

Immoral Trafficking of Women For Prostitution in South Asia Association for Regional Cooperation Countries: A Legal Analysis

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Abstract

As a matter of fact immoral trafficking of women is an organized crime that violates the basic human rights. It has been regarded as a vicious crime which deprives women's dignity. It is estimated that globally, women's trafficking for prostitution has been identified as the third largest source of profit for organized crime, followed by arms and drug trafficking which has been generating billions of dollars annually. This paper addresses the situation of women trafficking in South Asia, particularly in India, Bangladesh, Nepal, Bhutan, Afghanistan, Pakistan, Maldives, and Sri Lanka. It also argues that the focus on trafficking either as an issue of illegal migration or prostitution still dominates the discourse of trafficking in these countries, which prioritizes legal framework for eradication of immoral trafficking of women. This paper argues that emphasis needs to be given to such underlying root causes, particularly to poverty that fuels women trafficking and threatens women's dignity of the trafficked persons in South Asian countries.

Key Words: SAARC, Immoral Trafficking, Prostitution, Poverty, Legal Framework, Migration, SAARC Conventions, SITA, Juvenile Justice Act,

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Introduction

The trafficking of women for prostitution across SAARC (South Asian Association for Regional Cooperation) countries is a matter of concern as it involves the violation of women's fundamental right to live with dignity. Furthermore, immoral trafficking of women has been regarded as a vicious crime which deprives women's dignity on the one hand and viewed as a form of modern-day slavery on the other. Globally, women's trafficking for prostitution has been identified as the third largest source of profit for organized crime, followed by arms and drug trafficking which has been generating billions of dollars annually.³ Generally trafficked women are subjected to physical, sexual, and psychological abuse through forced labor, commercial sex, and slavery-like practices. However, the traffickers sell, trade, and exploit victims by using violence and coercion as their means of control. Now the question is- what are the main causes of trafficking of women? Is poverty a root cause or vulnerability factor of women's trafficking? How poverty underlies the mechanism of trafficking for women's prostitution? These are some fundamental questions which require to address and to know the impact of poverty on women's trafficking.

In general, poverty is a global phenomenon which makes women more vulnerable to fall in the trap of traffickers to look for prostitution to support themselves and their families. Women have been exploited continuously and taken away from their home by way of fraud, abduction, auction, fake marriages, coercion, deception, abuse of power etc.⁴ Trafficking for commercial sexual exploitation is considered as the most virulent form in South Asia. It threatened the fundamental rights of women besides exploiting them in the most despicable manner, destroying them physically, psychologically, socio-economically and in many other ways across SAARC region, namely Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

Carrying further, trafficking of women for prostitution has been viewed with increasing concern in SAARC region. Many of SAARC countries have already had provisions in their laws, which could be used to combat trafficking since colonial times as in the cases of India, Nepal, and Bangladesh etc. However, many countries felt these provisions in general criminal codes to be insufficient and sought to check trafficking by incorporating in their constitution and passing of various specific trafficking legislations. For instance, Article 23 of the Constitution of India, Article 20 of the Constitution of Nepal and Article 18 and 34 of the Constitution of Bangladesh contained provisions prohibiting trafficking in forced labour. Furthermore, the law of crimes of India namely, the Indian Penal Code, 1860 (IPC) has several provisions dealing with trafficking and forced prostitution. Imprisonment up to 10 years and fine is provided for kidnapping or abduction of a woman with intent to marry her by

force or to force her into illicit intercourse or to compel her directly or indirectly to go from a place for this purpose⁵ and where the girl happens to be a minor, even inducing her by any means to go from any place for this purpose is punishable. Importing into India a girl below 21 years with intent or knowledge for this purpose will incur the same penalty.⁶ It has been argued that the wide prevalence of trafficking for women's prostitution and sexual exploitation across SAARC region, many of these laws are not satisfactory to address immoral trafficking of women in prostitution. Instead of a complete code dealing with different forms of trafficking, law is scattered across different legislations across SAARC countries. Then the question is: How far respective SAARC countries and its legislation address women's trafficking? Is trafficking laws of SAARC countries being sufficient to deal with all aspects of trafficking? And, finally, how far SAARC nation's respective laws concerning trafficking of women comply with international standards in providing complete justice to the victims? To address the above question trafficking-specific laws focus mainly on trafficking for commercial sexual exploitation.

