



Child Trafficking In India

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INTRODUCTION

Thousands of women and children are trafficked every day. Within the overall profile of trafficking in South Asia, India is a country of both **transit** and **destination**. There is a considerable degree of internal trafficking as well as some trafficking from India to Gulf States and to South East Asia. Sale of children and their movement across the state borders takes place within the country too. In other words, while there is movement of children through procurement and sale from one country to another, with India being both a supplier as well as a “consumer”, there is internal “movement” of children **within the country itself** - one town to another, one district to another and one state to another. It is undertaken in an organised manner, by organised syndicates or by individuals, and sometimes informal groups. Relatives and parents are part of this as well.

Issues of sale and trafficking of children are also closely linked to **issues of migration, especially illegal migration**. Cross-border trafficking continues to flourish because the issue continues to be ignored by the nation states involved in it. There is lack of coordinated efforts to take effective measures to address this problem at the regional level, between the countries involved.

Individual countries - both civil society and government have been trying to cope with this violation of human rights. Laws have been enacted and international and national initiatives have been launched.

This study attempts to look at the extent, causes, manifestation and the interventions made on trafficking of children in the country.

There is very little reliable quantitative data on the overall problem of trafficking. This is because there is as yet no common understanding on this issue. Almost everyone looks at and understands trafficking synonymously with prostitution. As a result, most of the studies, data and activity in the field of anti-trafficking work in the country have focused on trafficking for the sex industry and this applies to child trafficking also. The available information is in the form of news reports and stories published or highlighted in the media or those brought out by NGO initiatives. There is little or no systematic documentation on the other purposes of trafficking such as for entertainment, organ-trading, adoption etc.

This documentation on child trafficking in India has been undertaken for terre des homes (Germany) – India Programme. It is based on the news clippings, journals/magazines brought out by NGOs, papers and reports prepared by

NGOs and UN agencies, donor agencies or individuals on the basis of their experiences and research, information downloaded from the internet, government documents relating to trafficking in women and children, legal/policy documents on human rights/child rights etc.

WHAT IS TRAFFICKING OF CHILDREN?

The problem in dealing with this very complex phenomenon begins with its very definition. There is no single definition of trafficking. In the absence of a common understanding, it becomes difficult to design policies, guidelines or even interventions to tackle this issue. A broader understanding of the issue is that illegal movement of any human being in any part of the world is trafficking.

There is as yet no internationally recognised definition of “trafficking in persons”.

- ⊙ The preamble to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (“Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community, ...”) assimilates trafficking with prostitution. The Convention in its very first article makes trafficking punishable, defining it in terms of procurement, enticement or leading away of a person for prostitution or sexual gratification of another person.
- ⊙ The United Nations General Assembly, 1994 (Resolution 49/166) defined it as-“ The illicit and clandestine movements of persons across national borders, largely from developing countries with economies in transition, with the end goal of forcing women and girls into sexually or economically oppressive and exploitative situations for profit of recruiters, traffickers and syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption.”
- ⊙ At the World Congress Against Commercial Sexual Exploitation of Children, “trafficking” was taken to refer to the illegal moving and selling of human beings across countries and continents in exchange for financial or other compensation.
- ⊙ The Global Alliance Against the Trafficking of Women (GAATW), on the other hand, defines “trafficking” as “the recruitment and transportation of (a) person(s) within and across national borders, by means of violence or threat of violence, abuse of actual or perceived authority arising from a relationship, or deception, in order to subject them to the actual and unlawful power of (an) other person(s)”.

- ⊙ Another useful definition is that advanced by the Netherlands Advisory Committee on Human Rights and Foreign Policy, "The traffic in person could be defined as transporting a person from one place to another in order to subject him or her to the actual and unlawful power of other persons by means of using violence or the threat of violence or by using a position of authority arising from a relationship or by misleading the other person."

