for the purpose of migration who is indirectly an agent of trafficking too.

Table 1.3 Annual Statistics of Human Trafficking in Nepal during 2010-2014

Year	Total Interceptions	Migrants Informed at Borders	Victims Rescued	Human Trafficking Cases Initiated	Women Trained at Prevention homes	Missing/Found
2011	2,478	47,973	88	46	80	-
2012	2988	1,00,495	239	60	105	3013/1169
2013	2,809	1,08,850	142	27	120	1,442/283
2014	2,904	1,34,718	183	19	80	1,533/342
2015	60% risen compared to the previous year after earthquake.					

Source: *Maiti Nepal*, 2015, www.maitinepal.org/annual-report

The above data provided by National Crime Records Bureau of India and Maiti Nepal (NGO) of Nepal shows that the trends of human trafficking are increasing yearly in both India and Nepal. Cases of migration in the name of foreign employment have been increasing in alarm mode especially from Nepal to India and to other countries. This recent hike of migration from Nepal is suspected to be the outcome of human trafficking. According to Sashastra Seema Bal (SSB), since the earthquake of Nepal on April 2015, large number of women and girl child have been intercepted from being trafficked along the border of Bihar, Uttar Pradesh and Uttarakhand (Jha, 2015).

The 1950 India-Nepal Treaty of Peace and Friendship as a bilateral treaty is the legal foundation of the open border between two countries. This treaty established a close strategic relationship between the two South Asian neighbours. Article VII of 1950 Treaty states that “the Government of India and Nepal agree to grant, on reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and privileges of a similar nature”²¹. The 1950 Treaty became one of the important reasons behind no immigration control for Nepalese migrating to India and Indians coming in Nepal. The border between India and Nepal is 1,088 miles (1,751km) long and only lightly patrolled (Jha, 2015). People of both the countries can cross it from any point, despite the existence of border check posts at

²¹The Treaty was signed at Kathmandu on 31 July 1950 by the last Rana Prime Minister of Nepal Mohan Shamsher Jang Bahadur Rana and Indian ambassador to Nepal, Chadreshwar Narayan Singh and came into force the same day.

several locations and are largely unmanned that foster illegal movement of goods and people on both sides (Kansakar, 2001).

India and Nepal share similarity in cultural tradition and social life. Religion is perhaps the important factor that the people of both countries share as there is common religious faiths and philosophies. Similarly, people of India and Nepal share common languages, exchanges movies including frequent exchanges of ideas, personalities and group of people representing the area of art, culture, music, literature and sports etc. However, there are important differences in population, as India has the second biggest population of the world and a developing country. Nepal rather has a small population and belongs to the least developed countries in the categories of the UN.

People of both countries are using open border for different purposes like free shopping or exchanges of goods, smuggling of goods and more significantly free flow of people to search jobs in each other country. However, trafficking in women and girls has become one of the easiest and less risky crimes than the drugs and arms trafficking from Nepal to India.

Cross border trafficking is one of the serious problems in South Asia especially between India and Nepal. It is a means of exploitation of men, women and children by forcing them into the sex industry, domestic and factory labour, organ transplantation etc. Cross border trafficking in young women and children from not only Nepal to India but to other countries including gulf countries has become trend in Nepal. In this respect Nepal is not only a source country but a supplier where trafficking originates. Internal trafficking from rural to urban areas for sexual exploitation, domestic labour, child labour etc. is another aspect of trafficking within India and Nepal.

In addition, crossing borders has been central to the lives of many Nepalese and Indians as they move to and fro between their countries and for Nepal, India serve as a hope of better opportunities for themselves and their families. As a result of bilateral friendship treaty signed between India and Nepal in 1950, citizens of both countries can travel and work freely across the border and are regarded as native citizens (Bhattarai, 2007).

As discussed earlier, number of factors have been identified as the main causes for the increasing trend of cross border trafficking in India and Nepal like poverty, illiteracy, ignorance, social discrimination and exclusion, gender discrimination, open border, ineffective law enforcement and policy implementation mechanisms, natural calamities etc.

Another factor of increased cross border trafficking in India and Nepal is the changing dimension of trafficking. The dimension of trafficking has been changing with the passage of time along with the factors or forms of trafficking. With the change in economic, social and political situations on one country, the aspects of trafficking are also changing. There is an increase in the trafficking of women and children alongside an increase in illegal and undocumented migration within and outside region. The routes, methods and activities of traffickers are becoming increasingly more organised and there is a greater access of organised crime group in the trade and trafficking of women and children within and from the region.

These emerging trends in cross border trafficking are connected to extended vulnerability of women and girls in Nepal and India. The causes of this gender based vulnerability are not new but intensification in this cause has increased the case of trafficking. There are various issues that illustrate gender discrimination in both countries, like girls are not allowed to go school. As a result women's literacy rate is seemed low with 62.8% in India and 51.1% in Nepal (UNESCO, 2015). Early marriages or child marriages, unequal wages between men and women, women are not allowed to go alone outside from home, less representation in parliament and other public organisations etc. are some of the factors of gender discriminations. The women and girls of India and Nepal are facing challenges like insecurity of food and livelihood, facing serious political crisis or armed conflict, limited education and low income generating skills, victims of abuse and violence, loss of income, indebtedness etc. Because of such aspects, women or girl child are the most exploited and vulnerable to human trafficking.

Similarly, in the context of Bangladesh, it is experiencing same problem of cross border trafficking. Unlike Nepal, Bangladesh share closed border policy with India. Terrible economic and employment conditions in Bangladesh result in thousands of people each year travelling to India, in hope of better means and

conditions of living. People of Bangladesh are usually forced to subject themselves to illegal methods of migration and search of employment. Due to closed or strict border control rules, people willingly subject themselves to the services of human smugglers and middlemen, who for excessive process, assist in the covert process of trafficking. As a result of unsafe and illegal methods of migration made by middle-men and recruiters, many men and women of Bangladesh are not reaching their destination country. On the other hand, where there are open or porous borders, illegal trafficking can easily take place by making fake promises of better livelihoods to victims in light of poor economic and social backwardness. Neither open nor closed borders are a solution to the problem of trafficking, as trafficking is mainly for better life and livelihood.

In Indo-Nepal case, a coherent measure is required to tackle the problem of cross border trafficking as it cannot be dealt at the national level alone. International, multilateral and bilateral cooperation can play an important role in preventing and combating trafficking activities. Till now, there is no single bilateral agreement between India and Nepal, though both the state has their specific domestic laws. Interestingly, more strict laws are there but more people are getting trafficked²². Thus, a bilateral agreement between India and Nepal should be adopted in order to prevent trafficking and protect the rights and dignity of trafficked persons and to promote their well-being. To lower down the magnitude of cross border trafficking between India and Nepal, bilateral agreement with the cooperation of civil society organisations and its constituent NGOs of both the country would be the eminent resolution.

²²According to official of Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs of Nepal, though there is strict laws and rigid security at border, people are trafficking or going abroad for jobs by having fake identity or fake explanation. For example, Nepal prohibits women under age of 30years migrating to Gulf countries for domestic work, the traffickers have started to take these women to India by road and then sent to various Gulf countries by air.

According to US Department of State, Nepal and India are on Tier 2 Watch List²³ by not curtailing the minimum standard human trafficking (US Department of State Report, 2015). Realising the ever growing problems of human trafficking between India and Nepal, laws are prepared to combat the problem of trafficking. However, it seems that the existing laws in both countries have had no effect on curbing trafficking. Together with the laws, government organisations, NGOs, Human Right Organisations, etc. are playing important role to prevent this crime against humanity.

However, despite of such efforts made, human trafficking for the purpose of exploitation has been continuously increasing in both India and Nepal. Absence of commitment of Governments, concerned authorities, NGOs, stakeholders of both countries, the poor compliance with international protocols and domestic laws coupled with weak enforcement system, and delay in justice delivery encouraged the traffickers to continue the commercial trade of human trafficking in both countries. There is a serious lack of emphasis on rehabilitation and protection of rescued victims in Nepal and Indian legislature. This is a major challenge which leads to not only discrimination of victims but also to re-trafficking of the rescued person.

To deal with cross border human trafficking, there is a need of change in society's perception towards India and Nepal, where people followed certain social rituals and customs that has direct or indirect impacts on illiteracy, poverty, discrimination, violence against women etc. An effective system designed within human rights system that prevents women from abuses within nation and during the migration is also required. It is a need of hour to adopt anti-trafficking legislations as a law that deals with violence against women and other related women rights issues. The concerned Ministries, national commissions, government, civil society organisations and law enforcement agencies should conduct programmes and policies that actually assist women victims of violence.

²³Tier 2 Watch List- Countries whose governments do not fully comply with the Trafficking victims Protection Act's (TVPA) minimum standards, but are making significant efforts to bring themselves into compliance with those standards and for which: a) The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; or b) There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or c) The determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year. India and Nepal are among 75 countries in an intermediate group called "tier 2". These countries are considered as demonstrating a "significant" commitment to address their trafficking problems but have not yet achieved international standards. Also see the meaning of tier 2.

4.8 Open/ Unregulated Border as a Factor of Human Trafficking

Nepal has open border with India. As pointed out in earlier sections, the Nepal-India Peace and Friendship Treaty 1950 is marked as open border treaty. Consequently, human trafficking mainly takes place through this open and unregulated border.

India- Nepal open border system has its negative and positive impacts for both the nations. Some of the positive aspects of India-Nepal open border system are the easy access or free movement of people of both the countries, fostering harmony and mutual understanding, maintaining relationship among the people to expand socio-cultural activities, health service, education and instant supply of labour.

Similarly, the negative impacts the open and unrestricted border between Nepal and India include increased number of human trafficking, migration, illegal import of arms and ammunitions, smuggling of goods, material and machinery, border encroachment etc. Hence, uncontrolled border security system between India and Nepal has been contributing to these kinds of issues. As a result, general people of Nepal are experiencing fragile peace and security in the nation due to free movement of people. It is because of the fact that no identification card has to be produced while crossing the border. Apart from these, open or unrestricted border between India and Nepal has also affected social, economic and political aspects of both these countries. However, the negative impacts that Nepal faces is comparatively larger than that of India²⁴.

Apart from free flow of people and goods as a facilitator in the smooth functioning of trafficking, the various treaties signed between India and Nepal also adds into that. None of the treaties between India and Nepal ever mention the procedures for the regulation of the open border system. Primarily, both India and Nepal have positively agreed to control such illegal activities along the border, but there is lack of an effective and practical approach from the concerned departments like police, border control personals etc. Thus, according to respondent, both the

²⁴Border encroachment; cross border terrorism; smuggling of goods, material and machinery; cross border crime like kidnapping, theft, murder, rape; illegal migration; trafficking of narcotic drugs are the result of thorough passage from the uncontrolled and open border.

governments need to be checked strictly and managed/regulated properly to stop transportation of people, smuggling of goods from the unpatrolled open border.

The unregulated open border between India and Nepal may have been one of the many reasons behind the difficulty in controlling cross border human trafficking. As India and Nepal, apart from having registered routes, consists of various unmanned routes. As a result, traffickers often change their entry and exit point to avoid any kind of encounter with the border police or with the NGO's. It is under these circumstances, law enforcement officials find it difficult to control and take action against such offenders. The law enforcement officials also state that, the open border that exist between India and Nepal makes it difficult for the police force to identify whether the couple or the group is migrating or a case of trafficking. Therefore, in an open or un-regulated border between India and Nepal, a precise policy is necessary to invent to deal with the issues like human trafficking.

The issue of human trafficking seems to be growing in Nepal, as there is demand for Mongolian women and also for white skin in sex industry. Since Nepalese girls fulfil that demand, maximum number of girl child and women are trafficked from Nepal and its border areas. Victims come from all areas of Nepal, but most targeted are those marginalised groups or traditionally disadvantaged such as Dalits and ethnic minorities. They are most vulnerable as they are illiterate, often abandoned by their husbands or families, or who are victims of abuse and violence. Many cases of trafficking involve those from disadvantaged communities and extremely poor families. This could also be the reason why women from hills are more trafficked than the plain areas. For instance, seventy percent of Nepali women who belong to ethnic groups such as the Tamang, Gurung, Magar, and Sherpas are engaged in flesh trade (Report of Human Right Watch/Asia 2010). It has been estimated that in the brothels of Bombay, there are about 20,000 Nepali girls engaged in sex trade (Maiti Nepal, 2013). These ethnic or excluded groups are vulnerable due to various social, economic and political factors like poverty, gender discrimination, lack of education, lack of awareness and information etc.

Poverty and lack of employment opportunities force individuals to migrate to economically prosperous places or accept distant job offers which make them vulnerable to trafficking. Poverty Reduction Strategy Papers of Nepal identifies that

38% of its population live on or below the poverty line (PRSP, 2003). Carpet industries of Nepal became transit centres for trafficking girls to India as a large number of women and children working in the factories were enslaved and sexually abused. The society view boys are assets and girls are burden to the family because girls will eventually married off to serve another family and the parents have to give a dowry in addition. More so, women are given fewer opportunities to education and employment than men. Poor families in this situation might sell their daughters to traffickers or send them to work who ultimately became the victims of trafficking.

4.9 Role of NGOs/Civil Society Organisations

NGOs are the key partners of law enforcement agencies. NGOs are the non-profit organizations and social service agencies worked to end the (dehumanization activities) human trafficking. In fact, NGOs and Civil society Organizations have long been active in the anti-human trafficking movement before governments and international community. NGOs and civil society organizations mainly focus on carrying out awareness raising campaigns, conducting research, providing basic services to victims of human trafficking and most importantly helping law enforcement officials for the identification of victims and provide legal assistance to victims etc.

The insufficiency of the government to control human trafficking made NGO's to function with or without the government. And have taken the initiative to work as a welfare mechanism and create awareness at the village level. NGOs, conduct programmes with government officials in their voice against human trafficking with an aim to make human trafficking apolitical issue.²⁵

Civil society organizations have contributed significantly to raise the voice against this kind of exploitation of women and girls for commercial sexual abuse in South Asia. The major civil society groups which focus/engage in curbing human trafficking in India and Nepal are *Sanlaap, Prayash, The Asia Foundation Mumbai and Child Helpline etc.* from India, *Maiti Nepal, ABC Nepal and Shakti Samuha, Alliance Against Trafficking in women and Children in Nepal (AARWIN)* from Nepal. These organizations particularly look into the matter of Human Trafficking and at

²⁵Maiti Nepal, an NGO from Nepal, is working effectively to put the issue of human trafficking in the new Constitution of Nepal.

times provide assistance to rehabilitate them by providing foster homes. They even go to the extent of patrolling sensitive borders in order to control trafficking. In a nutshell, the civil society groups in South Asia, particularly in India and Nepal, are playing a critical role to combat human trafficking.

In South Asia, nonetheless, the governments and its policies have been slow in taking action against the global concerns of human trafficking as an organized crime. What seems obvious is that, Governments are less accountable in dealing with the problem of human trafficking mainly due to its internal issues like political unrest or civil war, lack of internal security and other matters of socio-economic pressures. This is precisely the reason why every major anti-trafficking initiatives in the region has been taken up by different civil society groups. Organising awareness on human trafficking and related issues through camps and other programmes in the countries of origin is another major 'modus operandi' of these civil society groups. They also make it a point to formulate every effort to find methods in combating such organised crime in the countries of destination as well. Further, they provide rehabilitation centres, develop an integrated aid system, introduce different income generation schemes and giving training to the victims and even work to raise awareness concerning public opinion to garner further support base so that the issue could be dealt more effectively. In this way NGOs provide support services for victims of trafficking by creating shelters, legal and psychological counselling, training to concerned officials and training in income generating endeavours to the victims (Sanghera, 2000). While NGOs plays vital role to combat human trafficking, it would be effective if laws are drafted in partnership with NGOs to have an better consequence in providing support for trafficking victims specially women and girl child.

According to the interview taken from NGOs of both India and Nepal, the activities they conduct are, identify the victims in brothels through their networking source, and after counselling, they try to reintegrate victims with the help of local authority. These organisations help in relocating them by providing shelter at their rehabilitation centres and then provide education to them, and place them in income generating avenues so that the rescued individuals do not lag behind. This ensures the victims to start a fresh life because in most of the cases, society/family refuses to accept the person who are rescued from such crime.

Civil society or the NGOs are on the path of immense progress in raising human trafficking issue at the global level. The civil society activism in South Asia had critical impacts on issues related to human trafficking. South Asia, despite its inadequate legal and binding law enforcement, has shown a progressive response to combat human trafficking as a human security challenge. Governments are also becoming active in this regard, though most of the programmes and policies are carried out by NGOs. As such, there is a greater involvement of NGOs than the government since they themselves try to combat human trafficking particularly through the rescue operations and rehabilitation process.

NGOs in the region are involved intensely in the issue of human trafficking by designing and implementing awareness programmes, also about unsafe migration and human trafficking, making policies and laws to protect victims from trafficking. It further provides informal education, looks in the issue of health and nutrition, provides counselling to rescued victims and so on. Maiti Nepal even provides special training for police personnel, which have also helped a great deal in reducing the number of women and girls being trafficked from the region. It has led to the arrest of number of traffickers and also large number of women and girls who solicited the same.

4.10 Gaps in the Legal Framework of Trafficking in India and Nepal

In India and Nepal, government does not fully comply with the minimum standards for the elimination of human trafficking. The key gaps in the legal framework of both India and Nepal have an impact on emerging magnitude of human trafficking. In this section some of the key gaps or limitation of existing laws and legal framework of both India and Nepal has been examined below:

4.10.a. Non Implementation of UN Convention on Trafficking and its Protocols

Non-implementation of *United Nation Convention Against Transnational Organized Crime*, 2000 and its *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children* by both India and Nepal, is a major stumbling block to facilitate their own domestic laws or treaties in an effective manner. India has ratified it on 2011 but Nepal has not ratified it yet. Both the states have not implemented it in their national legal frameworks. According to one official

of Maiti Nepal, the reason behind it is that the developing countries would sign such international treaties or protocols but their basic structure or infrastructure are yet to be ready to accept or to implement such treaties. Domestic laws of both states are supreme to deal with the case of trafficking. Further, there is also lack of commitment from the government to implement the existing international standard in their national level.

As United Nation Convention against Transnational Organized Crime and its Protocols has provided an internationally accepted definition of trafficking and has define every aspects of human trafficking with proper process of criminalization with prevention and rehabilitation for the victims. It further clarifies that the consent of the victim of trafficking in persons to the intended exploitation, is irrelevant as set forth in the subparagraph. Also, where a child is concerned, the recruitment, transportation, transfers, harbouring or receipt of a child for the purpose of exploitations shall be considered trafficking, even if it does not involve any of the means laid down in the definition of trafficking²⁶. The UN Protocols play a major role in providing protection, prevention and prosecution to the victims of human trafficking. As mentioned in earlier chapter, the purpose of trafficking protocol has following objectives (a) to prevent and combat trafficking in persons, paying particular attention to women and children; (b) to protect and assist the victims of such trafficking with full respect for their human rights; and (c) to promote cooperation among States Parties in order to meet these objectives²⁷.

The development of an appropriate legal framework that is in consonance with United Nations Convention and its Protocol and other international instruments and standards will play an important role in the prevention of trafficking and related exploitation. There is an urgent need to harmonize existing legal definitions at the national and regional levels in accordance with UN Convention on Trafficking and its Protocol. The UN Convention on Trafficking and its Protocol will enhance the level of international co-operation among the various State Parties within South Asia in the fight against various forms of organized crime with transnational character, which jeopardize not only the lives and liberties of citizens, but also affecting the very

²⁶ A 'Child' is any person under eighteen years of age (Article 3 (d, c) of Protocol).

²⁷Article 2 of UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children

foundations of peace, progress and well-being of nations and their societies in an increasingly globalised world. There is an urgent need to include the activities made by the Convention and its Protocols in the domestic laws or acts of criminal offence of both India and Nepal with an important legislative or administrative step or mechanism to effectively implement the provisions of the Convention and its Protocol.

4.10.b. Lack of a Comprehensive Definition on Human Trafficking

There is a lack of comprehensive definition of trafficking in regional and domestic laws of both the states. While the SAARC definition is there, it is limited to trafficking for sexual exploitation and only covers women and children. In case of India, the Goa Children's Act, 2003 provides a definition that only covers children and is not applicable beyond the boundaries of the state. The Act list out the components or activities like procurement, recruitment, transportation, transfer, harbouring, receipt of persons by using means or methods like threat, force, other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability, for the purpose of intention to achieve the consent of a person having control over another person or for monetary gain or otherwise giving or receiving of payments²⁸.

The scope of SAARC Convention focuses on trafficking in women and children for commercial sexual exploitation. However, the definition of trafficking under UN Convention on Trafficking is broader in scope, as it addresses trafficking in general as well as issues relating to forced labour, slavery, servitude or the removal of organs thereby addressing other forms of organized crime as well. In addition, the Immoral Traffic (Prevention) Act, 1956 of India defines trafficking but not in a holistic manner as it only covers trafficking for sexual exploitation. The Laws of Nepal covers more forms of trafficking including the removal of organs, but lacks to define the other forms of trafficking.

4.10.c. Missing of Gender Sensitivity in Enforcement of Laws

Gender discrimination is rooted in society because of which even after having so much of effective laws in both of these countries, women and children are facing

²⁸Goa Children's Act, 2003, goagovt.nic.in/documents/goachildact2003.pdf

domestic violence on a daily basis. For example, the issue of gender discrimination is well covered in daily newspapers where the issue of rape and molestation is at its peak. Further, lack of adequate education also contributes to the ignorance towards their rights, even after having effective laws for them. In this kind of environment, the implementations of effective laws become null and void. Thus, the result of all these has led to missing of gender sensitivity in the enforcement of laws.

Effective measures of gender sensitivity should include in the laws of India and Nepal to deal with violation against women. Some of them are; by spreading awareness of gender related discriminations which are the causes of trafficking of women especially for sexual exploitation, by identifying and tackling injustice and stereotypes of women within society, by improving the effectiveness of the prevention and protection system of concerned law enforcement system ensuring proper protection and empowerment of the victims after rescued.

Human trafficking is an organized crime which is a category of transnational, national, or local groupings of highly centralized enterprises run by criminals, who intend to engage in illegal activity, most commonly for money and profit (Schloenhardt, 1999). Organized crime plays a significant role in human trafficking, as its process turns into the recruitment, transport, and control of an individual and force them for the purpose of exploitation. Human trafficking is believed to have become one of the least dangerous and most profitable activities for organized crime groups.

4.10.d. Lack of Cooperative Mechanism

It is well known fact that India and Nepal follow open border. Adding to this, India-Nepal border does not have cooperative mechanisms between government agencies, neither between NGOs and INGOs, nor between police force and concerned departments etc. It is because of this lack of cooperative mechanism that border between India and Nepal are experiencing increase in illegal trade, human trafficking issues, drug and arms trafficking issues, unsafe migration and many more. Underlying these issues a joint cooperation is needed address the issues²⁹. Safe migration is

²⁹For example, legal assistance should be provided to the victims through cooperative ventures, this kind of mechanisms should also provide information and awareness about trafficking to the people.

another area where cooperative mechanism is required, following the joint investigations to control such crimes, especially from open or unregulated border.

As far as cross border trafficking between India and Nepal is concerned, the lack of cooperative mechanism between India and Nepal is adding to this issue. Though there is a recent development in cooperative mechanism initiated by NGO's along with the border police personnel from both sides, a much more effective cooperative mechanism is required from the government of both these countries to curb or low down the volume of human trafficking. Encouraging and facilitating cooperation would ensure support and assistance to trafficked victims who are repatriated. Source, transit and destination countries should provide support to judicial activities for the prevention of trafficking victims. These would comprise witness protection and institute cooperation for criminal and civil proceedings against traffickers. Thus, a cooperation mechanism, with a rapid action plans between both countries and law enforcement agencies, are required to restrict cross border trafficking.

4.10.e. Un-satisfactory Systems of Prosecutions

Apart from the cooperative mechanism, prosecution system is another area where both these states have produced very limited effects. According to one official from Nepal Police, the laws so far have been from the perspective of perpetrators and not from the victim's perspectives³⁰. This one sided law does not ensure any kind of assistance to the victims, leading to re-trafficking of the same group. This kind of laws also does not provide any kind of rehabilitation programmes for the rescued victims. And in the countries like India and Nepal where society hardly accepts this profession, the life of victims become miserable after being rescued. Consequently, victims are not welcomed happily or open heartedly in the society. It is because of this cold welcome and various trauma that they go through in society, they generally gets re-trafficked instead of having a new life. Hence, there is a need of proper training and sensitization to the issue of trafficking to prosecutors. For instance, proper training programme should be organized for law enforcement personnel, border police, concerned department and also to the various NGO's who are working in this field.