Moreover, it is clear that others forms of trafficking are covered by some provision of each country's criminal code and these include all aspect of offences ranging from kidnapping and rape to wrongful confinement and hurt.⁷ There has been cases of trafficking which are thinly disguised and may not prima facie be identified as trafficking which includes using the open border policy between India and Bangladesh to send Bengali girls and women to Bangladesh and vice versa and then selling them to brothels where women find themselves in situations akin to forced labor or labor with little or no remuneration. It is important to consider that trafficking of women has been rarely referred to as an issue of individual security both in academic research and policy intervention and such form of immoral trafficking of women need to be addressed by individual SAARC nation and legislative measure has to be taken collectively to preserve women's dignity effectively. This paper discusses about trafficking of women for prostitution in SAARC nation and how trafficking entails a violation women's right to live with dignity across SAARC region. Therefore, the purpose of this paper is to explore the legal provisions to prevent immoral trafficking and provide complete justice to the victims.

Women's Trafficking for Prostitution

The alarming numbers of women being trafficked for prostitution as a forced labor or slavery-like practices including commercial sexual exploitation is one of the serious problems across SAARC countries. Debate concerning human trafficking in general and women's trafficking in particular has based on two approaches namely, prostitution/sex work approach and migration approach. The first approach forms several contestations among the activists and practitioners and focuses on whether prostitution should be banned or considered as a legitimate trade. The second approach

concerned about the supply/demand nexus of trafficking, and stresses on promoting safe migration by separating trafficking from illegal migration. As countries in South Asia has been experiencing rapid changes in economic, political, demographic and labor trends as an outcome of globalization, increasing demand for cheap labor and heavy population growth in the region encourages migration whether legal or illegal.

The movement of young girls and women from Bangladesh and Nepal into Indian brothels is very common and there is further movement of these women to the Middle East as well as other destinations for prostitution is not rare at times of hardship, this starts out as illegal migration and ends up as trafficking.⁸ Such migration occurs in the backdrop of supply and demand in the sending and receiving countries. Moreover, the supply side is associated with structural inequality, poverty, illiteracy and lack of opportunities for livelihood, whereas the demand rises from the need of cheap labor in the destination. Often women from the poorer countries like Bangladesh and Nepal are at risk of exploitation and are trafficked to the neighboring country like India⁹. An assessment study on sexually exploited children and youth by the Economic and Social Commission for Asia and Pacific shows that, in South Asia young girls from certain rural areas of Bangladesh, India and Nepal are trafficked for marriage and then sold into prostitution. In order to prevent women's trafficking, anti-trafficking intervention by the governments, NGOs, INGOs and other donor agencies is basically centered on these two approaches in this region while addressing trafficking as an issue of migration and prostitution does not highlight the root causes of the trafficked women.

Saarc Countries And Its Legal Framework Against Immoral Trafficking of Women(I) India

The legal framework under the Constitution of India according to Article 23 (1) prohibits trafficking in human beings and forced labour. This right is enforceable against the state and private citizens. The relevant provisions under the Indian Penal Code are: Firstly, Section 366A, which makes the procurement of a minor girl (below the age of 18 years) from one part of India to another, punishable¹⁰. Secondly, Section 366B, which makes the importation of a girls below the age of 22 years punishable¹¹. Thirdly, Section 374 allows for punishment for compelling any person to labour against their will etc.¹²

The separation of immoral traffic in women and girls at 1956 (SITA)¹³ was enacted under Article 35 of the Indian Constitution with the object of inhibiting or abolishing trafficking in women and girls. In 1986 SITA was drastically amended and renamed as the immoral traffic (Prevention) Act, 1956. This Act is a special legislation that deals exclusively with trafficking. The Act defines the term brothel, child, corrective institutions, prostitutions, protective home, public place, special police officer and trafficking officers. The purpose of the enactment was to inhabit or

abolished the commercialized vice of trafficking in women and girls for prostitution as means of living. The law confers wide powers on the concern authorities in matters of rescue and rehabilitation of victims and survivors and provides for stringent action against exploiters, including eviction from brothels, surveillance as well as aggravated punishment when the offence are committed on children. Others important relevant Acts are:

- (a) The Probation of Offenders Act, 1958
- (b) The Indecent Representation of Women (Prohibition) Act, 1986
- (c) The Child Marriage Restrained Act, 1929
- (d) The Young Persons (Harmful Publication) Act, 1956
- (e) The Indian Evidence Act, 1872
- (f) The Juvenile Justice (Care of Protection of Children) Act, 2000
- (g) The Criminal Law Amendment Act, 2013
- (h) The Protection of Children from Sexual Offence (POSCO) Act, 2012

Pakistan

The Prevention and Control of Human Trafficking Ordinance 2002 has been promulgated to deal with all types of human trafficking. It is comprehensive legislation which defines human trafficking to includes for any purpose, vis, prostitution, forced labour and services. The ordinance takes into consideration even the mental injury of a person as an act of exploitation and provides for harsher sentences for serious violations. It also takes into consideration, the organized nature of crimes and presumes the vicarious liability of each members of the traffickers group by providing for stringent punishment. It also includes provisions for the compensation of victims etc.