³⁰Interview held on 22nd May 2014

4.10.f. Limitations in Existing Laws for Understanding Dynamic Nature of Trafficking

Trafficking is not a new phenomenon; instead it has its roots in the form of slave trade during 19th century. Eventually, the definition of trafficking also changed with the change of various forms of trafficking³¹. The change in the forms of trafficking also contributed to the change in laws for curbing these kind of activities. The issue of human trafficking on the other hand has been dynamic with the eruption of the concept of global interdependence or in one word ‘globalization’. The existing laws, so far, has been enforced by understanding the earlier forms of human trafficking and which were somehow able to function in that particular paradigm. However, the measure through which the trafficking was done earlier is no more seen and new ways are discovered by the perpetrators for efficient flow of trafficking. It is in this scenario that new laws are required to understand the new flow of trafficking and eventually able to function in the new paradigm. The chairperson of Maiti Nepal Anuradha Koirala states that, there is a change in the dynamic nature of human trafficking. New forms have emerged, earlier where perpetrators used marriage institutions to lure women and girl child. Now promises of lucrative job and better future have become important means to lure people for the crime of human trafficking (The Himalaya, 2015). This is the reason why the network of trafficking has been gradually spreading from India and Nepal to West Asia and other countries. Policies and prevention measures are slow to respond to such newer forms of trafficking. With the changing pace of time, the dimension of trafficking has also been changing. Hence, effective and strict measures are required to handle this issue or to curtail down such issues from the society.

4.10.g. Lack of Organizations for Examining Cross Border Trafficking Cases

In case of India and Nepal, serious lack in the monitoring system to identify linkages between Nepal as source and India as destination have created a situation of disparity between India and Nepal. Due to lack of bilateral response between two countries, victims are facing problems to achieve proper protection on either side. Therefore, despite the ‘missing’ person having been eventually ‘rescued’ from a

³¹Different Forms of trafficking are- child trafficking, sexual trafficking, labour trafficking, drug trafficking, arms trafficking etc.

brothel or employment agency at another place the two instances continue to remain non-linked (Nair, 2010). Consequently, it has been very difficult to rescue victims or may rescue after several months from reported missing. Hence, there is a need of committees or organisations to examine repatriation of cross border trafficking cases, especially women and children. There is also a need of regular meeting of law enforcement agencies, including Border Security Forces from both sides of the border, and other concerned border officials to review or evaluate the cases of trafficking. The cooperation between these two countries should include identifying and interviewing witnesses respecting their safety; identifying, obtaining and preserving evidence of victims; encouraging and facilitating cooperation between non-governmental organisations and other civil society organizations to ensure support and assistance to trafficked victims of who are repatriated.

4.11 Conclusion

In South Asia, the anti-trafficking laws are redundant and are simply theoretical instruments. Though they are in practice, the aim on which these laws were made and implemented is yet to be achieved. Among South Asian states, India is a major destination region and Nepal serve as a major source region for persons subjected to different forms of trafficking like forced labour, child trafficking and sex trafficking.

Both India and Nepal have made rigorous efforts to tackle with the issue of trafficking in terms of legal frameworks, consolidation of institutional mechanisms and cross-border initiatives to control human trafficking. But it is understood that because of existing social, economic and political problems within the states, governments and the concerned departments much of the issues remained unaddressed/unresolved. Border police personnel and law makers are less accountable in tackling with the issue of trafficking and much therefore needs to be done to tackle the problem of cross border trafficking.

Cross border trafficking and Open and porous border between India and Nepal is another concern of human trafficking and there are no such laws that deal with border issue. Open border has provided as safe passage not only for trafficking but also for cross-border terrorism, illegal import of arms and ammunitions, smuggling of goods, illegal migration and other related crimes. Better policies and strategies are

required for investigation so that the border control personnel can use it to combat the issue of human trafficking in both the countries. Effective mechanisms for the prevention, protection and prosecution of trafficking victims exclusively on border between India and Nepal are required. This could help to stop substantial number of individuals from being exported for commercial purposes.

Finally, gaps or lack of specific or adequate legislation on human trafficking at national level of both India and Nepal has been identified. The major gaps of Indo-Nepal cross border trafficking is non ratification or implementation of *United Nation Convention on Trafficking* and its protocols, lack of comprehensive definition of trafficking, missing of gender sensitivity, lack of cooperative mechanism, unsatisfactory system of prosecution, in efficiency of existing laws for understanding dynamic nature of trafficking, lack of organizations for examining cross border trafficking cases tec.

In addition, there are various limitations within the governmental institutions, concerned departments, civil society and its constituent NGOs of India and Nepal on prosecution, prevention, and protection on the issue of human trafficking. Hence, there is an effective and an urgent need of both bilateral and regional measures to deal with such issues within India and Nepal.

Chapter V

Addressing Human Trafficking between India and Nepal: Reform of Legal Frameworks and Restructure of Institutions

5.1 Introduction

This chapter focuses on the issues of restructuring institutions and reforming legal frameworks of both India and Nepal that deals with human trafficking. The Chapter also discusses the different measures to address human trafficking more efficiently that include establishment of new institutions and legal mechanisms and/or reform of the existing bilateral, multilateral, regional and international agreements. Issues of responses, cooperation, and coordination of law enforcement officials to address human trafficking are also included in this chapter. Prevention, protection and prosecution measures such as rehabilitation programmes; better data, strategy and reporting to enhance anti trafficking efforts; strengthen the capacity of officials in the law enforcement agencies, immigration, education, social welfare, labour and other relevant departments to prevent trafficking are also discussed in detail in this chapter.

As discussed in previous sections, human trafficking has emerged as a global problem/issue where millions of people have been trafficked across borders and within countries every year. Over the last few decades, the South Asian region has attracted global attention for its growing trafficking problem. Within South Asian region, Nepal has been designated as ‘sending’ country or country of origin and India is usually referred to as country of ‘transit’ and/or ‘destination’. Within South Asia, human trafficking occurs both within the borders of a country and across borders, regions and continents.

To address this, India and Nepal have formed a number of laws and provisions, however the rate of trafficking continues to increase year after year and apparently uncontrolled. The crucial tool used by government of South Asian nations to combat cross border trafficking is their own domestic legislations (UNODC, 2011). In both the states, the ratified international laws or provisions have to be incorporated in domestic legislation (Hameed, 2010). Therefore, the international conventions and

laws are not very effective in the country unless they have been translated into domestic laws. This does not mean that international law or provisions have no role to play, as law enforcement agencies, NGOs and civil society can make reference to these provisions to combat human trafficking (UNODC, 2011). It is important to have a strong domestic legal framework in compliance with International standard conventions especially UN Trafficking Protocol to deal with the cases of cross border trafficking in India and Nepal. Additionally, strong law enforcement system becomes a necessary tool to control such crimes from the society.

5.2 Addressing Human Trafficking in India and Nepal

India is a source, destination and transit country for men, women and children subjected to forced labour, child trafficking and sex trafficking. Movement of persons take place easily from Nepal to India through the borders which are porous. Since India has an open border policy with Nepal, illegal cross border movements may be difficult to check and identify. As discussed in Chapter III, the provisions or legislative tools that directly and indirectly deals with the relevant matters of human trafficking in India has been included in the Indian Penal Code 1860, the Indian Constitution of 1950, the Immoral Traffic Prevention Act 1956, the Bonded Labour System (Abolition) Act 1976, the Child Labour (Prohibition and Regulation) Act 1986, Juvenile Justice Act, 2000, the Transplantation of Human Organs Act of 1994, Immigration (Carrier's Liability) Act of 2000, and the Protection of Child Marriage Act, 2006etc.

The Ministry of Home Affairs (MHA), Ministry of Women and Child Development (MWCD), National Human Right Commission (NHRM) of India, National Commission for Women (NCW), Anti-Human Trafficking Units (AHTU) etc. are some of the Institutional frameworks collaborated with International Organizations and NGOs that addresses the issue of human trafficking¹. Despite of various efforts made by them; the protection, prevention and prosecution of trafficking victims are still minimal in India. According to US Department of State, the Government of India does not fully act in accordance with the minimum standards

¹Functions of these institutions have been discussed in detail in Chapter III

for the elimination of trafficking, though it is making significant efforts to do so (US Department of State, 2014).

Similarly, Nepal has also created several national legal frameworks to deal with human trafficking like Muluki Ain (General Code) 1963², the Bonded Labour (Prohibition) Act of 2002, the Human Trafficking and Transportation (Control) Act of 2007 (HTTCA)³ and the Human Trafficking and Transportation (Control) Rules of 2008, the Constitution of 2015⁴ etc. Government of Nepal also made improvements in its efforts to prevent human trafficking, however the anti-trafficking structures were not fully effective and trafficking victims did not receive sufficient support from the government.

In the institutional framework of Nepal, the crucial agencies responsible for formulating and implementing laws, plans, and policies with concern to human trafficking are the Ministry of Women, Children and Social Welfare (MoWCSW), Ministry of Labour and Transport Management (MoLTM), Ministry of Home Affairs (MoHA), Nepal's National Human Rights Commission (NHRM), etc. Thus far, these institutions are working for the cause of human trafficking and its related crimes. However, still lot of significant and efficient factors are needed to deal with the same. For instance, the government of Nepal has yet to effectively implement the National Plan of Action against human trafficking, which identifies the broad areas for interventions like prevention, protection, prosecution and cooperation (American Bar Association, Nepal, 2011). Despite their crucial role in Nepal's anti-trafficking efforts, they have not come out effectively in their fight against trafficking because of various factors such as lack of resources, lack of coordination and cooperation within committees, lack of conceptual clarity about the actions in anti-trafficking investigations including the lack of commitment of major political parties to combat trafficking (ibid). Therefore, it has been reported that the government of Nepal is

²The Muluki Ain criminalizes making another person Kamara, Kamalari (Sub-servant), slave, or bonded labourer; the arranging of or causing of forced or child marriage; as well as many acts which tend to be committed within the trafficking context (e.g., kidnapping and rape).

³ The HTTCA is gender-neutral, prohibits both internal and transnational trafficking in persons, and covers both sex and labour exploitation.

⁴The Constitution guarantees basic human rights, including freedom from human trafficking, exploitation, forced labour, slavery, and servitude, and the right to constitutional remedy.

highly dependent on civil society organisations in its obligations related to the prevention of human trafficking and the rescue and rehabilitation of victims⁵.

Both India and Nepal are increasingly willing to focus on dealing with this crime. Both countries are signatories/ratifying states of many national and international commitments for combating Trafficking in Persons and protection of Human Rights of Victims such as *The Universal Declaration of Human Rights (UDHR)*, *Convention of Elimination of All Forms of Discrimination against Women (CEDAW)*, *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, *United Nations Convention on Transnational Organized Crime (UNTOC)*, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000 (Palermo Protocol)*, *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution* which are key international and regional legal instruments for combating trafficking.

India and Nepal has taken significant steps towards bringing effective anti-trafficking laws by creating several laws, formulating policies and procedures and by signing and ratifying international law obligations. With the political encouragement and through practical assistance from projects, both States have experienced a range of improvements including the enactment of new anti-trafficking laws, specialization of law enforcement, awareness raising for officials, specialist trafficking investigation training, improvement in cross border cooperation and development or coordination between states to have an effective criminal justice system to ensure justice for the victims of trafficking (Pretious, 2008). However, the facts show that these provisions or policies have proved to be insufficient/inadequate to combat trafficking. Hence, greater political commitment and much harder and more practical approach is needed within law enforcement agencies to bring down the magnitude of human trafficking.

⁵ One of the major aim of Maiti Nepal is that all political parties should include human trafficking as political issue in their manifestation so that government will take some initiative to address the issue. Because of the constant Political transition in Nepal, the focus of political parties is to make new constitution, development of state, peace building and so on. Hence, they are less concern on the issues of human right violation as human trafficking.

Various studies point out that, to a large extent, the existing legal frameworks of India and Nepal have failed to address such issues like prevention of human trafficking, witness protection, repatriation of victims, immigration and border control measures, compensation fund for victims, etc⁶.(US Department of State, 2015). To address these gaps, at the foremost, the Government of India and Nepal should rapidly implement the *UN Trafficking Protocol*, which provides a comprehensive definition covering various forms, means and objectives of trafficking. Implementation of the Protocol would give India and Nepal the opportunity to become a Party to future negotiations in the matter and the Protocol will further enhance the chances of international cooperation among the various States as parties in the fight against various forms of organized crime.

5.3 Reforming Legal Framework and Law Enforcement System of India and Nepal

An effective legal framework is a first step to deal with the problem of human trafficking in India and Nepal. Impact of the weak laws and the challenges inherent in the process of investigation of crime of human trafficking are some of the issues as outlined below with some strategies that can be adopted, in response to these challenges. These assessments present a practical nature of human trafficking as a crime on the one hand and identify the new measures that need to be initiated to protect and support the vulnerable on the other.

5.3 .a. Re-define the term ‘Trafficking’

While there are a number of international instruments dealing with human trafficking, the primary tool used by the Governments of India and Nepal to combat cross border human trafficking is their own domestic laws. However, those existing laws of both Nepal and India focus only on the portion of trafficking that is for the purpose of prostitution. None of the existing trafficking laws in these countries address trafficking in a holistic manner. By emphasizing the endpoint, the violence and abuse of human rights that occur during the process of trafficking (and for any

⁶The UN Protocol states that State Parties should ensure the safety of trafficking victims after rescue as well as consider instituting measures to assist victim recovery and integration into society (*UN Trafficking Protocol, Art 6(3)*).

purpose other than prostitution) are not addressed. Domestic laws of both India and Nepal lack collective understanding of trafficking. India has specific law on trafficking, ITPA that does not define trafficking, but defines trafficking as prostitution to have the usual attribute of trafficking as sexual exploitation (UNODC, 2011). The laws of Nepal also did not strictly cover all forms of trafficking⁷. The existing laws have not been properly defined and there are several loopholes⁸ in them and due to which the perpetrators of human trafficking escape from being effectively punished. According to *UN Trafficking Protocol, 2000*, trafficking is the much more threatening business of buying, selling, and movement of persons within or between countries, through, in the case of adults, a range of means such as coercion and deception, for the express purpose of exploiting them (UN Trafficking Protocol, 2000, Art.2)⁹. The end purposes of trafficking are not limited to sexual exploitation but are as varied as the potential for profit where women, men, and children are trafficked for the purpose of forced labour, child labour, forced marriage, illegal recruitment, debt bondage, exploitation of labour, involvement in organized crime, organ transplant etc.

The legal definition of trafficking of India and Nepal should also be improved according to the definition provided by *UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, 2000*, as it has provided a detail guidance and provisions for punishment to the various purposes of human trafficking¹⁰. Re-examining of current laws of both the States based on international standard's definition may cover all aspects of human trafficking and controls the action of such business. An effective provision for additional penalties should apply to persons found guilty of trafficking including perpetrators to crime committed public officials.

⁷The existing laws of Nepal covers more forms of trafficking such as for the removal of organs, but it also covers actions it considers immoral and punishable, though it is not strictly define trafficking (UNIFEM, 2007).

⁸The existing laws only emphasis on sexual exploitation as one form of trafficking, lack of implementation of those existing laws that are only in paper not in practice, the existing laws did not incorporate the procedure of rehabilitation or reintegration of trafficking victims etc.

⁹ The UN Trafficking Protocol is an international legal framework to fight transnational organized crime with a detailed agreement on tackling trafficking in persons.

¹⁰ "As per this definition human trafficking is an exploitation include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs" (*UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, 2000*).

Similarly, both the states should provide legal protection for trafficked persons in their anti-trafficking legislation, including protection from rescue to reintegration with proper information, assistance and appropriate support. With the proper training and sensitization to law enforcement officials or authorities, States will guarantee to promote cooperation of law enforcement officials within and between India and Nepal in their task of effective investigation and prosecution of the traffickers. Strengthening the capacity of law enforcement of both the States, it will adopt measures to reduce vulnerability of being trafficked, arrest and prosecute those involved in trafficking, developing programmes that offer livelihood options like basic education and skills training especially for girl child and women. Hence, a redefinition of human trafficking is essential to tackle cases of cross border trafficking between India and Nepal.

5.3 .b. Reform Criminal Justice System and Procedures

Corruption is prevalent in the criminal justice system of both India and Nepal. As a result, traffickers use corruption to extend their operations to avoid persecution. At times, the law enforcement agencies are also partners and parties in the crime of trafficking. The police, border control authorities, immigration services, security/armed forces, public officials, private sector actors such as travel agencies, transportation sectors, financial institutions, etc. are among the partners or corrupt actors in the crime. However, lack of knowledge and commitment at this level can be equally serious leading to poor prosecutorial systems, failure to adequately utilize and protect witnesses, failure to apply trial prosecutorial briefs, failure to adequately utilize and protect witnesses, failure to apply trial procedures properly, and inappropriate sentencing (Gallagher, 2008). Due to all these, the present legal framework to combat human trafficking results in re-victimisation of the victims of exploitation while the exploiters mostly unpunished. Corrupt practices within legal frameworks and judicial weaknesses have great impact to the victims of trafficking who have suffered a lot. Their cases are lost or badly dealt in most of the situations.

Corruption within law enforcement officials does play an important role in facilitating and fostering the crime of human trafficking. It is evident that, with the help of corrupt public officials, traffickers may recruit, transport and exploit the

victims. Corrupt behaviour of officials may responsible for the lack of investigation, prosecution and adjudication of trafficking in persons, lack of information and data collection, lack of adequate responses to root causes of trafficking, etc. (UNODC, 2011).

The issues of corruption should be address in anti-trafficking legislation of both India and Nepal that the involvement of a public official in the trafficking activities enhances strict punishment (Matter, 2013). To combat human trafficking, both governments should give priority to investigate and take legal action against corruption within officials. There should be a life time imprisonment if the perpetrator of the crime is a law enforcement official. The UN Convention against Transnational Organized Crime states to take effective action in the prevention, detection, and punishment of corruption of public officials (UN Convention against Transnational Organized Crime, 2000)¹¹.

For the developments in law enforcement, both the states should establish a centralized group of specialist prosecutors to handle issue of corruption in trafficking cases and to provide other post-rescue supports to the victims. This group should jointly address issue of corruption in trafficking by sharing information and resources that may help to speed-up investigation process. Specific anti-trafficking training needs to be delivered to the committed prosecutors who may contribute to tackle with human trafficking issue and eliminate practice of corruption within law enforcement agencies and encourage them to perform effectively. It will help to strengthen cross-border legal cooperation between the states.

¹¹ UN, General Assembly Resolution 55/25 of 15 November 2000, United Nations Convention against Transnational Organized Crime and the Protocols Thereto, 2004, Article 8: 1: “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties. Article 9 (2): Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions”.

Law enforcement agencies need to be aware of the problem of corruption in the system and need to ensure that it does not influence the access to justice of victims and punishment to traffickers accountable for the crimes they have committed. A crucial step in addressing human trafficking related corruption is precisely the collection of data and information in order to get a better insight in to the problem. However, improved data gathering and analysis would make it possible to combat corrupt practices in human trafficking. A better data or information can be generated only when there is an enhanced co-ordination and commitment among group of law enforcement agencies that exist.

5.3 .c. Improve the Law Enforcement Capacity to Deal with Human Trafficking

Weak legal framework of both India and Nepal results in lack of awareness on human trafficking among all sections of society from public to government to the concerned departments, stakeholders, and civil society. As an impact of insufficient existing legal procedures has promoted continues flourish of the crime with its objective of exploitation.

This situation has multiple negative effects. According to the respondent, in several cases the arrested victims are charged incorrectly (e.g. for smuggling instead of trafficking and vice-versa), as a result traffickers are continually exempted from being punished. Further, victims of trafficking are not identified as such and are not treated sympathetically. Many law enforcement officials within the region do not know how to deal with human trafficking as a crime because they have not received any additional training on this issue. Therefore, it is necessary to include basic and other training curricula for law enforcement officials with proper system to deal with trafficking as first responders to the crime, for addressing human trafficking effectively.

In most of the cases, law enforcement agencies often are the first to come into contact with this clandestine crime. As first responders, law enforcement agencies play a critical role in identifying and responding to human trafficking cases. Though the crime has received more public attention recently, yet, the concerned agencies still were not fully informed about the issue. By increasing awareness about human

trafficking, law enforcement agencies will continue to identify areas in which they need support, assistance, and information to identify this crime and respond to its victims. With the lack of awareness among all sections of society comes the lack of law enforcement.

There is a need to increase/better understanding of law enforcement agencies' role in human trafficking related cases. Law enforcement agencies have a crucial role to play in any investigation of trafficking cases. Additionally, the role of law enforcement is to help victims of human trafficking in their rehabilitation process or in their sustain process that may affect the lives of human trafficking victims. Further, the close collaboration among law enforcement agencies of Central and State level, between prosecutors, immigrant advocacy organizations, legal advocates, civil society, victim advocates, and other social service providers is needed with an objective of prevention, intervention, and treatment strategies to address the crime. Working together within law enforcement agencies will address human trafficking adequately and meet the needs of victims.

Till date, research on the role of law enforcement in human trafficking work from the investigatory phase to the prosecution phase has been limited and hence there is a need to focus, primarily on training of law enforcement agencies. Both India and Nepal should have set protocols/procedures, and trainings specifically designed or developed for human trafficking. What is required is that law enforcement agencies should feel direct responsibility for investigating human trafficking cases. Similar to police, most of the law enforcement prosecutors are also not truly informed/educated about what human trafficking really entails. Therefore, local law enforcement system/agencies need to join the initiatives taken by central government for actively participating in addressing this crime.

In all respects of law enforcement work, there are barriers and challenges faced such as victim's distrust on law enforcement prosecutors, lack of training/knowledge to identify cases, and lack of resources (Clawson, et.al, 2006). For

example, as per the respondent of Kanchanjunga Uddhar Kendra¹², it is difficult to get victim's consent and to gain their trust as many people do not trust the police because most of the cops they found are corrupted within their localities. Furthermore, the challenges faced by law enforcement agencies is lack of awareness among communities or societies regarding the issue of human trafficking and its consequences as a result the cases of trafficking increased day by day.

As human trafficking is an ongoing and increasing crime, more information and education is needed for law enforcement prosecutors to better deal with this crime. Police personnel are familiar with other crimes but human trafficking requires officers to look through different prism to deal with the issue, as it is sensitive and time consuming. Education and knowledge of trafficking in persons among all members of society are solution to beat human traffickers. Thus, it is necessary to use all of the means to raise awareness about the crime, its nature, causes and damage to victims. Governments, civil society, media, and private companies with each and every entity must work toward promoting knowledge of this issue, to address the same effectively.

Citizen reporting is a major area in addressing human trafficking which shouldn't be overlooked. Victims can often be society's most marginalized members and it's up to neighbours and friends to look out for one another. On this note, access to authorities is major issue and the State should ensure that they are easily reachable and that the concerned departments such as the police are themselves educated about human trafficking. In such a situation, civil society or its constituent NGOs has an opportunity to work closer with the State and to assist in identifying those groups most at risk.

Looking to the above issues, there is a need of better understanding of the law enforcement role in a human trafficking case. The law enforcement agencies of both India and Nepal should realize the role in any human trafficking cases in the process from investigation, prevention, protection and prosecution of the vulnerable. The more they understand their role, the more likely they will be able to work together

¹² Kanchanjunga Uddhar Kendra is a NGOs in Siliguri (India), dedicated to help victims of sex trafficking.

effectively to deal with the issue. As discussed earlier, due to various difficulties present in human trafficking issues like lack of trust, lack of cooperation and difficulties in communicating with the victims; it is important for law enforcement agencies to receive proper training with the concerned NGOs and other social service providers with proper system to interact with victims. Additionally, using these materials of cross training of law enforcement officials of both the states will help increase understanding of each other's role and help spread information to victims.

5.3 .d. More Effective Investigation Process by Law Enforcement Agencies

There is a lack of commitment when it comes to the investigation of trafficking. Both in India and Nepal, law enforcement officials receive poor basic training or poor basic investigation skills. There are also no clear training and development plans designed and exercised to develop the knowledge and skills of these officials. In India and Nepal, the external sources like INGOs/NGOs provide training and development opportunities to law enforcement agencies to prepare them for their task as trafficking investigators (UNDOC, 2007). Thus, an effective and efficient measure is possible for law enforcement agencies if both states work in collaboration with such organisations. More so, efforts by such organisation to raise public awareness will help in interception of trafficking victims in the border areas.

An effective investigation response is possible when there is an equal participation of all levels of society, from law enforcement prosecutors/officials to NGOs to immigration officials to local communities. Human trafficking is a sensitive crime, so investigation process requires careful treatment of victims and their witnesses. In the process of investigation, the victims should access proper care, protection and compassion to gain their trust and cooperation. Very often the victim do not trust police or they fear with law enforcement agencies as they will be treated as criminals, incarcerated or deported (Bales & Lize, 2007). Thus, the quality of investigations of trafficking is very low owing to the lack of clear standards and guidelines. The problem gets accentuated further by the lack of effective supervision of investigations within the concerned departments or law enforcement agencies (Pretorius, 2008).

The above issues indicate that the law enforcement officials are not prepared to recognise human trafficking victims or investigate accordingly. However, one of the respondent states that, the law enforcement agencies and institutions of both the states should establish their own innovative policies, procedures, and proper training to handle issues related to human trafficking in collaboration with other international organisations/institutions. It will be further successful with the sharing of policies, practices, procedures, data and information between law enforcement systems of two states can bring positive results in investigating human trafficking. Similarly, strong cooperation between Central, State, and local law enforcement mechanisms, NGOs, and social service providers who deals with human trafficking is required to communicate with the victims and also to provide proper rehabilitation. Such collective initiatives would help to stop the process of human trafficking.

5.3 .e. Effective Border Control between India and Nepal

As mentioned earlier, from the mid-twentieth century, trafficked victims started crossing the Nepal-India border after the *Peace and Friendship Treaty* 1950¹³ between India and Nepal, which established an open border between the two countries. This treaty has given legality to the free movement of people across India Nepal border.

The open border agreement between Nepal and India was designed to facilitate trade and transit between the two countries but now merely enables traffickers to easily transport victims from Nepal to India (Deana, 2010).¹⁴ Due to open and porous border, trafficking in women and girls has become one of the easiest and less risky crimes compared to drugs and arms trafficking from Nepal to India. A number of women and children are trafficked to Indian brothels because of open and unregulated national border between Nepal and India. There is absence of proper law

¹³It was signed on July 31, 1950 by the then Prime Minister of Nepal Mohan Shamsher Jung Rana and Indian Ambassador to Nepal, Chadreshwar Narayan Singh.

¹⁴ Due to lack of effective and practical approach, open border has created so many problems and has affected in social and economic aspects for both Nepal and India. For example; More than five thousand Nepalese girls have been sold annually in the Indian brothels. U.N. Women Development Fund and UNICEF Nepal Field Office mentions that there are near about two hundred thousand Nepalese girls and women in total in India. They are as the consuming commodity in the red-light and prostitution areas of Bombay, Calcutta, Darbhanga, Betia, Siliguri and some other cities of India (UNICEF, 2014).

enforcement mechanism between Nepal and India for border control personals to protect and prevent individual from trafficking, especially women and children.

It is important to note in this context that, none of the treatise between India and Nepal mentions the procedures for the regulation of the Indo-Nepal border (Deane, 2010). As a result, large numbers of anti-social, criminal and illegal activities occurs in the border areas. Therefore, there should be strict action on regulating the movement of population on either side of Nepal and India. Both the States should look into the measures that provide employment opportunities to their citizens in their respective territories to avoid illegal immigration. Along with this, an intensive research, joint reviews or initiatives, successful exchange of ideas on the diverse aspects of open border between India and Nepal would check and regulate illegal activities like human trafficking occurs in the border.

More significantly, the largest volume of trafficking exists in the form of cross-border trafficking of young women and children from Nepal to India. Increasing technology and global cooperation have made world a sense of borderless one, which facilitate migration, both legal and illegal, and make easy accessible for traffickers. In the case of India and Nepal, open and porous border has also created a condition of insecurity or unrest in the country.¹⁵ Cross-border nexus has made both the country vulnerable for not only human trafficking but also smuggling of drugs and arms from Nepal to India¹⁶.

Socio-economic causes like poverty, unemployment, ignorance and insurgency within state encourage large scale cross border movement. Open/porous border between India and Nepal has become one reason behind the easy accessible of trafficking process. However there has been very little attempt by either of the Government to make the border safe. Due to porous/open border, it is exceptionally easy to traffic victims across the border, without recognition, where traffickers lured individuals by making false promises and other coercive measures.

¹⁵ Open border has provided as safe passage to the terrorists. We are aware that Nepalese Maoist terrorists use to cross the borderline and are taking shelter in Indian settlements.

¹⁶ It has been estimated that around 1,268 unmanned routes along the Indo-Nepal border which facilitate human trafficking and other related crimes (Das, 2008: 887).

As India and Nepal share an open border, individuals from Nepal are mostly trafficked by taking detour to sub-routes to enter India. Mostly, these sub-routes provide safe passage for the maximum amount of traffickers as the sub-routes largely remain unmanned. Therefore, there is an urgent need to equally patrol those sub-routes used by the perpetrators to control trafficking, jointly by the police prosecutor with the help of NGOs and related officials. This could help to stop a substantial number of individuals from being exported for commercial purposes.

There is a need of cross-border cooperation between India and Nepal, especially between law enforcement systems to investigate and prosecute the recruiters and the transporters of trafficking in persons cases. There are very few genuine investigations that have been made between India and Nepal to track traffickers and all these are initiated by civil society organisations with the help of concerned departments¹⁷. Cross border cooperation has significantly contributed to breaking down various criminal networks like transnational trafficking of persons or other transnational crimes like drugs and arms trafficking. There should be a strengthening of India- Nepal border controls to fight trafficking, to criminalize all forms of trafficking and to prosecute and punish traffickers. Cross border collaboration and coordination between countries should aim to ensure that there are no safe havens for traffickers. The legal framework of both States must ensure punishment of traffickers by conducting effective investigation and eliminating the proceeds of trafficking with the effective judicial cooperation.

5.3 .f. Addressing Illegal Migration to Curb Trafficking

The process of migration in the name of foreign employment has directly or indirectly linked to human trafficking. Illegal migration contributes to an environment of vulnerability and abuse where anyone can become a victim of trafficking. As illegal migrants are highly vulnerable to being trafficked due to a range of factors like lack of legal status or protection, limited language skills, limited employment options,

¹⁷ For e.g. NGOs like Kanchenjunga Uddhar Kendra (India) and Maiti Nepal (Nepal) have been generously working with this border issue. They are making efforts to safeguard individuals from railway stations, bus stations and other places. They also provide awareness on safe migration to individuals who cross borders.

poverty and immigration related debts, and other socio-economic conditions (Walser, et. al, 2011).

Migration as a trend has been increasing day by day from Nepal to India and to other (Gulf) countries. Women migration to Gulf countries has been mainly associated/ linked to human trafficking. Migrants are pushed to work abroad to cope with unemployment and alleviate poverty. As a consequence, human traffickers lured them operating job facilities in the destinations countries in the name of foreign employment. Most of the women have been reaching other countries via illegal routes by avoiding procedures set by the government¹⁸. As per the information provided by an official of Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs, the Foreign Employment Act 2007 of Nepal has a mandatory provision that every migrant worker must leave the country for foreign job via the country's only international airport. But in effect, maximum number of migrants has used other routes to reach the destination countries. Such illegal/undocumented migration can be one reason of continuous increase of human trafficking in the name of foreign employment. In this matter, the existing laws related to human trafficking, foreign employment, migration etc. should focus or address those problems to control human trafficking in the name of foreign employment. Government, with other law enforcement agencies, NGOs, institutions etc. should work together to eliminate such dark side of foreign employment related human trafficking.

In order to tackle the problem of illegal migration and to reduce the toll of human trafficking in the region, both India and Nepal must take a comprehensive approach of increasing border security and improve legal immigration procedures. To enhance border security, the Department of Immigration should revise the existing measures or propose new measures for effectively responding to the multiple threats related to open border between the states. This should include cooperation through interaction programmes between the border security forces, NGOs, media and other

¹⁸According to one official of Ministry of Women and Child Welfare of Nepal, to control illegal migration, government tried to channelize it through registered agents. But to identify those registered agent is very difficult work because around 60,000 agents are there in Nepal who work as an agent for foreign employment and are indirectly involved in the process of trafficking. According to Anuradha Koirala, the Chairperson of Maiti Nepal over 90 percent of women migrant workers did not have knowledge about the destination and their job nature (Interview held on 23rd May 2014).

related agencies of both India and Nepal. Such programs or initiatives should support or strengthen the developmental process of law enforcement agencies to combat illegal movements of immigrants, issues of corruption, illicit drugs trafficking and human trafficking etc.

As the study reveals, lack of awareness and knowledge among migrants in preparation of passport, visa, government registration, work permit and other necessary documents for migration would make them victims of trafficking. They depend or rely highly on the family members, relatives and friends for migrating abroad and later on became the victim of trafficking. Further, high reliance on middle man, lack of information, lack of knowledge and awareness are also main causes of being deceived both in the host country and the country of origin. In this case, women got easily lured and trapped into human trafficking and other crimes.

To deal effectively with such problems, the concerned departments, NGOs, social workers, and public officials should conduct informational campaigns or awareness programs regarding safe migration as an initiative to educate and inform individuals about illegal activities. Such actions would aim at reducing illegal migration and other related crimes from the states. According to the chairperson of Ministry of Women, Child and Social Welfare of Nepal, developing individual responsibility, building trust in law enforcement institutions and to keep away from being victims of unlawful crime are crucial aspects in fighting illegal immigration and human trafficking.

Hence, it has been an immediate responsibility of both the federal governments to address the illegal migration problem which creates and perpetuates an environment in which exploitation of innocent runs out of control. Governments, recruiting agents and NGOs need to work together under a common strategy to ensure safe and dignified employment opportunities abroad. To ensure this, there is a need for thorough analysis and investigation as to what are the root causes of choosing risky routes by thousands of migrants who falls prey to the human traffickers. Illegal immigration is largely a consequence of slow economies within a country. In order to resolve this problem, both states should implement schemes for employment like

small-scale or cottage industries that would meet the needs of unemployed and also put down the drive for illegal immigration. Such schemes would help to reduce the need for individuals to seek employment outside the country. In short, a comprehensive and collective strategy is needed to combat human trafficking with a better enforcement of both the States immigration laws and greater cooperation in law enforcement.

5.3 .g. Reforms in Rescue, Rehabilitation and Reintegration Programmes

The legal responses to the trafficking focuses on the framework of prosecuting traffickers, protecting trafficked persons and preventing trafficking which comprise of rescue, rehabilitation, and reintegration of the trafficking victims (Pandey, et al., 2013). Rescue is removal of a victim from trafficking situation, it implies a safe withdrawal of victims from the place of exploitation (ibid, 6). Rehabilitation is a phase that covers the period of physical and psychological recovery, and social integration (Zimmerman, 2003). In this phase, a support from concerned departments or other organisations is essential as this is difficult time for trafficked ones who escaped and want to lead normal life in the society. Reintegration is often referred to as the return stage where victims require assistance in the form of legal representation with social respect and dignity as she/he was trafficked before. There are limited number of laws and policies both India and Nepal - that has procedures and provisions for the rescue, rehabilitation and reintegration of survivors of human trafficking. The rescued victims have trouble accessing compensation and achieving a safe recovery due to loose policies and moreover the failure of implementation of them.

In the words of Pandey, lack of effective empowerment provisions for victims during rehabilitation process may disrupt the reintegration process and provoke many victims to retreat to their exploitative situations (Pandey, et al., 2013). Therefore, an effective rehabilitation and reintegration framework should be included in new anti-trafficking laws that must ensure safety and wellbeing of victims and their community, simultaneously securing human rights and safeguarding against their re-victimisation and retaliation. Further, there should be provisions for fully government

funded rehabilitation homes in the laws of both States for the proper reintegration of rescued victims. Such shelters homes should provide various schemes or programmes for the rescued victims to avail financial benefits. These shelter homes should allow the rescued victims to lead a normal life. Such shelter can ensure health check-up, counselling, meditation, cultural programmes, skill training etc. time to time.

Similarly, the criminal justice system's response to trafficking should acknowledge the fact that victims of trafficking have usually been undergone through traumatic and often horrific experiences and that they have a right to be treated with dignity. It is generally accepted that the legal support should be provided to all victims with an enforceable right of immediate support and protection. Victims should have the legal right to have their immediate physical safety ensured and to be protected, by the state from further harm (*UN Trafficking Protocol 2000*, Articles 6 & 9). In this matter, civil society organisations of both India and Nepal proved to be an important partner or agency in the delivery of such support and victim protection, though the Government has ultimate responsibility for the well-being and safety of the victims. Thus, States in collaboration with such NGOs should ensure that victims are provided with information and assistance that will enable them to actually secure the compensation or restitution to which they are entitled (UNODC, 2004: 285-6).

Further, the Central and State governments of both the States should take effective, speedy and practical steps to ensure that the existing legal provisions against human trafficking especially exploitation of women and children are strictly enforced. Considering the need for rehabilitation of the rescued victims of cross-border trafficking, the concerned departments of Nepal and India in collaboration with NGOs of both the States should take initiatives to establish shelter homes or transit homes for rescued victims and should provide proper repatriation and rehabilitation of the survivors. Hence, it is necessary to establish a voluntary organisation for advocacy and protection for the rescued victims. Such organisations, with the help of Government and NGOs of both States, should regularly follow-up the rescued victims for their repatriation/rehabilitation and consequent social integration. Because, it is a very difficult task for law enforcement agencies to convince victims to cooperate

because of trauma, fear of retaliation and the distrust to national law enforcement authorities.

Special and enhanced measures should also be in place to provide safety, support and assistance to child victims and to protect their privacy during their stay in the country of destination and throughout any repatriation (*UN Trafficking Protocol* 2000, Art. 6). Protection of Children's right as a measure from child trafficking, violence, exploitation and abuse should be developed in both the States and made operational in national and community levels (UNICEF, 2008). These measures include empowering children and youth through raising awareness on the risk of trafficking as well as its legal and policy framework to combat such a crime. Rescued child victims should provide child-friendly legal, medical and psychosocial services with proper reintegration programmes. Systematic collection of data and monitoring is also needed to control the magnitude of child trafficking.

Special support to victims as witness should be provided by the law enforcement agencies, as victims have a critical role to play in the criminal prosecution of traffickers. It will be difficult or impossible to investigate and prosecute without the cooperation and testimony of victims. It is a fact that victims of trafficking are often unwilling to cooperate with criminal investigations for fear of harm to themselves or their families. In such situations, the State or concerned department or law enforcement officials should do all within its power and resources to provide or otherwise ensure effective protection to victims who are cooperating in criminal investigations (*UN Organized Crime Convention* 2000, Art.24). Victims should also be provided with adequate levels of support, assistance and information for the duration of their involvement in criminal proceedings. They should not be repatriated until after the completion of relevant legal proceedings and after they have been able to claim and receive compensation or other remedies (*UN Trafficking Protocol*, 2000, Art 8).

Effective laws should be in place to protect the privacy of victim-witnesses and the confidentiality of their identities. They should be aware of their rights and the legal processes should be in a language that they understand (Gallagher, 2008). These are all critical to both India's and Nepal's criminal justice systems to find better ways

to help out victims of trafficking, to ensure their participation in court processes and also considering their safety and protection. Establishment of a Special Court in the nearest border area of both the States would help to take strict and speedy action in case of processing of trafficking.

5.3.h. Collaboration and Cooperation among Concerned Anti-Trafficking Institutions

The major political parties of both India and Nepal have expressed commitment to combating human trafficking, however the governmental response is proved minimal in this phenomenon. Insufficient collaboration among the concerned governmental agencies or ministries, lack of adequate expertise within law enforcement officials, lack of resources, lack of knowledge on the human trafficking as a phenomenon, low provisions of the existing legal procedures etc. are the main factors impacting both the Government's capacity to control human trafficking in the country.

The coordination between institutions such as the Ministry of Women and Child Development (MWCD), Ministry of Home Affairs (MHA), National Human Rights Commission (NHRC), National Commission for Women (NCW), Anti Human Trafficking Units etc. of India and the Ministry of Women, Children and Social Welfare (MoWCSW), National Human Rights Commission (NHRC), Ministry of Labour and Transport Management (MoLTM), Ministry of Foreign Affairs (MoFA), etc. of Nepal is minimal. Similarly in the local level too, there is an absence of coordination between the concerned agencies and stakeholders. Besides, there is a lack of conceptual clarity about the role of these concerned institutions in combating human trafficking which has an effect in the lack of cooperation with each other.

In Nepal, the central agency responsible for formulating and implementing laws, plans and policies related to human trafficking is Ministry of Women, Children and Social Welfare (MoWCSW) (American Bar Association, Nepal, 2011). Despite of its potential role in counter-trafficking efforts, the MoWCSW is viewed as welfare institution and it fails to coordinate its activities with other institutions. As per the information of MoWCSW's chairperson, the power to formulate and implement anti-

trafficking laws and policies should have given to MHA, which comprises of seven departments that deals with the issues of crime and would be a perfect ministry to handle human trafficking. Similarly, in India the concerned institutions are executing their objectives by projecting several Plan of Actions to combat human trafficking, but those initiatives has not been effectively implemented yet, to lower down the crime of human trafficking. According to the official of National Commission for Women, there is a need of complete reformation or restructuring of legal frameworks from bottom to top level to have an effective implementation or enforcement of laws.

In the case of India-Nepal, the NGOs or INGOs are more effectively came out with their objectives to combat human trafficking. These organizations are more attached in their expertise, interest or commitment such as awareness raising among vulnerable groups, research, support to shelters, and assistance in victim return and rehabilitation. Political commitment from the major political parties in supporting stronger and more effective national criminal justice systems to investigate and prosecute trafficking is a need of the hour. Thus, the governmental response to human trafficking should be more holistic and should involve deeper collaboration and coordination between governmental institutions, civil society organisations, stakeholders etc.

Civil society organisations and its constituent NGOs working with trafficked persons will be encouraged to participate in monitoring and evaluating the human rights impact of anti-trafficking measures in collaboration with States in order to ensure that trafficked persons receive necessary support and assistance. The bilateral or regional cooperation between India and Nepal will bring out essential agreements, laws, policies concerning cross border trafficking in accordance with international law related to human trafficking.

Therefore, the study reveals that both India and Nepal will have to develop required guidelines and procedures and ensure cooperation between authorities or officials who deals with trafficking, INGOs, NGOs, etc. to facilitate rescue, rehabilitation and reintegration assistance to trafficked persons.

5.3 .i. Re-examining the SAARC Convention in case of Human Trafficking

Legal jurisdiction to provide safeguard against such crimes like human trafficking is not fully implemented in the South Asian region as a whole. For instance, the *SAARC Convention on Combating the Crime of Trafficking in Women and Children for Prostitution*, 2002 has been ratified but not been implemented in an effective manner yet. The various signatories have agreed upon strengthening of the same, but the problem is such initiatives are only in paper and not in actual practice. The negligence on the enforcement of existing laws and legislations results in the failure of such laws and provisions designed for the noble cause. It stands as a major challenge in front of the nation states of South Asia. The loose provisions of such regional instrument also lead to the re-trafficking of the rescued victims.

One of the major shortcomings is that the definition provided in the Convention is very narrow and focuses only on ‘prostitution’¹⁹. The title of the SAARC Convention should be expanded to cover trafficking not only for the issue of prostitution but also for other issues such as forced labour, slavery, bondage, organ transplant, forced beggary and forced marriage. There is little evidence that the Convention has exerted any influence over anti-trafficking law, policy, or practice at either the regional or national levels (Gallagher, 2010). Two bodies mandated by the Convention- a regional taskforce responsible for implementation of its provisions and a regional voluntary fund for the rehabilitation and reintegration of victims of trafficking- are yet to be established. These are some relevant issues, which have been ignored in the SAARC trafficking Convention. Regional cooperation over human trafficking issue is needed backed by strong political will and commitment by SAARC member states. Implementation of SAARC Convention with greater seriousness by the member states is required which comprises of effective prevention, prosecution and rehabilitation/reintegration activities.

¹⁹The person subject to trafficking means “women and children victimised or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage or any other unlawful means” (*SAARC Convention on Combating the Crime of Trafficking in Women and Children for Prostitution*, 2002).

5.3.j. Bringing Gender Sensitivity in the Policies and Provisions on Human Trafficking

Human trafficking is a crime which is inherently gender sensitive. Human trafficking violates basic human rights of women and children, including the rights to equality, dignity, security, and freedom from violence and torture. In India and Nepal, human beings, especially women and children, are trafficked for commercial sexual exploitation or forced marriage, as well as for involuntary servitude as child soldiers, domestic servants, circus entertainment, and factory workers. Sex trafficking is one form of human trafficking and the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), consider sex trafficking a form of sex discrimination and a human rights violation (CEDAW, Art. 6).

Human trafficking is both a human rights violation and the fastest growing criminal industry in the world where human beings are often isolated, intimidated, sold into debt bondage, subject to physical and mental assault with post-traumatic stress disorder and disassociation, and are at greater risk of contracting sexually transmissible infections including HIV/AIDS. Women and girls who are also trafficked into industries other than commercial sex industry, including agricultural work, factory work, domestic servant, etc. are also at high risk of HIV/AIDS transmission, because trafficked women in all industries become more vulnerable to sexual exploitation²⁰.

It has been recognized that both trafficking and HIV/AIDS are burning issue of contemporary world. However, much more is being done to address the issues of Trafficking and HIV/AIDS by India and Nepal. There are still much to do to stop/minimize the increased risk of HIV/AIDS infection as a result of human trafficking at all stages during the process of human trafficking²¹.

It is evident, both the State's constitution ensures gender equality under law. The National Policy on Combating Trafficking under MOWCSW (Nepal) and

²⁰ Maiti Nepal found that 38% of rescued women are girls from Nepal who are rescued suffered from HIV/AIDS, as well as sexually transmitted infections and tuberculosis (Maiti Nepal, 2010).

²¹ For e.g., pre-departure, transit, arrival, exploitation, identification, rehabilitation, repatriation, reintegration (UNGIFT, 2010).

MWCD (India) includes commitments that discriminate against women, takes all necessary measures to protect the rights of women, and take steps to alleviate poverty and provide employment opportunities to women. In addition, the National Plan of Action of both the States proposes training programs for behaviour and attitude change on gender issues and trafficking. However, several laws still discriminate against women, especially in the areas of property, inheritance, and migration. A legal environment that limits options and redress for women in difficult marital and financial situations may force them to migrate, legally or illegally, and increase their vulnerability to trafficking.

Hence, a holistic and comprehensive strategy is needed by both the states' to bring gender sensitivity in combat human trafficking that violates an individual's human rights. Effort must also include elimination of gender discrimination that trap women in poverty and fail to protect them from violence and make them vulnerable to human trafficking. It is essential to implement legal safeguards for women and girls to alleviate poverty and create non exploitative measures for women and girl child. However, a strong anti-trafficking law in India and Nepal is needed that prevent trafficking, including domestic trafficking, and punish exploiters. In addition, a complete strategy is needed to end trafficking and care for survivors of trafficking who are infected with AIDS. Such strategy should be on transformation of society based on gender equality, the legal system, and education, and of discriminatory practices against women. Similarly, national, bilateral, regional and international legislation is required to fight against cross-border trafficking between India and Nepal. Since sex trafficking is a cross-border problem, there is a need of review and improvement of national existing legislations addressing trafficking for sexual exploitation and prostitution. Further, preventive measures with public awareness and health education to control the spread of HIV/AIDS should be encouraged in the local level.