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Bangladesh

The Bangladesh Constitution guarantees equal rights and equal protection to everyone regardless of gender. The fundamental principles of state policy require the state to prevent prostitution. Article 34 (1) prohibits all forms of forced labour. The Panel Code of 1860 deals with sheltering of girls forced into prostitution and with the punishment for offenders who procure minor girls, both from with and outside the country.¹⁵ Sections 364A, 366A and 373 provide protection to women who are victims of sexual offences or of illicit intercourse by punishing the kidnapper or abductor. The Separation of Immoral Trafficking Act, 1993 provides punishment for forcing girls into prostitution and for detaining girls below the age of 18 years, against their will, in any house, room or place in which prostitution is carried out. In Bangladesh, The Women and Children Repression Prevention Act, 2000 recognizes the different motive for trafficking and provides several victims and witnesses protection measures and compensations etc.

Bhutan

The Constitution of Bhutan protects its citizens from trafficking. The Labour and Employment Act, 2007 protects men and women from exploitation by regulating the minimum age for work and the working conditions, while the Child Care and Protection Act, 2011 comprehensively addresses the offence of child trafficking. The Royal Government of Bhutan has not yet ratified the United Nations Convention against Transnational Organized Crime; however, it has made tremendous efforts in preventing and countering human trafficking.¹⁶ Moreover, the Royal Bhutan Police has also set up specialized Woman and Child Protection Units that register complaints of abuse and violence against women and children. These units also offer counseling and support to survivors.

Maldives

Article 25 (a) of the Constitution prohibits slavery, servitude, and forced labour. Article 3(a) of the Employment Act (2008) prohibits forced labour. In December 2013, national authorities introduced the offence of trafficking in persons in the Maldives. The Anti-Trafficking Bill criminalizes sexual exploitation and forced labour. Previously, the Maldives did not have an anti-trafficking legislation in place. It may be pointed out that the Prevention of Human Trafficking Act criminalized some, but not all, forms of sex and labor trafficking. Inconsistent with the definition of trafficking under international law, the Prevention of Human Trafficking Act required transportation of a victim in order to constitute a trafficking offense. The law criminalized child sex trafficking but did not make clear if forced prostitution of adults was considered a form of trafficking. Article 16 criminalized debt bondage without reference to transportation. Furthermore, the Prevention of Human Trafficking Act prescribed penalties of 7 to 15 years imprisonment, which were sufficiently stringent and, with respect to sex trafficking, commensurate with those prescribed for other serious crimes, such as rape.¹⁷

Nepal

The Constitution of Nepal enshrined the principle of equality and justice for every citizen without any discrimination on the basis of race, caste, sex, creed etc. and safeguards the human rights of all citizens. Article 20 of the Constitution forbids the trafficking and sells of women and children and other forms of slavery.¹⁸ The Muluki Ain (Code of Law) 1963 lays down provisions against interstate and domestic trafficking. Section I decrees prison sentences of 20 years for international trafficking and 10 years for attempted sell, plus fines equivalent to the amount of transaction. The Human Trafficking (Control) Act of 1986 establishes territorial jurisdiction for offences committed outside Nepal etc.¹⁹

Sri Lanka

In Sri Lanka, trafficking is one of the major problems which address under

Section 360 of the Sri Lankan Penal Code deals with the offence of trafficking, defined as the act of buying or selling or bartering of any person for money or for any other consideration. Those assisting, arranging the travel, recruiting, falsifying birth record and impersonating or engaging in the procurement of children for adaptation are also liable to be prosecuted. In 1988, the Code was amended to provide for offences against children, such as causing or procuring children to beg or hiring children for sexual intercourse. In addition a provision was inserted for their protection from pornography. The Convention on Preventing and Combating Trafficking in Women and Children for Prostitution Act, 2005²⁰ which specifically on trafficking, though limited to women and children in prostitution, however, it has not yet been notified and cannot be used in cases of trafficking. Thus, at the moment, has no legislation in force specifically on trafficking. It has a number of miscellaneous legislations which are relevant to trafficking.²¹