5.4 Course of Action on Laws of Human Trafficking in India and Nepal

Both India and Nepal have tried to include all measures in their existing laws/legal processes of human trafficking and other related laws to curtail the menace of human

trafficking, but still both states doesn't fulfil the minimum standards for elimination of trafficking. Number of legislations and Plan of Actions are initiated by both states. They conducted programmes like awareness-raising measures, measures relating to data collection and research, economic and social policies with the aim at addressing the root causes of human trafficking, border control measures and legislative measures. However, there are several priorities that need to be kept in mind when looking to the improvement of the legal framework or law enforcement agencies and victim assistance. Some of them are identified in this study underlined below with a possible route to prevent future human trafficking:

1. The lack of specific or adequate legislation on human trafficking at India and Nepal has been identified as one of the major obstacles in the fight against trafficking. There is an urgent need to harmonize legal definitions, procedures and cooperation at the national and regional levels in accordance with international standards, especially the UN Trafficking Protocol. The existing laws of human trafficking of both India and Nepal are limited one that doesn't define human trafficking comprehensively. As explained earlier, definitions provided by both the states give more importance to sexual trafficking as one form of human trafficking. Therefore, the national legislations of both the states needs to be upgraded by covering all aspects of trafficking such as debt bondage, forced labour, child trafficking, organ transplantation including sex trafficking.

The development/reviewing of the existing legal framework equivalent with relevant international instruments and standards will also play an important role in the prevention or protection of trafficking and other related exploitation. Both the states should make effective legislative provisions for criminal penalties, where persons found guilty of trafficking should strictly be punished.

In addition to this, the legislation should also make from victims perspective or for the benefit of victims of trafficking. For this, Provisions for the compensation by exploiters to the victims should also be added. Anti-

trafficking laws should ensure the protection of trafficked persons with full security at the time of deportation to their family. Law enforcement agencies of both states should guarantee the protections for witness of the victims, including legislative protection for trafficked persons who voluntarily agree to cooperate with law enforcement authorities. Till now laws are made that focus more on the punishment to the perpetrators of the crime, and no laws are made in victim perspective that focuses rescue, rehabilitation and reintegration of the victims. Thus, effective legal rights should be provided to victims in their rehabilitation process which is to be backed by law.

2. An adequate law enforcement responses to trafficking is dependent on the cooperation of trafficked persons as witnesses. However, victims are unwilling or unable to report against traffickers or to serve as witnesses because they lack confidence in the police and the judicial system because of an absence of effective protection mechanisms (UNHCHR, 2002). These kinds of problems arise when law enforcement officials are corrupted or involved in trafficking cases. Hence, strong measures need to be taken to ensure that such corrupted officials must be prosecuted and punished. With the devoted officials to deal with such crime, strict actions should also be made to punish law enforcement officials who are involved in corruption.

Both the governments, concerned departments, INGOs and NGOs should sensitize law enforcement authorities/agencies to their primary responsibility to ensure the safety and immediate well-being of trafficked victims. Law enforcement authorities including police, prosecutors, border immigration officials, judicial authorities, social and public health workers should efficiently cooperate to fight against the problem of trafficking and should provide the provision of specialized training to combat trafficking by protecting the rights of victims. Respective government should also encourage law enforcing authorities to work in partnership with NGOs to ensure that rescued victims receive necessary support and assistance.

Because civil society organizations and NGOs are proved more effective than government agencies in exposing human trafficking networks in South Asia,

both the entity should work together to ensure the rehabilitation of the victims in terms of providing them healthcare, education, self- esteem measures and other employment opportunities. The weakness of each of the institutions could be compensated by the other, if they work together by sharing information and extending legal jurisdictions whenever and wherever needed.

3. Establishment of fast track courts, time-bound judicial remedy for prosecution and extradition of the trafficker(s), and rehabilitation and repatriation of the victims of trafficking is needed in India and Nepal. The poor families of India and Nepal cannot afford to file their cases in the court because of lengthy legal process and high processing fee. Maximum numbers of the victim's parents are afraid to file a case because of ignorance, economic issues and lack of information regarding it. Most of the rural areas in Nepal have a lack of proper road networks which make it very difficult for the parents of the victims to travel and file their case and have an effective court hearing in their respective wards.

It leads to the need of a special court exclusively to deal with such cases in the nearest possible border area. This can shorten the case hearing duration and curtail the processing fees involved in the cases related to human trafficking. It would be an easy way for the poor people to complain or file their respective cases in the court with minimum expenditure which will further help to control human trafficking from the region. The lengthy legal process should be made short in order to have speedy action towards the traffickers. Human trafficking is one of the busiest crimes in the world affecting many therefore if speedy and strict actions are made available against traffickers it would help in cutting down the magnitude of human trafficking.

4. Proper training to law enforcement officials is an obvious starting point and should aim to improve awareness of the crime of trafficking as well as of the law enforcement role (Clawson, et.al, 2006). It should cover those topics within which these law enforcement officials are able to make an impact on the areas like intelligence gathering, victim identification, planning and executing victim rescue and suspect arrest operations, and the securing and

preservation of trafficking related evidence (Gallagher, 2008). However, some interaction programmes entitled “Combating Human Trafficking”, “Girl Trafficking and its effects at the Border” etc. have already been taken by the NGOs of India and Nepal in collaboration with police officials, social organizations, political leaders, human rights defenders, women’s groups and the media of both the states. They provide information on safe migration every year for the migrant girls and women, provide medical services and clothes to the survivors of trafficking, and provide psychological counselling to the victims. A much more effective collaboration is needed between Governments, NGOs, and law enforcement officials of both India and Nepal to combat cross border human trafficking.

5. In South Asia, SAARC as a regional organization should legitimate a proposal for development of a region-wide training course in this regard that will be shaped to the particular needs of each of its member States. This strategy will seek to strengthen or contribute to coherent and unified relations between law enforcement agencies of both the States. Further, SAARC Convention should elaborate its purposes using the UN Trafficking Protocol²² and relevant international human rights/trafficking standards as a baseline and framework. SAARC Convention should expand the definition of trafficking covering all forms of exploitation and not just prostitution as equal with the UN Protocol on Trafficking which has the only internationally accepted definition of trafficking. The SAARC Convention should further emphasis on the subject such as; to prevent and combat trafficking in persons, paying particular attention to women and children; to protect and assist the victims of such trafficking with full respect for their human rights and dignity; and to promote cooperation among states parties in order to meet those objectives (Global March against Child Labour, 2013).

²² The UN Trafficking Protocol divide human trafficking in three components: (1) an act (e.g., transportation, or receipt of persons), (2) by a specified means (e.g., threat or use of force or other forms of coercion, abduction, fraud, etc.), (3) resulting in “exploitation”. Exploitation is defined as “including, at a minimum, the exploitation of the prostitution of others, or other forms of sexual exploitation, forced labour or services, slavery or similar practices, servitude, or the removal of organs”.

The SAARC Convention should emphasize on the systematic safe migration policies and effective border control that needs to be developed to ensure that when people move it is not for the purpose of exploitation reducing vulnerability of people to be trafficked. The Regional Task Force on Trafficking composed of government, concerned departments, civil society members, law enforcement agencies of all member States should provide recommendation, suggestions and guidelines to the State Parties and monitor and overlook the effective implementation of the Convention. Establishment of SAARC Regional Fund to combat trafficking in persons dedicated to prevention, awareness generation for elimination of trafficking in persons and victims assistance in the south Asian region including repatriation, rehabilitation and reintegration. Social and economic welfare measures should be formulated and implemented by SAARC with special focus on trafficking prone regions like India and Nepal. This will promote regional cooperation to effectively deal with the prevention, elimination and suppression of trafficking and the repatriation, rehabilitation and reintegration of victims. Cooperation and collaboration between the member states to combat human trafficking is required with enthusiastic step to prevent, protect and prosecute the individuals. Above all, implementation or strengthening of the SAARC Convention as a regional institution against human trafficking is needed.

6. There is a need of growing recognition of the importance of a well-developed bilateral and regional networks for prosecutors and law enforcement authorities that are reinforced through regular meetings and exchanges of information, including discussion on border control measures, safe migration, rehabilitation and reintegration measures of rescued victims etc. With the bilateral or regional cooperation, both the states should adopt or strengthen legislative, educational, social, cultural, or other measures to discourage the demand that fosters all forms of exploitation of individuals, especially women and children who are more vulnerable to trafficking.

There are many potential roles that law enforcement agencies can play in a human trafficking issue. Their primary role in working on cases of human

trafficking is to conduct both open and secret operations, following with conducting surveillance, investigations, interviewing victims, and rehabilitation of victims etc. There is an urgent need for greater education and cross training within law enforcement prosecutors of central, state and district levels. One critical role that law enforcement plays in a human trafficking issue is granting continued presence to victims to provide legal remedy, legal assistance and integration.

7. Criminal procedures would also be modified and improved in both India and Nepal to ensure gender/child sensitive application of judicial processes and efficient and quick prosecution of traffickers, including summary disposal of cases of human trafficking specially of women and children. Both the governments should take appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of gender equality, the right to equal pay for equal work and the right to equality in employment opportunities. The Governments should also address all forms of discrimination against minorities. Governments should encourage gender sensitization and education on equal and respectful relationships between male and female which results in preventing violence against women. Such initiatives will offer livelihood options for women including basic education, equal access to and control over economic and financial resources, communication and other skills etc. Further, States should ensure safe migration; especially women and girls are properly informed about the risks of migration like exploitation, debt bondage, health issues including HIV/AIDS and other sexually transmitted diseases. They should also inform about legal or non-exploitative migration.
8. The governments should promote both economic development and social inclusion to reduce migration which is as a factor of trafficking from the state which has been fostered by social, economic and political instability. The immigration officials and labour department should address the problem of unprotected, informal and often illegal labour with a view to maintain possibilities of regular migration. Government should enhance job

opportunities for women by facilitating business in micro small and medium scale enterprises. Further, governments with its concerned department should strengthen border and immigration controls to address problems of corruption among law enforcement such as police, customs officials, border guards, railway and airline staffs.

Many victims are held in debt bondage by their exploiters. Laws that prevent bonded labour would be enforced or amended where necessary to ensure release of victims from debt bondage. Reviewing and modifying the existing policies and laws related to labour may compel individuals alert from irregular and vulnerable labour migration. Government should provide various opportunities for legal and non-exploitative labour migration based on the rights of migrant workers.

9. Trafficking is a regional and global phenomenon that cannot always be dealt with effectively at the national level. International, multilateral and bilateral cooperation can play an important role in combating trafficking activities. Such cooperation is significantly needed between India and Nepal in different stages of the trafficking cycle. India and Nepal should adopt bilateral agreement with the aim of preventing trafficking, protecting the rights and dignity of trafficked persons and promoting their welfare. Both the states should ensure judicial cooperation between states in joint investigations and judicial processes relating to trafficking and related offences. This cooperation should include identifying and interviewing witnesses with due regard for their safety; identifying, obtaining and preserving evidence; producing and serving the legal documents necessary to secure evidence and witnesses; and the enforcement of judgements (UNHCHR, 2002).

Hence, a rational measures is required to tackle the problem of cross-border trafficking which cannot be dealt with at the national level alone. International, multilateral and bilateral cooperation can play an important role in preventing and combating trafficking activities. Strict and efficient bilateral agreements between India and Nepal should adopt to prevent trafficking and

protecting the rights and dignity of trafficked persons. Bilateral agreements should be made in accordance with UN Convention of Trafficking and its Protocol which is considered as internationally accepted definition of human trafficking. Central and State Government should also take effective, speedy and practical steps to ensure that the existing legal provisions against human trafficking especially exploitation of women and children are strictly enforced. Governments should make effective provision for trafficked victims by giving legal information, assistance and support ensuring that the right of trafficking victims to pursue civil claims against alleged traffickers is enshrined in law (NHRC, 2015).

10. Anti- trafficking and Prevention Cells should be set up in major cities and in districts which are identified as high supply areas. These cells would consist of specially trained and sensitised Police Officers at every level who would ensure that the laws are enforced to arrest the traffickers or exploiters and provide humane treatment to the victims. As far as possible, women police officials would be placed to these cells. It has been found, in several cases, that the constraints on the Police Station Officers, including their diverse duties and heavy workload, made the anti-trafficking measures ineffective. Anti-trafficking and preventive cells can organise programmes and projects to strengthen the law enforcement in both India and Nepal against trafficking through training and capacity building. This will build up law enforcement capacity to better investigate the crime and prosecute the offenders perpetrating such crimes. Such Cells should also be responsible to collect and analyse the data related to human trafficking and identify the causes or problem with monitoring actions for combating the crime.
11. Members of Advisory Boards, NGOs representatives and Government officials who work for the welfare of women and child victims of both the states should encourage and facilitate cooperation as the countries of origin and destination to ensure support and assistance to trafficked persons who are repatriated. The cooperation should include the provision of assistance in

identifying or tracing individuals connected to trafficking and related exploitation. Counselling and free legal assistance should be provided by the Advisory board or civil society organisations to women victims who are in the custodial places or rehabilitation centres. This will help in addressing the devastating and growing problem of human trafficking with the skills and tools necessary to the legal community to join the fight against human trafficking.

12. Special anti-trafficking units or task forces should be set up in major cities to effectively coordinate activities for the prevention, suppression, rescue, rehabilitation and reintegration in case of commercial sexual exploitation and to coordinate among the various agencies involved. This Task Force should consist of law enforcement officers, prosecutors, legal aid officials, social welfare officers, probation officers, officers in charge of Juvenile Homes, Protective homes, destitute homes, Women and Child Development Officers, medical personnel, and STD/AIDS experts, The Municipal Officers, educational experts, Psychologists, social workers and representatives of NGOs working in this area can also be included in this Task Force/Anti Trafficking Units.

Major objective of this anti-trafficking units is to bring effective networking among its partners working on specialised aspects of human trafficking, ensuring a victim-centric approach that account interest of the victims and prevent from re-victimisation. The action of anti-trafficking unit has to be implemented in local level for taking up activities of prevention of the vulnerable. In this process, the government of both states should instruct its village level officials to be involved in anti-trafficking unit to deal with the problem.

13. Serious steps should be taken to enforce existing provisions of law against human trafficking. It is necessary for both India and Nepal to review or reassess the existing laws to eliminate all forms of human trafficking-labour trafficking, child trafficking and sex trafficking. The new legislation with

effective procedures is the need of the hour for both the states. There should be restriction on the operation of commercial and sexual exploitation of women and children by regulating raids or bans wherever necessary to the institutions like illegal brothels, massage parlours, call girl rackets, cabaret shows, etc. Therefore, sensitisation within the law enforcement officials to human trafficking issues along with the changes or review of laws of India and Nepal would bring possible result to control trafficking.

14. There should be special measures for the protection and support of child victims of trafficking. The child victims should be dealt separately from adult trafficked persons in terms of laws, policies, programmes and interventions. Child victims of trafficking should be provided with appropriate assistance and protection taking care of their special rights and needs. Children who have been victims of trafficking should be provided with appropriate physical, psychological, legal, educational, and health care assistance.
15. There should be a fully government-funded trafficking victim's rehabilitation and welfare homes in India and Nepal for the rescued victims. Provisions must be made in the legal framework of both the States for real and sustainable rehabilitation homes, which provide necessary linkages to various schemes and programs for rescued trafficked victims, especially women and children. Programs like micro or small scale industry provides large employment opportunities contributing to the socio-economic development of the trafficked victims. Enactment of such programs would prevent victims of trafficking from re-victimisation, social prejudices, economic inequity etc.
16. More rigorous empirical research on human trafficking should be done regularly within the country to generate better updated/accurate data, which is of use for more effective strategy and reporting to enhance anti-trafficking efforts. Similarly, rigorous evaluation of policies and programmes are needed to identify the limitations and to frame the most effective counter trafficking strategies. Precise methodologies with qualitative and quantitative indicators

should be developed to address the lack of research and data on trafficking in both India and Nepal.

Some of the major gaps and weakness in current empirical research needs to be overcome as well. These include the over focus on trafficking for sex and less on labour exploitation²³, lack of studies presenting the viewpoints of the victims, lack of research on trafficking of boys and men, scattered research findings, lack of interdisciplinary studies, and lack of evaluations of policy response or counter-trafficking programmes etc. (Laczko and Gozdzia, 2005). In-depth studies, discussions and analysis by overcoming these weaknesses of such issues would enhance the quality of data collected and therefore, develop better ways to address human trafficking. Hence, by conducting rigorous research with relevant methodologies and interpretive techniques will check the scale of human trafficking with effective counter trafficking strategies.

Finally, more effective cooperation between Nepal as a source and India as a destination state is required. Effective investigation in the cases involving human trafficking should be carried out with the aim to destroy the magnitude of trafficking. There is an urgent need of joint initiative between both the government of India and Nepal in terms of providing legal assistance to the victims, providing information on safe migration to cross border victims and also need joint investigations to reduce the ongoing scale of human trafficking from the nation. Cooperation mechanism with rapid action plans between countries must be set up to restrict cross border trafficking.

Above measures will contribute both the states to adopt appropriate legislative and other measures to tackle with human trafficking and other related crimes. Both the State would be able to effectively examine, prosecute and deliver judgment to the offender of trafficking and other related crimes. States will ensure that trafficked persons are given access to effective and appropriate legal assistance with compensation from the traffickers. Law enforcement agencies will ensure that the

²³ In India, the human trafficking laws and efforts have historically focused exclusively on trafficking for sexual exploitation purposes despite the fact that the majority of human trafficking in India is for the purpose of forced labour.

issue of gender-based discrimination is addressed systematically when anti-trafficking measures are proposed, protecting the right of all persons to freedom of movement. States will also have to ensure that anti-trafficking laws, policies, and programmes do not affect the right of all persons including the trafficked.

5.6 Conclusion

While it is clear that India and Nepal have made enormous progress towards combating human trafficking, the region still does not comply with international standards and much still needs to be done to tackle with the problem of cross border human trafficking. Firstly, India and Nepal should implement the international laws related to the human trafficking in its national legislation, especially *The UN Trafficking Protocol*. This is because, the *UN Trafficking Protocol* is a more uniform system of anti-trafficking frameworks for tackling cross border trafficking. Existing domestic laws must be modified by in cooperating definitions on trafficking in accordance with this Protocol.

The SAARC as a regional organisation can play a crucial role in this regard by arranging some regional instruments in South Asia to prevent human trafficking. SAARC should focus on strengthening the capacity of the judicial system and law enforcement agencies of all member states to manage trafficking cases through number of trainings. The South Asian countries should develop some special common laws to protect victims of human trafficking and to prevent them from being re-victimised. India and Nepal should make bilateral agreements between them to end trafficking by acknowledging the fact that human trafficking is a violation of human rights and forced labour and the sexual exploitation as the main motive of traffickers and most of the trafficking takes place between India and Nepal.

Both States must develop measures to prevent the individuals from illegal migration and the exploitation of trafficking of labour. There is an urgent need of strict and speedy law enforcement mechanism within India and Nepal. The existing laws for all forms of trafficking and related crimes should be made in accordance with international standards. The future legal framework should facilitate victims to seek and receive remedies including compensation from traffickers, because till now the

existing laws don't include procedures on victims' standpoint rather than to punish perpetrators. The major concern is that law enforcement agencies should ensure protection of the trafficked persons from any kind of harm or threats by the traffickers and prosecution and punishment of those culprits. Further, a special agency or task force should be appointed within or between two states to perform the review and suggest reforms to structures, law and policy to improve protection, prevention and prosecution in the cases of human trafficking.

To conclude, initiating new anti-trafficking legislations in both the states would be a first step that will not only penalize the perpetrators of human trafficking, but also provide comprehensive services to the victims of human trafficking. These laws must be accompanied by adequate law enforcement initiatives that thoroughly address the conditions of vulnerability that lead to human trafficking.

Chapter VI

Conclusion

With the advent of globalisation, an increasing number of people have begun to move across borders for different purposes. In that process, human trafficking or the illegal moving or selling of human beings across countries and continents is done for the exchange of financial or other compensation (bonded labour). While most of these victims are trafficked for sexual exploitation, others are exploited for their labour. Likewise, People are trafficked from one place to another through force or by fraudulent methods for the purpose of exploitation.

At the outset, human trafficking is prominent crime against humanity even in the twenty first century. It affects territorial integrity of states through violations of various criminal and immigrations laws, and it resorts to violence and corruption. Many people resort to human trafficking as it is a highly profitable enterprise and therefore, it remains as the third largest crime in the world after drugs and weapons trafficking. Over the period, human trafficking has grown to the level of the largest growing crime industry in the world. Many people are being transported annually across national borders which is an immense threat to national and international security. Similarly, threats like spread of HIV/AIDS and other STDs across communities and nationals have the potential to harm the human resource of any nation-state. And most significantly, it can prove a major threat to national and international security as world's sex traffickers are connected to organized crime syndicates including terrorists groups and mafia groups.

With regard in South Asian context, human trafficking has been considered as one of the most prominent form of organised crime in the region. In South Asia, socio-economic problems make people more vulnerable towards human trafficking. India and Nepal are two important countries which draw special attention in the current human trafficking scenario within South Asia. Nepal serves as source/supplier in men, women and children to India. India, on the other, act as an important destination and a hub for these trafficked individuals. Among South Asian states, India and Nepal share special closeness and similarities in cultural, social and geographical areas. The Indo-Nepal border is open where Nepal and Indian nationals

may move freely across the border leading to increased cross-border migrations. As a result of open border that is not manned literally, cross-border migration and trafficking is rampant between Nepal to India. This has led to increase in undocumented or illegal migration. Vulnerable women and children become easy victims for labour and sex trade. Besides cross-border trafficking, intra trafficking of men, women and children from rural to urban areas is another important issue in India and Nepal.

As discussed in the chapters, the increase of human trafficking between India and Nepal is caused by different factors. Economic injustice like poverty; unemployment; social inequality based on gender, caste, race, ethnicity, forced/early marriage and patriarchal social system; insufficient existing laws or lack of law enforcement; corruption; civil war or other internal unrest; natural calamities like earthquake are some noteworthy of these factors that cause/intensify human trafficking between India and Nepal.

It was found during the interview that one of the reasons behind the increasing rate of human trafficking is lack of awareness about the phenomenon associated with migration for a purpose of brighter future. Most of the victims are from poor families and are lured by false pretence under marriages or promises of employment. It is also observed that poverty in Nepal have forced number of Nepalese to cross over to India either legally or illegally in search of livelihood. Natural calamities are other aspects for rising issue of human trafficking. It is estimated by Ministry of Home Affairs (India), that human trafficking has increased three-fold after the April 25th earthquake in Nepal (Tiwary, 2015). In the wake of such an earthquake tragedy, the poor, especially women and children are most vulnerable to trafficking. As a result, majority of the victims who were rescued from trafficking after Nepal quake were children and women. According to MHA the figures show a, 500% increase from the 2014 numbers (MHA, 2015)

As discussed in chapter II and III, number of programmes has been introduced by International Non-Governmental Organisations (INGOs), Non-Governmental Organisations (NGOs) and special authorities of both countries to combat trafficking. Some of the important conventions are *Convention on Suppression of Trafficking* and the *Convention on Exploitation of the Prostitution of Others, 1949*; *Convention on the*

Elimination of all Form of Discrimination against Women, 1979; the *Convention of Rights of Child*, 1990 and the *UN Protocol to Prevent Suppress and Punish Trafficking in Persons*, especially Women and Children, 2000 , *SAARC Convention on Regional Arrangements on Child Welfare in South Asia*, as well as *Regional Convention on Combating the Crime of Trafficking in women and Children for Prostitution*, 2002 and so on.

The important legal framework, institutions and NGOs that deals with human trafficking of Nepal are *Muluki Ain (National Code) of Nepal* 1963; the *Human Trafficking (Control) Act*, 1986; *The Children's Act*, 2048 (1992); *Labour Act*, 2048 (1992); *Foreign Employment Act*, 2064 (2007); Ministry of Women, Children and Social Welfare (MoWCSW); National Human Right Commission (NHRC); Maiti Nepal, Shakti Samuha, ABC Nepal etc.

Similarly, the important laws, Acts, institutions and NGOs of India are *The Constitution of India*; *The Immoral Trafficking Prevention Act (ITPA)*, 1956; *Bonded Labour System (Abolition) Act*, 1976; *Indian Penal Code* 1860; *The Child Labour (Prohibition and Regulation) Act*, 1986; *The Transplantation of Human Organ Act*, 1994; *Juvenile Justice (Care and Protection of Children) Act*, 2000; *The Prohibition of Child Marriage Act*, 2006; *Protection of Children from Sexual Offences Act (POCSO) Act* of 2012; *The Criminal Law(Amendment) Act*, 2013; Anti Human Trafficking Units; Ministry of Women and Child Development; Ministry of Home Affairs; National Human right Commission; National Commission for Women; Sanlaap, CINI, Prajwala etc.

Despite abundance of international and national legal framework, these have proved to be inadequate in effectively dealing with the crimes related to trafficking. Even though, both the countries legal frameworks are prepared, it has proved to be ineffective to lower down the degree of human trafficking.

Looking at the increasing issues of human trafficking, it is evident that, there are various gaps and weaknesses in the existing laws, Acts, policies and practices of India and Nepal as none of these laws defines human trafficking comprehensively. The existing trafficking laws of India and Nepal do not address all forms of trafficking. The definitions of human trafficking provided by both the states has

emphasise more on sex trafficking without mentioning other forms of exploitation such as labour exploitation, trafficking and exploitation of children, organ transplantation, etc. These forms of trafficking have been given inadequate attention in the government plans and policies of both India and Nepal. It is also observed that the existing laws of both India and Nepal have not been properly defined and there are several loopholes and are not effectively implemented, due to which the perpetrators of human trafficking escape from effective judicial trials.

As stated in *UN Trafficking Protocol, 2000*, trafficking in persons is made for the purposes of exploitation that includes sexual exploitation, forced labour, child labour, forced marriage, debt bondage, organ transplant etc. India and Nepal should implement the international laws related to the human trafficking in their national or domestic legislation, especially the *UN Trafficking Protocol, 2000*. Domestic laws of India and Nepal lack collective understanding of trafficking and therefore, those laws must be modified in accordance with the standard of the UN Protocol. Hence, giving rise to an effective legal system with proper abiding legal jurisdiction is the need of the hour for India and Nepal to control human trafficking.

Both India and Nepal have promulgated several anti-trafficking laws which are viewed as strong and progressive piece of legislation; however, it contains many ambiguities within it. The laws and policies of India and Nepal have failed to address issues such as prevention of human trafficking, witness protection, repatriation or rehabilitation of victims, illegal immigration, cooperation and collaboration to counter human trafficking, border control measures, and compensation fund for victims as required in the UN Protocol. Additionally, both the states have developed its National Plan of Action against Trafficking of women and children, and are still in force but not effectively enforced yet. Hence, a comprehensive effort to address human trafficking through appropriate prevention, rescue and rehabilitation programmes is required. Implementation of centrally administered rehabilitation programmes is equally important at the state level initiated by governments in collaboration with NGOs. Similarly, government-run rehabilitation homes in border areas and easy access to legal aid services would evenly provide safety and proper recovery to the victims.

Owing to weak legal frameworks of India and Nepal, a number of challenges enclose within law enforcement officials/agencies for designing and implementing anti-human trafficking laws and policies. As the study shows, there is a lack in law enforcement capacity and commitment among all sections of people. There is a lack of awareness and basic training within law enforcement agencies/officials on the subject of human trafficking. It is observed that law enforcement officials are the first responders to such crime. Therefore, they should be well versed with the due process if and when such crimes are committed. To enhance the role of law enforcement agencies to control human trafficking in India and Nepal, the Governments should strengthen the financial, operational, technical and substantive capacity of all concerned departments and organisations such as the MoWCSW, the Ministry of Labor and Transport Management (MoLT), NHRC and other governmental organisations of Nepal and MHA, MWCD, NHRC, NCW and other governmental Anti-Trafficking Units of India.

One of the research questions raised in the study is; Are the existing legal mechanism is sufficient to tackle the increased Human Trafficking between India and Nepal? The study explicitly shows that the existing laws of both India and Nepal fail to create a legal obligation to human trafficking. Policies and programs with an endeavour to assist cross-border, bilateral, regional or multilateral cooperation or assistance in matters related to human trafficking have by and large proved to be ineffective. An effective collaboration and coordination among law enforcement officials including prosecutors, immigrant advocacy organizations, legal advocates, civil society organisations, social service providers and victims is required to address this crime. It is further significant to initiate more effective anti-human trafficking collaborations, both the governments should conclude and effectively implement bilateral agreements for mutual legal assistance, such as rehabilitation or repatriation agreements, border control agreements, safe migration programmes, and labour agreements.

Taking the recourse of India and Nepal, the loose provisions in the existing laws has consequences in lack of investigation process of law enforcement agencies including poor border control in the fight against human trafficking. Hence, special training/investigation skills are required to the concerned for their task as trafficking

investigators. According to the respondent, due to insufficient knowledge among investigators or officials of human trafficking, they are unable to provide proper guidance to the rescued victims. Such weaknesses within the laws and law enforcement officials lead to the re-trafficking of the rescued victims.

Weaknesses in the existing laws, policies and procedures have resulted in depressing impact on prosecution and law enforcement activities. It has become difficult to gain trust of victims to identify the cases as most of the law enforcement officials are found corrupt. Corruption in the criminal justice system poses another challenge to the law enforcement process in both India and Nepal. The cases of victims are dealt carelessly because of prosecutorial and judicial weaknesses. It resulted in re-victimisation of trafficking victims, in most of the cases. Hence, awareness and proper investigation among law enforcement officials is required to handle the problem of corruption in the system. Committed officials with strong enthusiasm are needed to deal with this social evil as the issue of human trafficking is sensitive.

Another aspect of insufficient existing legal mechanism in India and Nepal is their lengthy or prolonged legal process. It is imperative that the legal process be made easy and short, so that speedy action can be taken towards the traffickers. Most of the rural families find it very difficult to file their cases in the court because of the lengthy legal process and high processing fees. Human trafficking is one of the busiest crimes in the world affecting vulnerable population therefore, if speedy and strict actions without corruptions are made available against traffickers, it would help to cut down the magnitude of human trafficking. Likewise, corruption among police and border officials must be investigated in order to address the lacuna in human trafficking related issues. This would also help to closely examine recruitment and employment agencies for trafficking.

It is evident that there exists a special nexus between trafficking and migration. Migration is a fundamental part of trafficking which entails the movement of a person or a group of persons across international border or within a country (Chibba, 2013). However, involuntary/illegal migrants are highly susceptible to trafficking in different forms such as child trafficking, labour trafficking and sex trafficking. Easy availability of passport in Nepal is another means for illegal

migration. The concerned government authorities are making it very easy to avail passport and the legal process is devoid of proper procedure. As a consequence, in the name of foreign employment, individuals are transported but do not reach the correct destination. These individuals end up in the circle of human trafficking.

The second research question of the study is; What are the possibilities of developing new common legal frameworks and institutions to address the issue of Human Trafficking between India and Nepal? With regards to policies and practice of law enforcement, the study shows that there is a need for many key measures to be adopted to tackle human trafficking in all forms. These include good governance in which decisions are implemented by putting people grievances into centre. As most of the laws of human trafficking are institutionalised from the perspective of the perpetrators, there is also the need to frame laws that will require respective governments to reintegrate rescued victims and prevent re-trafficking. These laws should protect, prevent, prosecute and finally rehabilitate the victims to lead a life of self-sustenance. International, regional and bilateral cooperation and partnerships between India and Nepal with an obligatory legal commitment is an important way forward to tackle human trafficking and illegal migration. To tackle these interrelated concept of human trafficking and illegal migration, a comprehensive development within society in terms of economic, social, political and cultural dimensions are needed which prioritises human rights.

It is an accepted fact that the legal support should be provided to all victims. Thus a provision of immediate safety and compensation is extended to which the victim is entitled. But the legal responses to the trafficking victims are insufficient and ineffective in their rescue, rehabilitation and reintegration programmes in India and Nepal. It is important to gain consent/trust and cooperate fully with the victim so as to ease the process of criminal prosecution. Therefore, the concerned department and law enforcement officials should ensure effective protection to victims with adequate levels of support, assistance and information.

As the study reveals, legal measures to provide safeguard against such crimes are not fully implemented in the South Asian region. For instance, the *SAARC Convention on Combating the Crime of Trafficking in Women and Children for Prostitution*, 2002 has been ratified but not been implemented in an effective manner

yet. The various signatories have agreed upon the strengthening of the same, but such initiatives are only in paper, not in actual practice. The negligence on the enforcement of existing laws and legislations results in the major failure of such laws and provision designed for the noble cause. It stands as a major challenge confronting nation-states of South Asia.

In addition, the SAARC Convention should expand the definition of trafficking covering all forms of trafficking and should emphasise on various related subjects like safe migration policies, social and economic welfare measures paying particular attention to women and children, and promote cooperation among states parties in order to effectively combat human trafficking.

The international laws/conventions are the legal frameworks and an instrumental major step for combating human trafficking. Such international Laws/Acts provide essential tools to governments, international organizations and human rights advocates working to eliminate trafficking. Hence, non-ratification or not putting those laws into effective practice enhance key gaps in the legal framework of India and Nepal which has an impact on all three key areas of trafficking-prevention, protection and prosecution. Further, there must be ratification and execution of international laws and conventions, by both India and Nepal for a common and comprehensive legal framework to curb human trafficking.

Such a ratification and implementation of key international laws on trafficking can further wider cooperation and joint regional strategy between Nepal and India. A common legal framework can be woven to crack international trafficking networks and strengthen programs to help victims to get reintegrated into society. Though, India and Nepal are increasingly developing in their possessions to combat human trafficking, yet they have made limited efforts to prevent human trafficking. With the increase in human trafficking trends in recent years a unilateral action in the part of either government would be a misnomer. Thus, a collective action among regional states and institutions, civil society organisations with specialist expertise and knowledge is to be initiated.

Each existing legal framework and institutions have played a role in countering human trafficking, but there is still a need to link them together in a

mutually supporting and reinforcing mechanism. As the study explicates, more effective channel of cooperation and coordination is required to prevent Nepal from being a source and India as a receiver country of human trafficking in the region. In addition, effective investigation in the cases involving human trafficking should be carried out with an aim to control the magnitude of trafficking.

Owing to such issues, there is an urgent need of joint initiative between both governments of India and Nepal with regards to provide legal assistance to the victims, joint investigation and exchanging information on safe migration to cross-border victims to curb the scale of human trafficking. Cooperation mechanism with rapid action plans between countries must be set up to restrict cross-border trafficking. Interestingly, there is no bilateral agreement existing between India and Nepal regarding human trafficking. As such, well developed bilateral networks are necessary that would emphasize on border control measures, safe migration, and prevention and rehabilitation measures to eliminate cross-border human trafficking.

It is observed that the need to protect women and children against all forms of exploitation has been agreed on and guaranteed through various conventions such as the *Convention on the Elimination of All Forms of Discrimination against Women*. Yet women and children are most vulnerable, maltreated, battered and are subjected to numerous criminal and humiliating acts throughout the world. Hence, it was found during the interview that an effective measure including awareness-raising and educational campaigns is required against various crimes and violence against women and girls. Similarly, the law enforcement officials must create positive thoughts toward the victims, as the children or women undergo countless trauma and sufferings when they are victimized.

It is equally important for India and Nepal to re-examine the existing laws, policies and procedures. For the development and improvement in the execution, more effective legislation with proper procedures is required that would restrict the operation of all forms of trafficking. Creating such initiatives will enable an environment of common and harmonious way of social life reducing the opportunities for criminal activities like human trafficking.

There is also a need to promote cooperation and coordination between civil society organisations and national law enforcement agencies of Nepal and India since, many committed civil society organisations have proved to be more effective in exposing human trafficking networks in these countries. For this, both states should work together to ensure the rehabilitation of the victims in terms of providing them healthcare, education, self-esteem measures and other employment opportunities. Management within civil society and law enforcement agencies sharing information and extending legal jurisdictions will definitely be helpful in dealing with the issue effectively.

A special anti-trafficking unit should be set up in major cities of India and Nepal comprised of Advisory boards, NGOs representatives, government officials, trained and sensitised (women) police officers, legal aid officials, medical personnel, and so on, to effectively harmonize activities such as counselling, legal assistance, repatriation or reintegration of victims. These anti-trafficking units can have some cross border cooperation in sharing information among them.

Despite numerous rights or laws for women, gender sensitivity is absent in both India and Nepal. There is a need of sensitive laws that is effective in preventing domestic violence, sexual harassment, abuse, exploitation, and rape, etc. Sex trafficking is one form of human trafficking where women and girls are persuaded by force, fraud and coercion, however this population becomes vulnerable and can easily contract HIV/AIDS and other sexually transmitted diseases. Thus, an important measure is needed to stop or minimise this global epidemic. A good health care centre and a separate shelter should be established for the survivors who have contracted AIDS.

These are the areas and propositions that would contribute to adopt appropriate legislation and other measures to defeat human trafficking as a form of social evils in India and Nepal. First and foremost, an internationally agreed definition of trafficking contained in *the UN Trafficking Protocol* should be engraved in their national laws to concretise the effectiveness of anti-trafficking laws in India and Nepal. India and Nepal have taken number of initiatives such as formulating laws and Acts to strengthen anti-trafficking measures, however, both states are unable to deal comprehensively in framing legal procedures. Therefore, proper trial under the

judicial provisions, accentuated by rule of laws of each country for the victims as well as traffickers is needed. Traffickers should be trailed and sentence appropriate punishment bestowed which he/she is entitled to according to the law of the land.

In addition, there should be cooperation and coordination among law enforcement agencies, civil society organisations, concerned departments, police, immigration officials and so on of both states. This would help to rescue victims with an effective rehabilitation and reintegration process. Further, gender sensitive services with proper punishment to perpetrators who are found guilty is required to curtail such crimes. This should be made through bilateral mechanism or regional arrangement like SAARC.

Both the Governments should undertake a comprehensive research to study on the scale of human trafficking. Spread of greater awareness to the very phenomenon human trafficking at all stages of source, transits, and destinations is the heart of justice. This in turn would contribute in creating several initiatives in order to combat the problem at the grassroots level. Rigorous research, information and other socio-economic initiatives like poverty alleviation measures should prevent and combat all forms of trafficking. Cross-border human trafficking between India and Nepal can be tackled with the great commitment jointly made by both the states balanced by their laws, policies and action supported by law enforcement agencies/officials including NGOs of both the States.

To conclude, as the study highlights, the existing legal mechanism is insufficient to tackle human trafficking between India and Nepal and therefore more rigorous implementation of the existing laws is essential. Similarly, framing of new laws are essential to address human trafficking within the countries under study. Similarly, as the study emphasise, new common legal frameworks and institutions are to be initiated/established for addressing the cross border human trafficking between India and Nepal more effectively. A joint action of both the countries with legal and institutional backing can certainly stop/curtail the menace of human trafficking.

References

Primary Sources

Official Reports

American Bar Association, Nepal (2011), *Human Trafficking Assessment Tool Report for Nepal*, United State of America, www.americanbar.org/...aba/...Nepal/nepal_human_trafficking_assessment accessed on 23 November 2015

Amnesty International (2011), *False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers*, 1-107, Index Number: ASA31/007/2011

Amnesty International (2014), *Violence against Women-Access to Justice for Survivors of Sexual Violence*, www.amnesty.org.in/our-work/stop-violence-against-women/show accessed on 12th June 2016.

Amnesty International (2015), *Amnesty International - Human Trafficking*, www.humantrafficking.org

Anti-Slavery International (2009), *Forced and Bonded Labour in Nepal*, 1-19. www.antislavery.org, accessed on 22nd July 2015

Anti Slavery International (2016), *Child and Forced Marriage*, www.antislavery.org accessed on 2nd June 2016

Asia Foundation/ Population Council Horizons (2001), *Policy Analysis, Documentation of Current Intervention Models*, Community-based Study of Trafficking, Prevention of Trafficking and the Care and Support of Trafficked Persons, Kathmandu, Asia Foundation.

Asia Foundation (2001), *Prevention of Trafficking and the Care and Support of Trafficked Persons*, Horizons Project Population Council, New Delhi, India

Asia Foundation (2001), *Trafficking and Human Rights in Nepal: Community perceptions and Policy and Program Responses*, Horizons, New Delhi. India.

ABC Nepal (2011), *Major completed projects since five years*, <http://abcnepal.org.np/who-we-are>, accessed on 13 September 2014

Asian Development Bank (1999), *Women in Nepal*, Manila: Asian Development Bank.

Asian Development Bank (2002), *Combating Trafficking of Women And Children in South Asia (RETA-5948): Nepal Country Report*. Manila: Asian Development Bank.

- CAC-Nepal (2010), *Underage Female Sex Workers and HIV in Nepal*, Tulasa Lata Amatya, www.cac-nepal.org.np/, accessed on 5th July 2014
- CATW (1999), *Coalition Against Trafficking in Women: Editorial Statement*, <http://www.uri.edu/artsci/wms/hughes/catw/catw.htm>, 24th Jan.2012
- CATW (2011), *Aiding Victims of Trafficking and Sexual Exploitation* www.catwinternational.org/ProjectsCampaigns/Aiding accessed on 20 March 2013.
- CATW (2013), *CATW, Beinnel Report 2012/2013*, www.catwinternational.org
- Child Rights Connect (2013), *The Optional Protocol to the CRC on a Communications Procedure (OP3 CRC)*, www.childrightsconnect.org/connect-with-the-un-2/op3-crc/ accessed on 12 April 2014
- CINI (2016), *Beyond Survival, Educating and Protecting Children*, <http://www.cini-india.org/content/history>, accessed on 7 May 2016
- CINI (2015), *A State Level Consultation with Child Protection Service Providers*, <http://www.cini-india.org/news-and-press/news/state-level-consultation-child-protection-service-providers>, accessed on 23rd March 2016
- Clawson, Heather J. (et.al) (2006), *Law Enforcement Responses to Human Trafficking and the Implications for Victims: Current Practices and Lessons Learned*, U.S. Department of Justice, www.ncjrs.gov/pdffiles1/nij/grants/216547.pdf accessed on 18 Feb. 2014
- Coomaraswamy, Radhika (2000), *Report on Trafficking by the UN special Rapporteur on Violence Against Women, Its Causes and Consequence*. New York: United Nations (UN).
- Council of Europe (1997), *Report on traffic in Women and forced prostitution in Council of Europe member states (ADOC 7785)*, Strasbourg, COE.
- CWIN (1994), *Voice of Child Workers* (Quarterly Magazine of CWIN) Issue No. 23.
- ECPAT (2011), *“Executive Summary Nepal”* www.ecpat.net/EI/pdf/A4A_II/A4A2011_S.Asia_NEPAL_FINAL.pdf
- Episcopal Life (2009), *Human Trafficking: India in Focus*. Retrieved February 3, 2010, from http://www.episcopal.org/documents/Country_Report_India.pdf.
- Europol (2007), *Trafficking Human Beings in the European Union: A Europol Perspective*, The Hague, http://www.europol.europa.eu/publication/serious_Crime_overviews/TBH_Factsheet2007.pdf

Ezeilo, J.N. (2009), *Report of the Special Rapporteur on trafficking in persons, especially women and children*, A/HRC/10/16, submitted to the fourth session of the Human Rights Council in 2009.

Global Alliance Against Traffic in Women (1999), *Human Rights Standards for the Treatment of Trafficked Persons*, unpublished paper in IMAOR. 1999, Tokyo

GAATW (2010), *Beyond Borders: Exploring Links Between Trafficking, Globalisation, and Security*, Global Alliance Against Traffic in Women and International Human Rights Clinic, Center for Human Rights and Global Justice, New York University School of Law,
www.gaatw.org/publications/WP_on_Globalisation.pdf

GAATW (2015), “*Power in Migration and Work: Project in 2015*”
<http://gaatw.org/asia/himrights/190-what-we-do/812-power-in-migration-and-work-projects-in-2015> accessed on 13 Jan. 2016

GAATW (2013), *Au Pair: Challenges to Safe Migration and Decent Work*, In GAATW Working Paper, [www.gaatw.org/.../AuPair_Challenges to Safe Migration and Decent Work.G...](http://www.gaatw.org/.../AuPair_Challenges%20to%20Safe%20Migration%20and%20Decent%20Work.G...)

GAO (2006), *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S Anti-trafficking Efforts Abroad*, Report to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, House of Representatives, www.gao.gov/new.items/d06825.pdf

Global March Against Child Labour (2013), *South Asian March Against Child Trafficking*, www.globalmarch.org/issues/Child-Trafficking

Gurung, G. (2013), “Living the Golden Dreams: The Gulf and Nepalese Women.” In *Shubha Yatra Project: Maiti Nepal*.

Hameed, S. et al., (2010), *Background Information on Human Trafficking in India A supplement to the Human Trafficking in India: Dynamics, Current Efforts, and Intervention Opportunities*, The Asia Foundation Report,
[www.asiafoundation.org/.../Standford Human Trafficking IndiaFinalReport](http://www.asiafoundation.org/.../Standford%20Human%20Trafficking%20IndiaFinalReport)

Human Development Report (2009), *Human Development Report 2009, Overcoming barriers: Human mobility and development*, published for the United Nations Development Programme (UNDP), New York, USA.

Human Rights Law Network (2013), *Prajwala V. Union of India*,
www.hrln.org/hrln/anti-trafficking/pils.../238-prajwala-v-union-of-india-.html

Human Trafficking Search (2016), *Types of Trafficking*,
www.humantraffickingsearch.net

ILO (2009), *Other Initiatives Against Child Labour in India*
<https://www.savethechildren.in/resource-centre/articles/initiatives-against-child-labour-in-india>

ILO (2010), *United States Policies to Address Child Labor Globally*, International Labor Rights Forum, June 4, 2010.
www.digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?...globaldocs

ILO (2013), *The ILO in Nepal*,
www.ilo.org/wcmsp5/groups/public/---.../---ilo.../wcms_360563.pdf

ILO (2016), *ILO in India*,
www.ilo.org/newdelhi/whatwedo/projects/WCMS_166809/lang--en/index.htm

ILO-IPEC (2000), *Trafficking in Children in Asia: A Regional Overview*, by Tumlin, Keren C. www.ilo.org/wcmsp5/groups/.../---asia accessed on 6 May 2016.

International Labour Office (2006), *Globalization and the Illicit Market for Human Trafficking: an Empirical Analysis of Supply and Demand*, in Special Action Programme to Combat Forced Labour, by Gergana Danailov Trainor & Patrick Belser, Geneva, International Labour Office.

International Organization for Migration (IOM) (2000), *Combating Trafficking in South –East Asia, A Review of Policy and Programme Responses*, IOM Migration Research Series, International Organization for Migration, 17 route des Morillons, 1211 Geneva 19, Switzerland.

IOM (2005), *Data and Research on Human Trafficking: A Global Survey*, International Organization for Migration, 17 route des Morillons, 1211 Geneva 19, Switzerland.

Kansakar, V. B. S. (2001), *Nepal-India Open Border: Prospects, Problems and Challenges*, Friedrich Ebert Stiftung, Democracy Nepal,
www.nepaldemocracy.org/documents/treaties_agreements/nep_india_open_border.htm

Maiti Nepal (2010), *Annual Report 2010*,
maitinepal.org/admin/.../Maiti_Nepal_Annual_Report_2010.pdf

Maiti Nepal (2013), *Annual Report 2013*
maitinepal.org/admin/.../Maiti_Nepal_Annual_Report_2012.pdf

Maiti Nepal (2015), *Annual Report 2015*
maitinepal.org/admin/.../Maiti_Nepal_Annual_Report_2015.pdf

Maiti Nepal (2016), *Annual Report 2016*

maitinepal.org/admin/.../Maiti_Nepal_Annual_Report_2016.pdf

Mark, W. et al., (2010), *Empowering Women in Nepal: A 2010 Report*,

[www.darkwing.uoregon.edu/aweiss/.../Nepal-Empowering %20Women.p](http://www.darkwing.uoregon.edu/aweiss/.../Nepal-Empowering%20Women.p)

MHA (2013), Standard Operating Procedure to handle Trafficking of Children for Child Labour- measures to be taken for rescue of trafficked child labourers' and action against the traffickers/employers, F.No.15011/20/2012-ATC (CF-145675)

National Human Rights Commission (2015), *Annual Report 2014-2015* National Human rights Commission, Faridkot House, Copernicus Marg, New Delhi, India
www.nhrc.nic.in

National Plan of Action (2012), *Trafficking in Children and their Commercial Sexual Exploitation*, Government of Nepal-Ministry of Women, Children and Social Welfare, Singhadurbar, Kathmandu, Nepal.