Afghanistan

Afghanistan a source, transit, and destination country for men, women, and children subjected to forced sex-trafficking. The anti-trafficking legislation provides an opportunity for the National Assembly and Afghan Parliamentarians to demonstrate their ability and the crucial role they have to play in the anti-human trafficking movement. The role of Afghan parliamentarians in combating trafficking is manifold, and includes ensuring ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and any other relevant international instruments.²² Law Prohibiting Human Trafficking and Migrant Smuggling prohibits all forms of human trafficking and criminalizes the use of threat or force or other types of coercion or deceit for the purpose of exploitation. It includes forms of exploitation such as medical experiments and forcing a person to commit “other illegal activities,” and includes armed fighting and creating a new offence which prohibits bacha baazi, i.e. the exploitation of young boys by men for social and sexual entertainment. It also prescribes maximum penalties of eight years imprisonment; aggravating factors increase the maximum sentence to between 10 and 15 years and the imposition of the death penalty if exploitation for armed fighting resulted in the victim’s death.²³

Saarc Convention on Preventing And Combating Trafficking in Women And Children For Prostitution

The South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution defines 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” (Article 1(3)).²⁴ Furthermore, the SAARC Trafficking Convention, 2002 is a revolutionary

step to combat the crisis of immoral trafficking of women in South Asia. It is considered to an inspirational and standard setting instrument which seeks for regional co-operation among the SAARC Countries to prevent and reduce trafficking crisis.²⁵ In order to promote cooperation for the prevention and suppression of trafficking and for the rehabilitation and repatriation of victims, the SAARC Convention requires that states:

1. To criminalize trafficking, managing or knowingly financing a brothel, and knowingly renting a property for the purpose of prostitution (Article 3(1) and(2)).²⁶
2. To ensure that the confidentiality of victims is maintained and that they are provided with appropriate counseling and legal assistance (Article 5). To establish a system for repatriation and collaborate with NGOs to provide for the care and maintenance of victims by, among other things, making shelters, legal advice and job training available to those victims (Article 9).
3. To adopt the prevention measures that states ratifying the Convention are required to adopt include training relevant officials, exchanging information about offenders, supervising employment agencies and using the media to promote awareness about the underlying causes of trafficking “including the projection of negative images of women” (Article 8).
4. Moreover, the prevention measure aimed at creating awareness of the underlying causes of trafficking is more concerned with reducing temptations for traffickers than it is with empowering and educating people who are vulnerable to being trafficked.²⁷
5. The consequence of such initiatives has been to undermine the rights of migrant women and make them even more susceptible to exploitation. Thus, the SAARC Convention is much more concerned with eliminating ‘the evil’ of prostitution than with restoring the human rights of trafficked persons. It conflates trafficking with prostitution and seeks to criminalize prostitution-related activities that do not necessarily involve coercion or harm. However, the SAARC Convention is yet to be ratified by all South Asian countries, and hence it has not yet come into force and was the subject of vigorous debate by women’s and human rights groups in the SAARC countries. While still in draft form, the convention also attracted the notice of the UN Special Rapporteur on Violence Against Women, which raised several concerns.

Conclusion

To sum up, the paper argues that women’s prostitution is a growing concern for immoral trafficking is not a new phenomenon across SAARC countries. Since the beginning, the issue of women trafficking has always been a subject of huge

debate both in theory and practice which focused on how the problem of trafficking relates to some other relevant issues concerning prostitution, migration, organized crime and human rights violation. It can be argued that immoral trafficking of women is often equated with prostitution and this view considers that the only purpose of trafficking is for prostitution and that all trafficked persons are sexually exploited. However, those who take this position consider that prostitution should be abolished in order to stop trafficking (radical feminist/abolitionist view). Opposing the view, another group (liberal feminist/sex worker group) acknowledges prostitution as sex work and hence they argue that migrant sex workers should not fall into the category of trafficked persons, or in other words they claim that all sex work is not necessarily the result of trafficking.

Furthermore, the legal frameworks combating trafficking of women and children in SAARC countries for prostitution, the convention provides a framework for regional cooperation that could be extended to address trafficking for other exploitative purposes. Although the convention will not come into effect until it has been ratified by all SAARC member countries, the countries can already proceed to develop bilateral mechanisms for sharing information on trafficked persons and suspected traffickers, and for arranging the prompt, safe, and voluntary return of trafficked persons to their home countries, if appropriate. To facilitate cooperation in the investigation, extradition, and prosecution of crossborder traffickers, it would also be desirable for the SAARC member countries—perhaps through a technical expert group—to compare their respective laws on trafficking and identify areas for possible harmonization. Finally it can be argued that, to facilitate extradition of traffickers from one SAARC country to another, it could be useful to harmonize the sentences imposed for similar offenses. A technical expert group could also assist the SAARC countries in identifying changes in their criminal laws that would be necessary to conform to the new UN Convention Against Transnational Organized Crime and its protocols including the Trafficking Protocol.

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Footnotes

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