NHRC (2004) a., National Human Rights Commission, *Action Research on Trafficking in Women and Children in India 2002-2003*
<http://nhrc.nic.in/Publications/ReportOnTrafficking.pdf>

NHRC (2004) b., *A Report on Human Trafficking in Women and Children in India*,
<http://nhrc.nic.in/Publications/ReportOnTrafficking.pdf>

NHRC (2011), *Trafficking in Persons Especially on Women and Children in Nepal*, National Report 2011, www.nhrcnepal.org

NHRC (2015), *Trafficking in Persons Especially on Women and Children in Nepal, National Report 2015*,
www.nhrcnepal.org/nhrc/Trafficking_in_Persons_National_Report_2015

NNLRJ (2009), *Amendment to the Transportation of Human Organs, 1994*, Law Resource India,
www.mohfw.nic.in/TransportationofHumanOrgans%Amendment%29Rules,2008.pdf

OECD (2008), *Trafficking in Persons as a Human Rights Issue*,
www.oecd.org/dac/gender-development/44896390.pdf

OHCHR (2016), *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>

Pacific Immigration Director's Conference (2010), *Understanding Human trafficking and people smuggling*, Policy Brief No: 2/2010
www.pidcsec.org/.../20100924%20Policy%20brief%202%20-%20Huma...

Pearson, Elaine (2004), *Gaps Analysis on Intervention Strategies Against Trafficking in Women in Nepal*, A Background research study to inform Oxfam GB Nepal Programme's Campaign on Ending Violence Against Women, Oxfam GB, Nepal Programme, Kathmandu, Nepal.

Prajwala (2014), *Prajwala-The Approach*,
<https://infopoint.co/en/Prajwala/The%20Approach>, accessed on 7 August 2016

Prajwala (2015), *Trafficking*, <http://www.prajwalaindia.com/trafficking.html>

Ramo, S. (2011), *The dark side of globalisation*, Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (UNGIFT)
<http://thebeaveronline.co.uk/2011/03/17/the-dark-side-of-globalisation/>

Rescue Foundation (2014), *Rescue Foundation-Saving The Victims of Human Trafficking*, <http://www.thebetterindia.com/9556/rescue-foundation-rescuing-victims-human-trafficking/>

Rhoten, K. (ed.) (2015), *India's Human Trafficking Laws and Policies and the UN Trafficking Protocol: Achieving Clarity*, Jindal Global Law School (India),
www.jgu.edu.in/.../Indias-Human-Trafficking-Laws-Report-Book_Feb-2015

Sakulpitakphon, P. (2011), *Stop sex trafficking of children and young people-a unique ECPAT and Body Shop campaign*, ECPAT, Bangkok
www.coe.int/t/.../children/.../PublicationSexualViolence/Sakulpitakphon

Shakti Samuha (2013), *Introduction*, <http://shaktisamuha.org.np/about-us/introduction/>

Shakti Smuha (2014), *Shakti Samuha Annual Report 2014*,
www.shaktisamuha.org.np/wp-content/.../2015/08/Annual-Report-2014.pdf

Sanghera, J. (2000), *Trafficking of Women and Children in South Asia: Taking Stock and Moving Ahead; A Review of Anti-trafficking Initiatives in Nepal, Bangladesh and India*, Study jointly sponsored by UNICEF- ROSA and Save the Children Alliance, New Delhi India www.childtrafficking.com/Docs/sanghera_unicef_stc_allianc.pdf

Social Development Notes (World Bank) (2009), *Human Trafficking: A Brief Overview*, World Bank, No.122,
www.siteresources.worldbank.org/.../Resources/.../Human_Trafficking.pdf, accessed on 9 May 2012.

South Asian Women's Centre (SAWC) (2014), *Forced Marriage as a Form of Human Trafficking* www.swac.org/.../Forced-Marriage-as-a-Form-of-Human-Trafficking-Re... accessed on 5 May 2016

Stop Violation Against Women (SVAW), (2010), *Trafficking Routes*
http://www.stopvaw.org/trafficking_routes

The World Bank (2010), *The State of the Poor: Where are the Poor and Where are they Poorest?*, Poverty Reduction and Economic Management(PREM),
www.worldbank.org accessed on 11 May 2016

TVPA (2000), *Labor Trafficking Fact Sheet*,
www.acf.hhs.gov/trafficking/about/fact/_labor.pdf accessed on 11 June 2012

TVPA (2000), *Trafficking Victims Protection Act of 2000 Fact Sheet*,
www.acf.hhs.gov/trafficking/about/TVPA_2000.pdf accessed on 28 June 2012

U N (2000), *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, United Nations,
www.uncjin.org/Documents/.../final.../convention_%20traff_eng.pdf. accessed on 25 November 2012

UNAIDS (2006), *2006 Report on the Global AIDS Epidemic*, The Joint United Nations Programme on HIV/AIDS, www.unaids.org/sites/default/.../2006_gr-executivesummary_en_0.pdf

UNDOC (2009), *Combating Trafficking in Persons: A Handbook for Parliamentarians*, United Nations Publication, ISBN : 978-92-9142-408-5, Document No. 16-2009.

UNDP (2004), *Trafficking in human Beings: A guidance Note*, UNDP, Europe and the CIS, Bratislava Regional Centre,
www.europeandcis.undp.org/.../Human%20Trafficking_Nadja_text_30Ma...

UNDP (2007), *Human Trafficking and HIV: Exploring vulnerabilities and responses in South Asia*, UNDP Regional HIV and Development programme for Asia pacific.
https://www.unodc.org/.../hiv-aids/.../human_traffick_hiv_undp2007.pdf

UNESCO (2015), *Literacy Statistics Metadata Information Table*, UNESCO Institute for Statistics- Education Indicators and Data Analysis Unit as of March 2015,
www.uis.unesco.org/gem-report/statistics

UNGIFT (2009), *Guiding Principles on Memoranda of Understanding Between Key Stakeholders and Law Enforcement Agencies on Counter-Trafficking Cooperation*, implemented by International Organization for Migration (IOM),
www.ungift.org/.../GIFT_IOM_Guiding_Principles_for_Stakeholders...

UNGIFT (2010), *Human Trafficking and HIV-AIDS*,
www.ungift.org/knowledgehub/en/.../human-trafficking-and-hiv-aids.ht...

- UNGIFT (2016), *Trafficking for Organ Trade*,
www.ungift.org/knowledgehub/en/about/trafficking-for-organ-trade.html
- UNHCHR (2002), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Economic and Social Council (E/2002/68/Add.1) Report.
www.ohchr.org/Documents/.../Commentary_Human_Trafficking_en.pdf accessed on 4 July 2016
- UNHCR (2005), *Combating Human Trafficking*, Overview of UNHCR Anti-Trafficking Activities in Europe, The UN Refugee Agency,
www.refworld.org/pdfid/43fd782d4.pdf
- UNICEF (2003), *Accelerating the Momentum in the Fight Against HIV/AIDS in South Asia*, South Asia High-Level Conference, Kathmandu, Nepal,
www.unicef.org/rosa/IP2.pdf
- UNICEF (2005), *Combating Child Trafficking*, Handbook for Parliament, published by Inter-Parliamentary Union,
www.unicef.org/ceecis/IPU_combattingchildtrafficking_GB.pdf
- UNICEF (2008), *South Asia in Action: Preventing and Responding to Child Trafficking*, Summary Report, www.unicef-irc.org/publications/ accessed on 8 July 2015
- United Nations (2003), *Combating Human Trafficking in Asia: A Resource Guide to International and Regional legal Instruments, Political Commitments and Recommended Practices*, United Nations Publications, accessed on 19 August 2013.
- United States (US) Department of State (2001), *Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report*, July 2001,
<http://www.state.gov>
- United States Agency for International Development (USAID) (2002), *Anti-Trafficking Programs in South Asia: Appropriate Activities, Indicators and Evaluation Methodologies, Summary Report of a Technical Consultative Meeting*, prepared by Huntington Dale, Population Council, New Delhi,
www.pdf.usaid.gov/pdf_docs/pnacq367.pdf
- UNODC (2007) a, *Protocol on the Structure and Function of the Integrated Anti Human Trafficking Unit (IAHTU) in India*, UNODC, Regional Office for South Asia,
https://www.unodc.org/.../human-trafficking/India.../Protocol_on_AHTU
- UNODC (2007) b, *Compendium on Best Practices on Anti Human Trafficking by Law Enforcement Agencies*, UNODC, Regional Office for South Asia
- UNODC (2008) *Resource Book on the Legal Framework on Anti Human Trafficking*, Regional Office for South Asia, New Delhi, India

UNODC (2011), *International Framework for Action to Implement the Smuggling of Migrants Protocol*,

https://www.unodc.org/.../MigrantSmuggling/Framework_for_Action_S

UNODC (2011), *Responses to Human Trafficking in Bangladesh, India, Nepal and Sri Lanka*, Under the United Nations Global Initiative to Fight Human Trafficking

www.unodc.org/.../human-trafficking/.../Resources_to_Human..._T... accessed on 3 August 2011

UNODC (2011), *The Role of Corruption in Trafficking in Persons*, Issue Paper,

Vienna. www.unodc.org/...trafficking/.../Issue_Paper_The_Role_of_Cor... accessed on 21 April 2016

UNODC (2014), *Global Report on Trafficking in Persons*, New York: United Nations Publication, globaltipreport@unodc.org

UNODC (2016), *India: Significance of the United Nations Convention against Transnational Organized Crime (UNTOC) to address human trafficking*,

<https://www.unodc.org/southasia/en/frontpage/2011/june/significance-of-the-untoc-to-address-human-trafficking-interview-with-mr-g-k-pillai.html>

US Department of State (2014), *Trafficking of Persons Report 2014*

www.state.gov/j/tip/rls/tiprpt/

US Department of State (2015), *Trafficking of Persons Report 2015*

www.state.gov/j/tip/rls/tiprpt/

Wolte, S. (2004), *Armed Conflict and Trafficking in Women Sector*, Project against Trafficking in Women, www.gtz.de/traffickinginwomen accessed on 11 May 2016

World Bank (2008), *Strengthening Monitoring and Evaluation of HIV/AIDS Components in Road Projects*, Sustainable Development Department Transport Unit, South Asia Region

Internet Sources

“Activist Offers Insight into Efforts to Fight Human Trafficking”, *The Spectrum*: 13TH April 2012.

<http://www.thespectrum.com/article/20120413/NEWS01/204130318>, accessed on: 22nd April 2012.

“Bombay HC to Govt: Set up Anti-Trafficking Cells”, *Daily News & Analysis*, 18th March 2012, www.dnaindia.com accessed on: 18th April 2012.

“Three-fold jump in human trafficking from Nepal to India after quake: MHA”, *Indian Express*, 4th Nov 2014, written by Deeptiman Tiwary, www.indianexpress.com accessed on: 23-02-2016.

“India is working to curb Trafficking of women, children: Maneka Gandhi” *NDTV Every Life Counts*, 20th April 2016 www.everylifecounts.ndtv.com accessed on 4th June 2016.

“India can ratify ILO Conventions with new child labour laws: Bandaru Dattatreya”, *The Economics Times (Politics and Nations)*, Jul 29 2016, 02.15 pm, accessed on 29th July 2016.

“Call for efforts to combat human trafficking”, *The Himalaya*, December 09, 2015, accessed on 5th August 2016.

“Nepalese Minors in Indian brothels”, *OPED*: 13th March 2012, humantraffickingwatch.wordpress.com/.../nepalese-minors-in-indian-brot... accessed on: 25th June, 2012.

Acts and Conventions

Bonded Labour (Prohibition) Act, 2058 (2002) of Nepal

Bonded Labour System (Abolition) Act, 1976 of India

Criminal Law (Amendment) Act, 2013 of India

Foreign Employment Act, 2064 (2007) of Nepal

Immigration (Carrier’s Liability) Act, 2000 of India

Labour Act, 2048 (1992) of Nepal

Protection of Children from Sexual Offences Act (POCSO), 2012

South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002

The Child Labour (Prohibition and Regulation) Act, 1986 of India

The Children Act, 1992 of Nepal

The Children’s Act, 2048 (1992) of Nepal

The Constitution of India

The Convention on Suppression of Trafficking and the Convention on Exploitation of the Prostitution of Others, 1949 of India

The Convention on the Rights of the Child (CRC), 1989

The Human Trafficking and Transportation Control Act, 2064 (2007) of Nepal

The Human Trafficking Control Act, 1986 of Nepal

The Immoral Trafficking Prevention Act (ITPA), 1956 of India

The Indian Penal Code, 1860 of India

The Constitution of Nepal, 2015

The Juvenile Justice (Care and Protection of Children) Act 2000 of India.

The Labour Act, 2048, Date of Royal Seal of Assent: 2049/2/2/6 (16th MAY 1992), Date of publication in the Nepal Gazette and enforcement 2054/10/15 (28th January, 1998).

The Muluki Ain (Code of Law), 1964 of Nepal

The Prohibition of Child Marriage Act, 2006 of India

The Transplantation of Human Organ Act, 1994 of India

U N Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 2000

United Nations Convention against Transnational Organized Crime, 2000

United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949

United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979

Worst Forms of Child Labour Convention, 1999 (No 182)

Secondary Sources

Books

Aas, F. K. (2007), *Globalization and Crime*, London: Sage Publications Ltd.

Andreess, B. (2008), *Forced Labour and Trafficking in Europe: How People are Trapped in, Live Through and Come Out*, Geneva: International Labour Office.

Aronowitz, A. A. (2009), *Human Trafficking, Human Misery: The Global Trade in Human Beings*, Westport: Praeger publishers.

Bales, K. (2005), *Understanding Global Slavery: A Reader*, London: University of California Press, Ltd.

- Bales, K. and Soodalter R. (2009), *The Slave Next Door: Human Trafficking and Slavery in America Today*, London: University of California Press, Ltd.
- Behrendt, S. D. (2010), 'The Transatlantic Slave Trade', in Robert Paquette and Mark Smith (eds.), *The Oxford Handbook of Slavery in the Americas*, Oxford University Press.
- Bhattacharyya, G. (2005), *Traffick: The Illicit Movement of People and Things*, London Pluto Press.
- Bhattacharai, A. (2007), *International migration, multi-local livelihoods and human security: perspectives from Europe, Asia and Africa*, The Hague: Institute of Social Studies www.iss.nl/content/download/8271/80771/file/panel5_bhattacharai.pdf
- Burke, M. C. (2013), *Human trafficking: Interdisciplinary Perspectives*, New York: Routledge
- Cameron, S. and Edward N. (eds) (2008), *Trafficking in Humans: Social, Cultural and Political Dimensions*, New York: United Nations university Press.
- Chettri, S. (2009), "Trafficking of Nepali Women in India" in T.B Subba, A.C Sinha, G.S. Nepal and D.R. Nepal, (eds.) *Indian Nepalis: issues and Perspectives*, pp. 288-295. New Delhi: Concept Publishing Company.
- Chu, Doris C. (ed.), (2010), *Crime and Punishment Around the World: Asia and Pacific, Volume 3*, Santa Barbara: California, ABC-CLIO, LLC.
- Clark, Michele A. (2005), "Trafficking in Persons and Human Security", in Lincoln Chen (ed.), *Human Security in a Global World*, USA, Harvard University Press
- Crawford, M. (2010), *Sex Trafficking in South Asia: Telling Maya's Story*, Abingdon Routledge
- Dalla L. and Rochelle L. (ed) (2011), *Global Perspectives on Prostitution and Sex Trafficking: Africa, Asia, Middle East and Oceania*, Md: Lexington Books.
- Ebbe, Obi I.N. and Das D. (eds.), (2008), *Global Trafficking in Women and Children*, Boka Raton, CRC Press.
- Elgar, E. (2010), *Trafficking and Human Rights: European and Asia-Pacific Perspectives*, Cheltenham: Edward Elgar Publishing Limited.
- Emmers, R. (2004), *Globalization and Non-Traditional Security Issues: A Study of Human and Drug Trafficking in East Asia*, Singapore: Institute of Defence and Strategic Studies.

- Falls, A. (2014), *Human Trafficking: A Global Perspectives of Modern Day Human Trafficking and Sex Slavery*
- Gallagher, Anne T. (2010), *The International Law of Human Trafficking*, New York: Cambridge Press.
- Giddens, A. (1990), *The Consequences of Modernity*, Cambridge: Polity Press.
- Giddens, A. (1998), *The Third Way: The Renewal of Social Democracy*, Cambridge: U.K: Polity Press.
- Graham, D. T. & Poku, Nana K. (2000), *Migration, Globalization and Human Security*, London: Routledge.
- Gupta, R. (2010), 'Human Trafficking in Asia: Trends and Responses' in Ellen Laipson & Amit Pandya (ed.), *On the Move: Migration Challenges in the Indian Ocean Littoral*. New York, Stimson Pragmatic Steps for Global Security
- Jha, Ajay K. (ed.) (2015), *Indo-Nepal Human Trafficking Post Earthquake Perspective: Concern and Challenges*, PAIRVI, New Delhi
- Jonsson, A. (ed.) (2009), *Human Trafficking and Human Security*, Routledge Transnational Crime and Corruption Series, New York: Routledge.
- Kalayaan (1999), *Community Action Against Sex Trafficking: A trainers Manual*, Quezon City: Kalayaan
- Kara, S. (2009), *Sex Trafficking: Inside the Business of Modern Slavery*, New York: Columbia University Press.
- Klein, H. S. and Klein, J. (1999), *The Atlantic Slave Trade*, U.K: Cambridge University Press.
- Lama, M. P. (2010), *Human Security in India: Discourse, Practices and Policy Implications*, Dhaka: Dhaka University Press Limited.
- Lee, M. (ed.) (2007), *Human Trafficking*, Cullompton: William Publishing.
- Letschert, R. and Dijk, J. V. (2011), *The New Faces of Victimhood: Globalization, Transnational Crimes and Victim Rights*, London: Springer Dordrecht Heidelberg.
- Mandal, M. (2014), 'Human Trafficking: Indo-Nepal Cross Border', in Monika Mandal *Indo Nepal Relations* (ed.), pp.49-63, New Delhi: KW Publishers Pvt. Ltd.
- Masika, R. (ed.), (2007), *Gender, Trafficking, and Slavery*, Cowley: Oxfam GB.
- Mccabe, Kimberly A. and Manian, S. (eds.), (2010), *Sex Trafficking: A Global Perspective*, Lanham, Rowman & Littlefield Publishers, Inc.

- Mishra, V. (2013), *Human Trafficking: The Stakeholders' Perspective*, Los Angeles: SAGE Publications Pvt.Ltd.
- Nair, P.M. & Sankar Sen (2004), *Trafficking in Women and Children in India*, New Delhi, Orient Longman Pvt Limited.
- Nair, P.M. (2010), *Human Trafficking: Dimension, Challenges and Responses*, New Delhi: Konark Publishers Pvt. Ltd..
- Newton, H. J. (ed.) (2012), *Human Trafficking: Scope and Response Efforts*. Law, Crime and Law enforcement, New York: Nova Science Publishers
- Nicola, A. D. et al., (eds.) (2009), *Prostitution and Human Trafficking: Focus on Clients*, U.K, Springer Science+Business Media, LLC.
- Pattnaik, J. (eds) (2004), *Childhood in South Asia: A Critical Look at Issues, Policies, and Programs*, Greenwich, Information Age Publishing.
- Pickering, S. (2011), *Women, Borders, and Violence: Current Issue in Asylum, Forced Migration and Trafficking*, London, Springer Science+Business Media, LLC.
- Quadir, F. and Lele, J. (2004), *Democracy and Civil Society in Asia: Volume 1, Globalization, Democracy and Civil Society in Asia*, New York, Palgrave Macmillan Ltd.
- Ramacharan, B. G. (2008), *Contemporary Human Rights Ideas*, Abingdon, Routledge.
- Samarasinghe, V. and Burton. B. (2008), *Female Sex Trafficking in Asia: The Resilience of Patriarchy in a Changing World*, New York: Routledge.
- Scholte, J. A. (2000), *Globalization: A Critical Introduction*, New York, Palgrave Macmillan Ltd.
- Shelley, L. I. and Okubo, S. (eds) (2011), *Human Security, Transnational Crime and Human Trafficking: Asian and Western Perspectives*, New York: Routledge.
- Shelly, L. (2010), *Human trafficking: A Global Perspective*, Cambridge University Press.
- Behrendt, Stephen D. (2010), 'The Transatlantic Slave Trade,' in Robert Paquette and Mark Smith (eds.), *The Oxford Handbook of Slavery in the Americas*, Oxford, Oxford University Press, 251-74
- Tadjbakhsh, S. and Chenoy, A. M. (2007), *Human Security: Concepts and Implications*, Abingdon, Routledge.

Thakur, R. & Wiggen O. (eds.) (2004), *South Asia in the World: Problem Solving Perspectives on Security, Sustainable Development, and Good Governance*, Japan, United Nations University Press.

Upreti, B.C. (2009), 'The India-Nepal Open Border' in K. Warikoo (ed.) *Himalaya Frontiers of India*, pp.103-122, London: Routledge.

Zheng, T. (ed.) (2010), *Sex Trafficking, Human Rights and Social Justice*, Abingdon, Routledge.

Zimmerman, C. (2003), *The health risks and consequences of trafficking in women and adolescents: Finding from a European study*, London: London School of Hygiene & Tropical Medicine. <http://www.lshtm.ac.uk/hpu/docs/traffickingfinal.pdf>

Articles

Adams, C. (2011), "Re-Trafficked Victims: How a Human Rights Approach Can Stop the Cycle of Re-Victimization of Sex Trafficking Victims." *The George Washington International Law Review*, Vol 43, no. 1 pp.201-234

Ambiranjana, S. (2000), "Globalization, Media and Culture", *Economic and Political Weekly*, Vol.35, No.25, pp.2141-2147

Aronowitz, Alexis A. (2009), "The Smuggling -- Trafficking Nexus and the Myths Surrounding Human Trafficking." *Sociology of Crime, Law, and Deviance*, 13 :107-28.

Bajpai, K. (2000), "Human Security: Concept and Measurement", *Kroc Institute Occasional Paper*, 19:1, http://www.hegoa.ehu.es/.../Human_security_concept_and_measurement.p...

Bales, K. & Steven L. (2007), "Investigating human trafficking: challenges, lessons learned and best practices", *FBI Law Enforcement Bulletin*, Vol. 76, NO.4.

Barner, J. R. et al., (2014), "Socio-Economic Inequality, Human Trafficking, and the Global Slave Trade" *Societies* 4, no. 2: 148-60

Batsyukova, S. (2012), "Human Trafficking and Human Smuggling: Similar Nature, Different Concepts." *Studies of Changing Societies: Comparative & Interdisciplinary Focus* 1, no. 1: 39-49.

Bernat, F. P. and Winkeller, H. C. (2010), "Human Sex Trafficking: The Global Becomes Local." *Women & Criminal Justice* 20, no. 1: 186-92.

Bhardwaj, V.K. (2011), "Women Trafficking from Nepal in India: Uncontrolled Problem and Helpless Victims", *South Asian Studies*, 46 (1/2), 79-107.

- Bhoi, P. (2005), "Social Dimensions of Child Labour", *Dialogue*, Vol.7, No.1, pp.119-125
- Biemann, U. (2005), "Remotely Sensed: A Topography of the Global Sex Trade", *Feminist Review*, No. 80, Reflections on 25 years, pp.180-193, <http://www.jstor.org/stable/3874374>, accessed: 21/11/2011.
- Blau, J. et al., (2007), "It Ought to Be a Crime: Criminalizing Human Rights Violations", *Sociological Forum*, Vol.22, No.3, pp.364-371, Springer, <http://www.jstor.org/stable/20110218>, accessed: 21/11/2011.
- Borges, I. (2009), "The challenges of the Current Legal Regime to Trafficking in Women", *The BSIS Journal of International Studies*, Vol 6, pp1-31
- Breau, S. C. (2009), "Legal Issues relating to Human Trafficking", *Journal of Commonwealth Law and Legal Education*, Vol.6, No.2, pp.217-238, <http://dx.doi.org/10.1080/14760400902969867>, accessed: 16/03/2012.
- Bruch, E. (2004), "Models Wanted: The Search for an Effective Response to Human Trafficking", *Stanford Journal International Law*, 40, 1-42.
- Brysk, A. (2009), "Beyond Framing and Sharing: Human Trafficking, Human Security and human Rights", *Journal of Human Security*, Vol.5, No.3, pp.8-21.
- Burkhalter, H. (2012), "Sex Trafficking, Law Enforcement and Perpetrator Accountability." *Anti - Trafficking Review*, no. 1 :1-8.
- Chew, L. (1999), "Global Trafficking in Women: Some Issues and Strategies", *Women's Studies Quarterly*, Vol.27, No.1/2, pp.11-18, <http://www.jstor.org/stable/40003394>, accessed:21/11/2011.
- Chibba, M. (2013), "Human Trafficking and Migration: Concepts, Linkages and New Frontiers", *Global Policy Journal* www.globalpolicyjournal.com
- Chitrakar, R. (2009), "Overcoming Barriers to Girls' Education in South Asia: Deepening the Analysis", www.unicef.org/rosa/whole_book_b.pdf accessed on 5 July 2012
- Cho, H. et al., (2009), "An Empirical Study on International Human Organ Trafficking: Effects of Globalization" *Innovative Marketing*, Volume 5, Issue 3, businessperspectives.org/journals.../2009/im_en_2009_3_Cho.pdf
- Chuang, J. (2006), "Beyond a Snapshot: Preventing Human Trafficking in the Global Economy", *Indiana Journal of Global Legal Studies*, Vol.13, No.1, pp.137-163, <http://www.jstor.org/stable/10.2979/GLS.2006.13.1.137>, accessed: 21/11/2011.

- Claude, D'Estree (2013), "Human Rights and Human Trafficking"
www.du.edu/.../researchdigest/trafficking/Introduction.pdf. Accessed on 21 May 2015
- Coomaraswamy, R. (2005), "Human Security and Gender Violence", *Economic and Political Weekly*, Vol.40, No.44/45, pp.4729-4736,
<http://www.jstor.org/stable/4417359>, accessed: 21/11/2011.
- Corrigan, K. (2001), "Putting the Breaks on the Global Trafficking of Women for Sex Trade: An Analysis of Existing Regulatory Schemes to Stop the Flow of Traffic", *Fordham International Law Journal*, 25, 1-50.
- Cox, T. (1990), "The Badi: Prostitution as a Social Norm Among an Untouchable Caste of West Nepal" *Kailash*, Vol.16, No. (3-4), pp.165-186
- Dairiam, S. (2011), "Failing Women: Why We Need a New Approach to Human Trafficking", www.globalasia.org/V6N3_Fall_2011/Shanti_Dairiam.html
- Das, P. (2008), "Towards a Regulated Indo-Nepal Border", *Strategic Analysis Journal*, Vol.32, No.5, pp.879-900, <http://dx.doi.org/10.1080/09700160802309233>, accessed: 16/03/2012.
- David, F. (2007), "Law Enforcement Responses To Trafficking in Persons: Challenges and Emerging Good Practice", *Trends and Issues in crime and criminal justice*, No.347 .
- Davidson, J. O'Connell (2006), "Will the Real Sex Slave Please Stand Up?", *Feminist Review*, No.83, pp.4-22, <http://www.jstor.org/stable/3874380>, accessed: 21/11/2011.
- Davy, D. (2010), "Transnational NGOs against Child Sex Trafficking-Challenges and Opportunities of Advocacy Networks for Social Change?" *University of Sydney*, www.istr.org/resource/resmgr/working_papers.../davy_wp10.pdf
- Deane, T. (2010), "Cross-Border Trafficking in Nepal and India-Violating Women's Rights" *Human Rights Review*, Vol.11, pp.491-513.
- Derks, A. (2000), "From White Slaves to Trafficking Survivors: Notes on the Trafficking Debate", Centre for Migration and Development Working Paper Series- Princeton University
- Dhaliwal, S. (2008), "Development of South Asian Human Rights Culture: The role of South Asian Association for Regional Cooperation (SAARC)", *The Indian Journal of Political Science*, Vol.69, No. 3, pp 565-575, <http://www.jstor.org/stable/41856445> accessed: 07-02-2016.
- Doezema, J. (2000), "Loose women or lost women? The re-emergence of the myth of white slavery in contemporary discourses of trafficking in women", *Gender Issues*, 18 (1), 23-50.

- Dona, K. (2011), "Globalization and its Effects on the Transnational Movement to End Human Trafficking", www.sapereaude.chapman.edu/?p=418
- Doocy, S. et al., (2007), "The Risk and Impacts of Porteting on the Well-Being of Children in Nepal", *Journal of Oxford university Press*, journals.permissions@oxfordjournals.org, accessed on 16/03/2012.
- Escaler, N.(1998), "The IOM position on trafficking in women" paper at US-EU *Transatlantic Seminar to Prevent Trafficking in Women*, L'viv, Ukraue, July.
- Farrell, A. (2009), "State and Local Law Enforcement Responses to Human Trafficking: Explaining Why So Few Trafficking Cases Are Identified in the United States." *Sociology of Crime, Law, and Deviance* 13, 243-59.
- Feingold, D. A. (2005), "Human Trafficking", *Foreign policy*, No.150, pp. 26-30, 32, <http://www.jstor.org/stable/30048506>, accessed: 21/11/2011.
- Fredette, K. (2009), "Revisiting the UN Protocol on Human Trafficking: Striking Balances for More Effective Legislation." *Cardozo Journal of International & Comparative Law* 17, no. 1: 101-34.
- Gabhan, S. N. (2006), "Human Trafficking: A Twenty-First Century Slavery", *The Forrow*, Vol.57, No.10, pp.528-537, <http://www.jstor.org/stable/27665410>, accessed: 21/11/2011.
- Gallagher, A. (2001), "Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis", *Human Rights Quarterly*, Vol.23, No. 4, pp.975-1004, <http://www.jstor.org/stable/4489368>, accessed: 21/11/2011.
- Gallagher, A. (2008), "Developing an Effective Criminal Justice Responses to Human Trafficking Lessons From the Front Line" *International Criminal Justice Review*, Vol.18 no.3 318-343.
- Gallagher, A. (2011), "Improving the Effectiveness of the International Law of Human Trafficking: A Vision for the Future of the Us Trafficking in Persons Reports." *Human Rights Review* 12, no. 3 381-400.
- Garcia Cuesta, S. (2009), "Gender-Based Violence and Trafficking in Women: Social Exploitation of the Trafficked." *Documentacion Social*, no. 152 :151-83.
- Gayen, S. (2006), "Innovative Approaches to Combat Trafficking of Women in the Sex Trade", *Inter-Asia Cultural Studies*, Vol.7, No.2, pp.331-337. <http://dx.doi.org/10.1080/14649370600674134>, accessed: 16/03/2012.
- George, A. and Shagun S. (2013), "Sex Trafficking, Physical and Sexual Violence, and HIV Risk among Young Female Sex Workers in Andhra Pradesh, India." *International Journal of Gynecology & Obstetrics* 120, no. 2 : 119-23.

- George, S. (2012), "The Strong Arm of the Law Is Weak: How the Trafficking Victims Protection Act Fails to Assist Effectively Victims of the Sex Trade." *Creighton Law Review* 45, No. 3 : 563-80.
- Ghosh, B. (2009), "Trafficking in Women and children in India: Nature, Dimensions and Strategies for Prevention", *The International Journal of Human Rights*, Vol.13, No.5, pp.716-738, <http://dx.doi.org/10.1080/13642980802533109>, accessed:16/03/2012.
- Gupta, M. (2000), "Prostitution in Nepal", *Institute of Environment Development Studies*, Lucknow & New Delhi: Swarup & Sons, , pp.90-96
- Gurung, S. H. (2014), "Sex Trafficking and the Sex Trade Industry: The Processes and Experiences of Nepali Women." *Journal of Intercultural Studies* 35, No. 2: 163-81.
- Guttal, S. (2007), "Globalization", *Development in Practice*, Vol.17, No. 4/5, pp.523-531, <http://www.jstor.org/stable/25548249>, accessed: 16/03/2012.
- Haddadin, Y. and Klimova A. (2013), "Human Rights-Based Approach to Trafficking the Work of the United Nations Office of the High Commissioner for Human Rights", *The Judges' Journal*, Vol. 52 No.1
www.americanbar.org/.../human_rightbased_approach_to_trafficking
- Haq, K. (2000), "Gender and Human Development: A South Asian Perspective", www.mhhdc.org/reports/khadija-haq/9-KH%20Oxford%20lecture.pdf accessed on 2 February 2012
- Haynes, D. F. (2004), "Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers", *Human Rights Quarterly*, Vol.26, No.2, pp.221-272, <http://www.jstor.org/stable/20069727>, accessed: 21/11/2011.
- Herzfeld, B. (2002), "Slavery and Gender: Women's Double Exploitation", *Gender and Development*, Vol. 10, No.1, 50-55
- Huda, S. (2006), "Sex Trafficking in South Asia" *International Journal of Gynecology and Obstetrics*, Vol.94, pp.374-381, www.chikdtrafficking.com/Docs/huda2006_oct07.pdf
- Hyland, K. E. (2001), "The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children" *Human Rights Brief*, no. 2, 30- 38.
- Jani. N. (2010), "Analysing legal paradoxes in anti-trafficking policies", *Journal of Comparative Social Welfare*, Vol.26 No.1, pp.27-42, <http://dx.doi.org/10.1080/17486830903190004>, accessed:16 March 2012.

- Jassal, P. (2007), "Legal Options/Rights for the Victims of Trafficking", [www.legalserviceindia.com>article](http://www.legalserviceindia.com/article)
- Joffres, C. et al., (2008), "Sexual slavery without borders: trafficking for commercial sexual exploitation in India", *International Journal for Equity in Health*, Vol7, No.22, <http://www.equityhealthj.com/content/7/1/22>.
- Johnson, B. C. (2012), "Aftercare for Survivors of Human Trafficking." *Social Work and Christianity* Vol. 39, No. 4 : 370-89.
- Jordan, A. D. (2004), "Human Trafficking and Globalization", *Centre for American Progress*, www.americanprogress.org/kf/terrorismshadows-jordan.pdf
- Jordan, A. D. (2008), "Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings", *Gender and Development*, Vol. 10, 28-29
- Kapur, R. (2013), "Gender, Sovereignty and the Rise of a Sexual Security Regime in International Law and Postcolonial India" , *Melbourne Journal of International Law* 14, no. 2: 317-45
- Kara, S. (2011) b, "Designing More Effective Laws against Human Trafficking" *Journal of International Human Rights* Vol. 9, No. 2: 123-47.
- Kara, S. (2011) a, "Supply and Demand" *Harvard International Review* Vol. 33, No. 2 : 66-71.
- Kendall, V. M. (2011), "Greasing the Palm: An Argument for Increased Focus on Public Corruption in the Fight against International Human Trafficking", *Cornell International Law Journal*, Vol. 44, No.1
- Kim Anh, D. (2012), "Human Trafficking in a Globalized World: Gender Aspects of the Issue and Anti-Trafficking Politics." *Journal of Research in Gender Studies* Vol. 2, No. 1: 48.
- Kim, K. and Chang G. (2007), "Reconceptualising Approaches to Human Trafficking: New Directions and Perspectives from the Field(s)", Board of Trustees of the Leland Stanford Junior University, *Stanford Journal of Civil Rights and Civil Liberties*, August 2007.
- Konrad, H. (2006), "Combating Trafficking in Human Beings", *Refugee Survey Quarterly*, Vol.25, Issue 4, <http://rsq.oxfordjournals.org/> , accessed on 27 March 2012
- Kumar, S. (1964), "Nepal's New Legal Code" *The Economic Weekly* www.epw.in.system/files/pdf/1964_16/2/nepal_s_new_legal_code_pdf accessed on 23 April 2014

- Laczko, F. & Gozdzia, E. M. (eds.) (2005), "Data and Research on Human Trafficking: A Global Survey", *International Organization for Migration (IOM)*, Vol.43 (1/2).
- Laczo, M. (2010), "Deprived of an Individual Identity: Citizenship and Women in Nepal", *Gender and Development*, Vol.11, No.3, pp.76-82, <http://dx.doi.org/10.1080/741954372>, accessed: 16 March 2012.
- Lampe, K. (2013), "Recent Publications on Organized Crime" *Trends in Organized Crime* 16, no. 3: pp - 361-63.
- Lehti, M. and Aromaa, K. (2006), "Trafficking for Sexual Exploitation", *The University of Chicago Crime and Justice*, 34, 1-33.
- Lepcha, R. (2016), "Role of International Institutions and Legal Regimes in Addressing Human Trafficking: A Study", *International Journal of Management and Social Science Research Review (IJMSRR)*, Volume-1, Issue-25, pp.10-20.
- Leppanen, K. (2007), "Movement of women: Trafficking in the interwar era", *Women's Studies International Forum*, 30, 523-533.
- Lobasz, J. K. (2009), "Beyond Border Security: Feminist Approaches to Human Trafficking", *Security Studies*, Vol.18, No.2, pg. 319-344, <http://dx.doi.org/10.1080/09636410902900020> , accessed: 27 March 2012.
- Lusk, M. and Lucas, F. (2008), "The Challenge of Human Trafficking and Contemporary Slavery", *Journal of Comparative Social Welfare*, Vol.25, No.1, pp.49-57, <http://dx.doi.org/10.1080/17486830802514049>, accessed: 16/03/2012.
- Madden, D. et al., (2012), "Defining Sex Trafficking in International and Domestic Law: Mind the Gaps." *Emory International Law Review* 26, no. 1: 137-62.
- Matter, M. Y. (2003), "International Conventional Law on Trafficking in Persons, Especially Women and Children: Problems in Enforceability of International Trafficking Prohibitions" <http://www.protectionproject.org>
- Matter, M. Y. (2013), "Transnational Legal Responses to Illegal Trade in Human Beings", *SAIS Review of International Affairs*, Vol.33, No.1, pp. 137-159
- Mishra, E. (2013), "Combating Human Trafficking: A Legal Perspective with Special Reference to India", *Sociology and Anthropology*, 1 (4): 172-179, <http://www.hrpub.org>
- Moses, G. (2007), "Drug Use, HIV/AIDS and Human Trafficking in the North -East", *Dialogue*, Vol.9, No.1, pp.161-165

- Muntarhorn, V. (2011), "Human Rights versus Human Trafficking in the Face of Globalization", www.hawaii.edu/global/projects_activities/Trafficking/vitit.pdf accessed on: 13/04/2011
- Moirangthem, S. et al., (2015), Child sexual abuse: Issues & Concerns, *Indian Journal of Medical Research*, 142(1): 1-3
- Nadelmann, E.A. (1990), "Global Prohibition Regimes: The Evolution of Norms in International Society" *International Organisation*, vol.44 no. 4, pp. 480-481
- Niaz, U. (2003), "Violence against women in South Asian countries", *Springer-Verlag*, 6: 173-184
- O'Neill, H. (1997), "Globalization, Competitiveness and Human Security: Challenges for Development Policy and Institutional Change", *European Journal of Development Research*, Vol.9, pp.1-36
- Oberleitner, G. (2005), "Porcupines in Love: the Intricate Convergence of Human Rights and Human Security", *E.H.R.L.R.* Issue 6, Sweet & Maxwell Ltd.
- Pandey, S. et al., (2013), "Antecedents and Reintegration of Sex Trafficked Victims in India: A Conceptual Framework" *International Journal of Criminal Justice Sciences (IJCJS)*, Vol.8 (1): 47-62.
- Patel, R. (2013), "The Trafficking of Women in India: A Four-Dimensional Analysis" *Georgetown Journal of Gender & the Law* 14, no. 1: 159-87.
- Patel, T. K. (2013), "Anti-Trafficking Laws in India-Issues and Perspectives", [www.manupatra.co.in>articles>Upload](http://www.manupatra.co.in/articles/Upload)
- Piotrowicz, R. (2008), "The UNICR's Guidelines on Human Trafficking", *International Journal of Refugee Law*, Volume 20, Issue 2, pp 242-253.
- Post, D. (2011), "Legalization of Prostitution Is a Violation of Human Rights" *National Lawyers Guild Review* 68, no. 2: 65-108
- Poudel, P. and Carrier, J. (2010), "Girl Trafficking, HIV/AIDS, and the position of women in Nepal", *Gender and Development*, Vol.8, No.2, pp.74-79, <http://dx.doi.org/10.1080/1741923626>, accessed: 16 March 2012.
- Pretious, W. (2008), "Law Enforcement Responses to Trafficking in Persons in East Asia", ARTIP (Paper presented at the Trafficking in Persons Research and Data Forum, University of Hong Kong, 3-4 November 2008), www.artipproject.org/artip-tip-cjs/resources-specialised-publications.html

- Rahaman, Md. R. (2015), "Human Trafficking in South Asia (Special Preferences on Bangladesh, India and Nepal): A Human Rights perspective", *Journal of Humanities and Social Science (IOSR-JHSS)* Vol. 20, Issue 3, pp 01-8, www.iosrjournals.org
- Rajbhandari, S. N. (2008), "Inequality of Income and Wealth Distribution in Nepal" www.doc.rero.ch/lm.php?url=1000,40,6,20060601155320-KC/...pdf
- Rao, S. and Presenti, C. (2012), "Understanding Human Trafficking Origin: A Cross-Country Empirical Analysis." *Feminist Economics* 18, no. 2: 231-63.
- Richardson, D. et al., (2009), "Sexual trafficking in Nepal: constructing citizenship and livelihoods", *Gender, Place & Culture: A Journal of Feminist Geography*, Vol.16, No.3, pp.259-278, <http://dx.doi.org/10.1080/09663690902836300>, accessed:16/03/2012.
- Richter, W. L. and Richter, L. K. (2000), "Human Trafficking, Globalisation and Ethics", www.aspaonline.org/ethicscommunity/.../Human%20Trafficking
- Samarasinghe, V. and Burton, B. (2007), "Strategising Prevention: A Critical Review of Local Initiatives to Prevent Female Sex Trafficking", *Development in practice*, Vol.17, No.1, pp.51-64, <http://www.jstor.org/stable/25548176>, accessed: 16/03/2012.
- Samuels, F. et al., (2011), "Vulnerabilities of movement: cross-border mobility between India, Nepal and Bangladesh" *Overseas Development Institute* www.odi.org/resources/docs/7404.pdf
- Schoenhardt, A. (1999), "Organized Crime and the Business of Migrant Trafficking", *Crime, Law and Social Change*, No. 32:203-233.
- Segrave, M. (2009), "Order at the Border: The Repatriation of Victims of Trafficking." *Women's Studies International Forum* 32, no. 4: 251-60.
- Seo-Young, C. (2013), "Integrating Equality: Globalization, Women's Rights, and Human Trafficking." *International Studies Quarterly* 57, no. 4: 683-97.
- Shelley, L. (2012), "The Relationship of Drug and Human Trafficking: A Global Perspective." *European Journal on Criminal Policy and Research* Vol.18, no. 3: 241-53.
- Shoham, S. G. & Knepper, P. (2007), "Introduction: Social, Political and Economic aspects of Human Trafficking", *International Journal of Comparative and applied Criminal Justice*, Vol.31, No.2, pp.119-121, <http://dx.doi.org/10.1080/01924036.2007.9678764> accessed: 27/03/2012.

- Singh, A. & Singh, A. K. (2014), "Impact of ILO on Indian Labor Laws" *International Journal of Research in Management & Business Studies*, Vol.1 p 124-126.
- Subedi, G. (2009), "Trafficking in Girls and Women in Nepal for Commercial Sexual Exploitation: Emerging Concerns and Gaps", *Pakistan Journal of Women's Studies*, Vol.16, No. (1/2), pp.121-146
- Surana, P. (2013), "Effect of Globalization on Human Trafficking and Forced Prostitution in India", www.childtrafficking.com/Docs/surana_nodate_effect_of.pdf
- Timalsena, R. K. (2012), "Cross Border Human Trafficking in Nepal" <http://nalcnepal.com/index.php/component/k2/item/20-cross-border-human-trafficking-in-nepal.html>, accessed on 28 July 2013
- Todres, J. (2006), "International Law: Combating Trafficking of Persons", *American Bar Association*, Vol. 23, No.2, pp. 36-37,44 <http://www.jstor.org/stable/23673013> accessed: 15-09-2015.
- Todres, J. (2009), "Law, Otherness, and Human Trafficking", *Santa Clara Law Review* Vol 49. 3.<http://digitalcommons.law.scu.edu/lawreview/vol49/iss3/1>
- Turner, J. and Kelly, L. (2009), "Trade Secrets: Intersections between Diasporas and Crime Groups in the Constitution of the Human Trafficking Chain", *BRIJ. J. Criminol.* Vol.49, pp.184-201, <http://bjc.oxfordjournals.org/> accessed: 27/03/2012.
- Tzvetkova, M. (2002), "NGO Responses to Trafficking in Women", *Gender and Development*, Vol.10, No.1, pp.60-68, <http://www.jstor.org/stable/4030684>, accessed: 21/11/2011.
- Vikram, V. (2010), "India's Response against the Act of Torture" www.indialawyers.wordpress.com
- Vivekanandan, V. (2010), "Child Sexual Abuse in India: Problems and Perspectives" Seminar Paper presented in the National Seminar at the University of Kerala, Thiruvananthapuram
- Walser, R. et al., (2011), "The Human Tragedy of Illegal Immigration: Greater Efforts Needed to Combat Smuggling and Violence" The Heritage Found <http://www.heritage.org/research/reports/2011/06/the-human-tragedy-of-illegal-immigration-greater-efforts-needed-to-combat-smuggling-and-violence>.
- Worthen, M. (2011), "Sex Trafficking or Sex Work? Conceptions of Trafficking among anti-trafficking organizations in Nepal", *Refugee Survey Quarterly*, Vol.30, No. 3, <http://rsq.oxfordjournals.org/> accessed: 16/03/2012.

APPENDIX I

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (2000)

Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

- (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from re victimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations

shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

APPENDIX II

Human Trafficking and Transportation (Control) Act, 2064

Act Number 5 of the Year 2064(2007)

(Date of authentication and publication: shrawan 8, 2064 (24 July 2007))

Preamble: Whereas it is expedient to control the acts of human trafficking and transportation, and to protect and rehabilitate the victims of such act by enacting law, the
'Legislature-Parliament' has enacted this Act.

PRELIMINARY Part 1

1. **Short Title , extension and Commencement:** (1) This Act may be called
“Human Trafficking and Transportation (Control) Act, 2064(2008).

(2) This Act shall come into force immediately.

(3) This Act shall extend throughout Nepal and anyone committing an offence against Nepali citizen under this Act from foreign territory shall also remain within the scope of this Act.

2. **Definition:** Unless the Subject or context otherwise requires, in this Act-

(a) "Offence" means an act pursuant to Section 3.

(b) "Center" means a rehabilitation center established pursuant to Section 13.

(c) "Victim" means a person who is sold, transported or put into prostitution.

(d) “Child” means a person who has not reached the age of eighteen years.

(e) "Exploitation" means an act of keeping human being as a slave and bonded and this word also includes to remove human organ except otherwise provided by prevailing law.

(f) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act.

Part 2

PROVISION OF OFFENCE AND INVESTIGATION

3. **Human beings not to be trafficked and transported:** (1) No one shall commit or cause to commit human trafficking and transportation.

(2) If anyone commits an act under Subsection (1), that shall be deemed to have committed an offence under this Act.

4. **Acts considered as Human Trafficking and Transportation:** (1) If anyone commits any of the following acts, that shall be deemed to have committed human trafficking:

(a) To sell or purchase a person for any purpose,

(b) To use someone into prostitution, with or without any benefit,

(c) To extract human organ except otherwise determined by law,

(d) To go for in prostitution.

(2) If anyone commits any of the following acts, that shall be deemed to have committed human transportation:

(a) To take a person out of the country for the purpose of buying and selling,

(b) To take anyone from his /her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostage, allurements, influence, threat, abuse of power and by means of inducement, fear, threat or coercion to the guardian or custodian and keep him/her into ones custody or take to any place within Nepal or abroad or handover him/her to somebody else for the purpose of prostitution and exploitation.

5. **Reporting:** (1) If anyone knows that the offence under Section 3 of this Act is being committed or may be committed, he/she may report to the nearest police office.

(2) If the person who reports under Sub-section (1) puts written request to remain unnamed, the police office which registers the report should maintain his/her confidentiality.

6. Certifying the statement: (1) If the person reporting under Section 5 is a victim, the police officer should take the statement immediately and the victim shall be taken to the nearest district court to certify the statement as soon as possible.

(2) If a police officer brings to certify a statement under Sub-section (1), the district judge, notwithstanding anything contained in the prevailing law and even if the offence related with that statement does not fall within the jurisdiction of that district court, shall certify the statement after reading it aloud and noting whether there is difference or not in the statement.

(3) If the statement of the victim is certified under Subsection (2), the court can take the certified statement as evidence even if the victim does not appear in the court in the course of further court proceeding.

7. Arrest and investigation: (1) If any act considered to be an offence under this Act is being committed or may be committed or attempted in a house, land, place or a vehicle, and if there is a chance the offender will escape or evidence relating to the offence will disappear or be destroyed if immediate action is not taken; notwithstanding anything contained in the existing law, a police officer of the rank Sub-inspector or higher may prepare a report and carry out any of the activities listed below at any time:

(a) To enter, search or seize such house, land, place or vehicle.

(b) To break or open windows or doors in order to carry out the necessary activities in case he/she faces obstruction and opposition in performing the duties,

(c) To arrest or take body search of a person engaged in such activity without an arrest warrant,

(d) To seize and take in custody of the evidence found in such house, land, place or vehicle.

(2) While carrying out such activity under Sub-section (1), police personnel shall, if possible, identify representatives of local bodies or otherwise those present at the time of activity as witnesses and provide a copy of the details of the activity to the owner of the house, land, place or vehicle.

8. Prosecution in custody: Notwithstanding anything contained in the prevailing law, and except to the offence under Clause (d) of Sub-section (1) of Section 4, the court shall keep the accused in custody while prosecuting cases on other offences that fall under Section 4.

9. **Burden of proof**: Notwithstanding anything contained in the prevailing law, a person accused of an offence under this Act shall provide evidence proving that he/she did not commit the offence.

10. **Right to keep separate Law Practitioner**: If a victim wishes to keep an additional law practitioner to represent his/her case during court hearings, he/she has the right to be represented by a separate law practitioner for an offence under this Act.

11. **Provision of Translator and Interpreter**: If the working language used by the concerned court and office in dealing with an offence under this Act is not understandable by the victim, he/she may manage for the translator or interpreter with the permission of the court.

Part 3

PROVISION OF RESCUE, REHABILITATION AND RECONCILIATION

12. **Act related to Rescue**: Nepal government shall manage for the rescue of any Nepali citizen sold in the foreign land.

13. **Rehabilitation Center**: (1) Nepal government shall establish necessary rehabilitation centers for physical and mental treatment, social rehabilitation and family reconciliation of the victim.

(2) Any organization can obtain permission as prescribed to establish and run rehabilitation center to address the objectives under Sub-section (1). Nepal government shall make regular and effective monitoring of that organization and rehabilitation center established by it.

(3) Nepal government may provide economic support as well as other assistance, as prescribed, to the center run under Sub-section (2).

(4) Center shall manage for the social rehabilitation and family reconciliation of the person stationed at the Center.

(5) Center shall manage for the medical treatment and consultation service and facility to the victims.

(6) No one shall make the victim in the Center engage in any work against his/her wish.

(7) Management, operation standard, monitoring of the rehabilitation center, skillful training and employment, rehabilitation, family reconciliation shall be carried out as prescribed.

14. **Rehabilitation Fund:** (1) Nepal government shall establish a rehabilitation fund for operation of the rehabilitation center established under Sub-section (1) of Section 13.

(2) The fund established under the Sub-section (1) shall receive contributions as follows:

(a) Funding received from Government of Nepal,

(b) Funding received from national and international organizations, and individuals,

(c) Half of the amount received as fines under Section 15.

(3) Management and operation of the rehabilitation fund shall be as prescribed

Part 4

PROVISION OF PUNISHMENT AND COMPENSATION

15. **Punishment:** (1) Any person who commits an offence as prescribed under Section 3 shall be punished as follows:

(a) Twenty years imprisonment and a fine of Two Hundred Thousand Rupees for selling or buying a human being,

(b) Ten years to Five years imprisonment and a fine of Fifty Thousand Rupees to One Hundred Thousand Rupees for forcing into prostitution, with or without financial benefit,

(c) 10 years imprisonment and a fine of Rs Two Hundred Thousand to Five Hundred Thousand Rupees for extracting human organ except otherwise determined by law,

(d) One month to three months imprisonment and a fine of Two Thousand Rupees to Five Thousand Rupees for a person engaged

1) Ten years to Fifteen years imprisonment and a fine of Fifty Thousand Rupees to One Hundred Thousand Rupees for taking a person out of the country.

Fifteen years to Twenty years imprisonment and a fine of One Hundred Thousand Rupees to Two Hundred Thousand Rupees for taking a child out of the country.

(2) Ten years of prison and a fine of Fifty Thousand Rupees to One Hundred Thousand Rupees for taking a person from one place to another place within the country. Ten years to Twelve years imprisonment and a fine of One Hundred Thousand Rupees for taking a child from one place to another place within the country.

- (f) One years to two years of imprisonment for taking a person from one place to another place within the country, and two years to five years of prison for taking out of the country for the purpose of exploitation under Clause (b) of Sub-section (2) of Section 4.
- (g) Except otherwise written in clause (e) and (f), seven years to ten years of prison for a person committing an offence under clause (b) of Subsection (2) of Section 4.
- (h) The person engaged in provocation, conspiracy and attempt of an offence of human trafficking or transportation or an abettor of that offence shall get half out of full punishment envisioned for that offence.

(2) Notwithstanding anything written in Sub-section (1), the punishment in the following matters shall be as follows:

(a) If same person is involved in buying or selling and forcing into prostitution, with or without any benefit; he/she shall be liable for punishment under both offences,

(b) If same person is involved in buying or selling or forcing into prostitution, with or without any benefit, and in an offence under Clause (b) of Sub-section (2) of Section 4, he/she shall be liable for punishment under both offences,

(c) Notwithstanding anything mentioned in Clause (b), if same person is involved in an offence under Clause (b) of Sub-Section (2) of Section 4 and in transporting a human being from one place to another place within Nepal or outside the country for the purpose of buying, selling or forcing into prostitution, with or without any benefits; he/she shall be liable for separate punishment for each offence.

(3) If an offence under Section 3 is committed by person holding a public post; in addition to the regular punishment for that offence, he/she shall be liable for Twenty five 25 percentage additional punishments.

(4) If anyone commits an offence under Section 3 with a person under protection or guardianship or if the victim is relative of the offender as incorporated in the Chapter of Incest in civil code , he/she is shall be liable for ten percentage additional punishment besides regular punishment under this Act.

(5) If anyone commits an offence under Section 3 repeatedly, for every offence he/she shall le liable for it additional one-fourth punishment in addition to the regular punishment.

(6) If, in the course of proceeding of the case, a person involved in reporting the offence under Section 5 of this Act gives contrary statement to that of the statement giver earlier or if he/she does not appear before the court on its notice or does not assist to the court, shall be liable for three months to one year of imprisonment.

16. **Exemption from Punishment**: If a person knows or there is reasonable ground to believe that he/she is being bought, sold or engaged in prostitution or taken for the same and he/she does not get help to get rid of from those acts or somebody creates obstacle or stops or takes into control or uses force, in such case, if he or she believes that it is impossible to get rid of from such control and on such faith the perpetrator happens to be killed or injured in the course of release, such person shall not be liable for any punishment notwithstanding anything in the prevailing law.

17. **Compensation**: (1) A court shall issue order to provide compensation to the victim which shall not be less than half of the fine levied as punishment to the offender

(2) If the victim dies before receiving the compensation under Sub-Section (1) and if he/she does have children below the age of 18, the children shall receive the compensation. If the victim does not have any children, the dependant parents shall receive the compensation.

(3) If there are no dependant parents and minor children to receive compensation under Sub-Section (2), the amount should be accrued in the Rehabilitation Fund.

Chapter – 5

Miscellaneous

18. **Seizure of Property**: (1) Any movable or immovable property acquired as a result of an offence under this Act shall be seized.

(2) If it is proved that anyone uses or provides to use any house, land or vehicle for any offence under this Act, that house, land or vehicle shall be seized.

19. **Award**: (1) If anyone is rescued or a person involved in an offence is arrested based on the reporting of an offence under this Act or giving notice that an offence is going to be committed; the informant shall be given, from Rehabilitation Fund established under Section 14, ten percent of the fine levied as punishment under Section 15 as an incentive .

(2) If there is more than one informant giving information under Sub-Section (1), the incentive amount shall be distributed proportionately.

20. **Confidentiality of the informant**: The name and address of the informant and the details provided by the informant under Sub-Section (1) of Section 19 shall be kept confidential.

21. **Exemption from penalty**: (1) If an accused charged of committing an offence under this Act accepts an offence and co-operates the police, public prosecutor or court to collect evidence and arrest other accused or abettor, and if he/she has committed the offence for the first time, court can reduce the punishment up to twenty five percent so prescribed for that offence. Provided that, if the assistance is not proved by the evidence or he/she gives statement against the support provided to the police or prosecutor, a case may be registered notwithstanding anything in the prevailing laws.

(2) Notwithstanding anything contained in Sub-Section (1), there shall be no reduction in claimed punishment, pursuant to this section, in the following conditions:

- (a) To provide exemption in punishment to the principal accused,
- (b) If the case involved is trafficking or transportation of a child,
- (c) If exemption in the punishment has already been provided.

22. **Claim of offence against moral turpitude**: While framing a charge sheet before the court for an offence under this Act, the concerned public prosecutor may claim that accused have committed an offence against moral turpitude.

23. **Formation of a Committee**: (1) Nepal government may form a National Committee and necessary District Committees as prescribed to coordinate the activities of government bodies and non-governmental organizations working to rehabilitate victims and control the offence under this Act.

(2) The functions, duties and powers of the committee formed under Sub-Section (1) shall be as prescribed.

24. **Punishment for obstruction**: Anyone obstructing an investigation of an offence under this Act shall be fined up to Ten Thousand Rupees.

25. **Prohibition against disseminating confidential information**: (1) Without the consent of the victim, no one shall publish or broadcast the real name, photograph or any information which is detrimental to his/her character.

(2) Any person who publishes or broadcasts the name, photograph or other information pursuant to Sub-Section (1) shall be subjected to a fine of Rs Ten Thousand to Twenty Five Thousand Rupees.

26. **Security**: If a person provides reasonable ground and requests the nearest police office for security against any type of retaliation for reporting to the police under Section 5 or providing statement on court or remaining as a witness, that police office should provide any or all of the following protection measures to him/her:

(a) To provide security during traveling in course of attending case proceeding in the court,

(b) To keep or cause to keep under police protection for a certain period,

(c) To keep at rehabilitation center.

27. **In camera court proceedings**: (1) Court proceeding and hearing of an offence under this Act shall be conducted in In-Camera.

(2) Only parties to the proceeding, their attorneys or other non-parties permitted by the court may enter to the court during the proceeding and hearing under Sub-section (1).

28. **Government to be the Plaintiff**: Government of Nepal shall be the plaintiff in all cases filed under this Act, and such case shall be deemed to be included in Schedule 1 of the Government Cases Act, 2049.

29. **Power to make Rules**: Government of Nepal shall frame Rules to implement the objective of this Act.

30. **Repeal and Saving** : (1) Human Trafficking (Control) Act 2043 is, hereby, repealed.

(2) Acts conducted and performed under Sub-Section (1) shall be considered to have be done pursuant to this Act.in prostitution.

(e) For a person who is involved in transportation of human being for the purpose of buying, selling and engaging some one in prostitution-

APPENDIX III

The Immoral Traffic (Prevention) Act, 1956

To curb the unlawful sale, purchase and exploitation of women and children both Indian and foreign, the Government of India enacted the Suppression of Immoral Traffic in Women and Girls Act of 1956. This Act was amended in 1986 and retained as the Immoral Traffic (Prevention) Act 1956. This Act supplemented by the Indian Penal Code (IPC) prohibits trafficking in human beings including children and lays down severe punishments especially for offences in respect of a child or a minor. The amended sexually for commercial purposes and provided enhanced penalties. One special amendment is that the presumption of guilt is laid on the accused in cases where children or minors are found in a brothel and on medical examination are detected to have been sexually abused.

Important Sections of the ITP Act:

Section 3 provides that any person, who keeps or manages or acts or assists in keeping or management of a brothel, shall be punishable on first conviction with rigorous imprisonment for a term not less than one year but not more than 3 years and also with fine which may extend to 2000 rupees and in event of a second or subsequent conviction with rigorous imprisonment for a term of not less than 2 years and more than 5 years and also with fine which may extend to 2,000 rupees.

Section 4 of the Act provides for the punishment of those persons over the age of 18 years for living on the earnings of prostitution. Such persons acting as tour or pimps on behalf of a prostitute are also included under this section and are liable to punishment, which are also included under this section and are liable to punishment, which may extend to two years or with fine, which may extend to one thousand rupees. And where such earnings, relate to prostitution of a child or minor, they shall be punishable with imprisonment for a term of not less than 7 years and not more than 10 years.

Section 5- Under Section 5 of the ITP Act procuring, inducing or taking a child or a minor for the sake of prostitution is punishable with rigorous imprisonment for a term of not less than 9 years. But which may extend even to life.

Section 6- Under Section 6 where a child is found with a person in a brothel there is a presumption of guilt for detaining the child or the person and he shall be punishable with imprisonment.

Section 7- Prohibits prostitution in or in the vicinity of public places such as public place for religious worship, educational institution, hotel, hospital, nursing home or such other place of any kind as may be notified in this behalf by the commissioner of police or magistrate in the manner prescribed. Under section 7 where a person commits the offence of imprisonment for not less than 7 years or for life for a term which may extend to 10 years and fine.

Section 9- Provides for stringent punishment if any person in custody, care, charge or authority of a person (girl or women) causes, aids or abets the seduction for prostitution.

Section 13 (4)- This section provides that the Central Government appoint such number of police officers as trafficking police and they shall exercise such powers and discharge such functions in relation to the whole of India.

Section 14- This section enacts that all offences under the Act shall be deemed to be cognizable within the meaning of the code of criminal procedure.

Section 16- This section empowers a special police officer to search without warrant.

Section 17- Empowers magistrates to pass orders for the rescue of girls from brothels.

Section 18- Provides for closure of brothels and eviction of offenders from the premises.

Section 19- Enables a women or a girl who is carrying or is being made to carry on prostitution to make an application to the magistrate having jurisdiction for an order that she may be kept in a protective home or provided care, protection by court.

Section 20- Confers power on the magistrate to remove a prostitute from any place within the local limits of his jurisdiction.

Section 21- Confers power on the State Government to establish protective homes and 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.

Section 21 A- Directs the persons/ authority concerned for maintaining a protective home or corrective institution shall whenever required by a court, produce the records and other documents maintained by home or institution before such court.

Section 22 A- Endows upon State Governments to establish special courts.

APPENDIX IV

SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002

THE MEMBER STATES OF THE SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION (SAARC), PARTIES TO THE PRESENT CONVENTION

EMPHASISING that the evil of trafficking in women and children for the purpose of prostitution is incompatible with the dignity and honour of human beings and is a violation of basic human rights;

RECALLING the decision of the Ninth SAARC Summit (May, 1997) that the feasibility of a regional Convention to combat the grave crime of trafficking in women and children for prostitution should be explored;

RECALLING ALSO the relevant international legal instruments relating to prevention of trafficking in women and children, including the Convention for the Suppression of Trafficking in Persons and of the Exploitation of Prostitution of Others, 1949; Convention on the Elimination of all Forms of Discrimination against Women, 1979; International Covenant on Civil and Political Rights, 1966; and the Convention on the Rights of the Child, 1989;

GIVING due regard to the implementation of the recommendations of the various pertinent International Bodies and Conferences including the Fourth World Conference on Women at Beijing (1995);

NOTING with concern the increasing exploitation by traffickers of women and children from SAARC countries and their increasing use of these countries as sending, receiving and transit points;

RECOGNISING in this regard the importance of establishing effective regional cooperation for preventing trafficking for prostitution and for investigation, detection, interdiction, prosecution and punishment of those responsible for such trafficking;

EMPHASISING the need to strengthen cooperation in providing assistance, rehabilitation and repatriation to victims of trafficking for prostitution;

HAVE AGREED as follows:

ARTICLE – I

DEFINITIONS

For the purpose of this Convention:

- 1) “Child” means a person who has not attained the age of 18 years;
- 2) “Prostitution” means the sexual exploitation or abuse of persons for commercial purposes;
- 3) “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 subjected to trafficking;
- 4) “Traffickers” means persons, agencies or institutions engaged in any form of trafficking;
- 5) “Persons subjected to trafficking” means women and children victimised or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means;
- 6) “Protective home” means a home established or recognised by a Government of a Member State for the reception, care, treatment and rehabilitation of rescued or arrested persons subjected to trafficking.
- 7) “Repatriation” means return to the country of origin of the person subjected to trafficking across international frontiers.

ARTICLE - II

SCOPE OF THE CONVENTION

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

ARTICLE - III

OFFENCES

1. The State Parties to the Convention shall take effective measures to ensure that trafficking in any form is an offence under their respective criminal law and shall make such an offence punishable by appropriate penalties which take into account its grave nature.

2. The State Parties to the Convention, in their respective territories, shall provide for punishment of any person who keeps, maintains or manages or knowingly finances or takes part in the financing of a place used for the purpose of trafficking and knowingly lets or rents a building or other place or any part thereof for the purpose of trafficking.
3. Any attempt or abetment to commit any crime mentioned in paras 1 and 2 above or their financing shall also be punishable.

ARTICLE – IV

AGGRAVATING CIRCUMSTANCES

1. The State Parties to the Convention shall ensure that their courts having jurisdiction over the offences committed under this Convention, can take into account factual circumstances which make the commission of such offences particularly grave, viz.
 - a) the involvement in the offences of an organised criminal group to which the offender belongs;
 - b) the involvement of the offender in other international organised criminal activities;
 - c) the use of violence or arms by the offender;
 - d) the fact that the offender holds a public office and that the offence is committed in misuse of that office;
 - e) the victimisation or trafficking of children;
 - f) the fact that the offence is committed in a custodial institution or in an educational institution or social facility or in their immediate vicinity or in other places to which children and students visit for educational, sports, social and cultural activities;
 - g) previous conviction, particularly for similar offences, whether in a Member State or any other country.

ARTICLE - V

JUDICIAL PROCEEDINGS

In trying offences under this Convention, judicial authorities in Member States shall ensure that the confidentiality of the child and women victims is maintained and that they are provided appropriate counseling and legal assistance.

A R T I C L E - V I

MUTUAL LEGAL ASSISTANCE

1. The State Parties to the Convention shall grant to each other the widest measure of mutual legal assistance in respect of investigations, inquiries, trials or other proceedings in the requesting State in respect of offences under this Convention. Such assistance shall include:
 - a) taking of evidence and obtaining of statements of persons;
 - b) provision of information, documents and other records including criminal and judicial records;
 - c) location of persons and objects including their identification;
 - d) search and seizures;
 - e) delivery of property including lending of exhibits;
 - f) making detained persons and others available to give evidence or assist investigations;
 - g) service of documents including documents seeking attendance of persons; and
 - h) any other assistance consistent with the objectives of this Convention.
2. Requests for assistance shall be executed promptly in accordance with their national laws and in the manner requested by the Requesting State. In the event that the Requested State is not able to comply in whole or in part with a request for assistance or decides to postpone execution it shall promptly inform the Requesting State and shall give reasons for the same.

A R T I C L E - V I I

EXTRADITION OR PROSECUTION

1. The offences referred to in the present Convention shall be regarded as extraditable offences in any extradition treaty which has been or may hereinafter be concluded, between any of the Parties to the Convention.
2. If a State Party which makes extradition conditional on the existence of a treaty, receives a request for extradition from another State Party with which it has no extradition treaty, the Requested State shall, if so permitted by its laws, consider this Convention as the basis for extradition in respect of the offences set forth in Article III.

3. Extradition shall be granted in accordance with the laws of the State to which the request is made.
4. The State Party in whose territory the alleged offender is present shall, if it does not extradite him or her, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution in accordance with the laws of that State.
5. In States where extradition of their nationals is not permitted under their law, nationals who have committed offences under the present Convention shall be prosecuted and punished by their courts.

A R T I C L E V I I I

MEASURES TO PREVENT AND INTERDICT TRAFFICKING IN WOMEN AND CHILDREN

1. The State Parties to the Convention shall provide sufficient means, training and assistance to their respective authorities to enable them to effectively conduct inquiries, investigations and prosecution of offences under this Convention.
2. The State Parties to the Convention shall sensitize their law enforcement agencies and the judiciary in respect of the offences under this Convention and other related factors that encourage trafficking in women and children.
3. The State Parties to the Convention shall establish a Regional Task Force consisting of officials of the Member States to facilitate implementation of the provisions of this Convention and to undertake periodic reviews.
4. The State Parties to the Convention may also, by mutual agreement, set up bilateral mechanisms to effectively implement the provisions of the Convention, including appropriate mechanisms for cooperation to interdict trafficking in women and children for prostitution.
5. The State Parties to the Convention shall exchange, on a regular basis, information in respect of agencies, institutions and individuals who are involved in trafficking in the region and also identify methods and routes used by the traffickers through land, water or air. The information so furnished shall include information of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction.

6. The State Parties to the Convention may consider taking necessary measures for the supervision of employment agencies in order to prevent trafficking in women and children under the guise of recruitment.
7. The State Parties to the Convention shall endeavour to focus preventive and development efforts on areas which are known to be source areas for trafficking.
8. The State Parties to the Convention shall promote awareness, inter-alia, through the use of the media, of the problem of trafficking in Women and Children and its underlying causes including the projection of negative images of women.

A R T I C L E - I X

CARE, TREATMENT, REHABILITATION AND REPATRIATION OF THE VICTIMS

1. The State Parties to the Convention shall work out modalities for repatriation of the victims to the country of origin.
2. Pending the completion of arrangements for the repatriation of victims of cross-border trafficking, the State Parties to the Convention shall make suitable provisions for their care and maintenance. The provision of legal advice and health care facilities shall also be made available to such victims.
3. The State Parties to the Convention shall establish protective homes or shelters for rehabilitation of victims of trafficking. Suitable provisions shall also be made for granting legal advice, counselling, job training and health care facilities for the victims.
4. The State Parties to the Convention may also authorise the recognised non-governmental organizations to establish such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.
5. The State Parties to the Convention shall encourage recognised non-governmental organisations in efforts aimed at prevention, intervention and rehabilitation, including through the establishment of such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.

ARTICLE - X

IMPLEMENTATION

The State Parties to the Convention shall adopt, in accordance with their respective Constitutions, the legislative and other measures necessary to ensure the implementation of the Convention.

ARTICLE - XI

HIGHER MEASURES

The measures provided for in the Convention are without prejudice to higher measures of enforcement and protection accorded by relevant national laws and international agreements.

ARTICLE - XII

SIGNATURE AND RATIFICATION

The Convention shall be open for signature by the Member States of SAARC at the Eleventh SAARC Summit at Kathmandu and thereafter, at the SAARC Secretariat at Kathmandu. It shall be subject to ratification. The instruments of Ratification shall be deposited with the Secretary General.

ARTICLE - XIII

ENTRY INTO FORCE

This Convention shall enter into force on the fifteenth day following the day of the deposit of the seventh Instrument of Ratification with the Secretary General.

ARTICLE - XIV

DEPOSITORY

The Secretary-General shall be the depository of this Convention and shall notify the Member States of signatures to this Convention and all deposits of Instruments of Ratification. The Secretary-General shall transmit certified copies of such instruments to each Member-State. The Secretary-General shall also inform Member States of the date on which this Convention will have entered into force in accordance with Article XIII.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

DONE at Kathmandu on this Fifth Day of January Two Thousand and Two, in nine originals, in the English Language, all texts being equally authentic.

M. MORSHED KHAN

Minister for Foreign Affairs

People's Republic of Bangladesh

JIGMI Y. THINLEY

Minister of Foreign Affairs

Kingdom of Bhutan

JASWANT SINGH

Minister of External Affairs

Republic of India

FATHULLA JAMEEL

Minister of Foreign Affairs

Republic of Maldives

RAM SHARAN MAHAT

Minister of Finance and Leader

of the Delegation of Nepal

Kingdom of Nepal

ABDUL SATTAR

Minister of Foreign Affairs

Islamic Republic of Pakistan

TYRONNE FERNANDO

Minister of Foreign Affairs

Democratic Socialist Republic of Sri Lanka