Some other definitions are:

- ⊙ "Trafficking is a question that belongs to the broader question of "migration", nationality and the question of applicability of fundamental human rights to children and any individual irrespective of their religion, race, class, gender, colour or nationality" (UBINIG. 1996).
- ⊙ "The recruitment and transportation of a person(s), within and across national borders by means of violence or threat of violence, abuse of actual or perceived authority arising from a relationship or deception, in order to subject them to the actual unlawful power of (an) other person(s). An individual may be trafficked for various purposes, invariably ending up captive, in coercive and exploitative or commercial sex sectors, commercial servile, marriage etc." (Sinha. 1997).
- ⊙ Office of Drugs Control and Crime Prevention (ODCCP) of UN defines child trafficking as *"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."*
- ⊙ The Transnational Training Seminar on Trafficking in Women, held in Budapest from 20 to 24 June 1998, promulgated the following definition: "Trafficking consists of all acts involved in the recruitment or transportation of persons within or across borders, involving deception, coercion or force, debt bondage or fraud, for the purpose of placing persons in situations of abuse or exploitation, such as forced prostitution, slavery-like practices, battering or extreme cruelty, sweatshop labour or exploitative domestic servitude. Ms. Calcetas Santos, the Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography finds this definition to be the most workable, although she expresses reservations as to whether trafficking always places the victim in a worse position than that held previously.

Clearly, intrinsic to *trafficking* is the *sale* and *purchase* of children, as is their movement from one place to another or issues of *migration* especially illegal migration. The lack of concrete definitions of both sale and trafficking makes it

very difficult in most instances to determine whether a particular transaction is a sale amounting to trafficking. There is therefore a need to examine what the understanding on these issues is to be able to arrive at a comprehensive understanding of trafficking.

Sale of Children

It is difficult to have a definition of “sale of children” since children are not, and should not be, legally and/or morally, the objects of trade or commerce. The reality of such sales, however, proves the need for a definition. The traditional concept of sale is that it pertains only to property - real, personal or incorporeal - and that the consideration is always price in money.

In order to gain a clearer perception of the meaning of “sale” in its commercial application, it may be useful to take a look at some definitions of “sale” in general. Black’s Law Dictionary defines it as “a contract between two parties, called, respectively, the ‘seller’ (or vendor) and the ‘buyer’ (or purchaser), by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and the possession of property”.

The Oxford English Dictionary defines “sale” as “the transfer by common consent of the ownership of a thing or an interest in land, or in incorporeal property, from one person to another in exchange for a price in money”.

Mr. Vitit Muntarbhorn, the first Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography, defined “sale of children” as “the transfer of a child from one party (including biological parents, guardians and institutions) to another, for whatever purpose, in exchange for financial or other reward or compensation” (E/CN.4/1994/84, Para. 31).

Ms. Ofelia Calcetas Santos, in her first report as the Special Rapporteur to the General Assembly (A/50/456, annex), defined “sale of children” as “the transfer of parental authority over and/or physical custody of a child to another on a more or less permanent basis in exchange for financial or other reward or consideration” (*Report of the Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography, Commission on Human Rights. Fifty-fifth Session. 29 January, 1999. Para. 18*). She adopted this definition in order to exclude transactions that are strictly on a temporary basis, as when a child is “rented” out, in order to obviate confusion as to whether the transaction constitutes sale or pimping, for example.

The confusion created by the lack of a clear definition of what constitutes the “sale” of a child has not helped the members of the working group on the Optional Protocol to the Convention on the Rights of the Child in dealing with the sale of children, child prostitution and child pornography. One position taken by the negotiators is that a “sale” must be for the purpose of sexual exploitation; the opposing view is that it is dangerous to limit the definition of the term in that way.

Migration

While it may seem that migration and trafficking are distinct and separate, they are at the same time integrally connected. The pressing need to migrate in search of work creates a fertile ground for traffickers and unscrupulous agents to exploit this need and profit from it. In today’s world, trafficking cannot be seen out of the context of migration as the most common form of trafficking is ‘migrant trafficking’.

A line must be drawn between trafficking and illegal migration in that trafficking, as is currently understood, involves some element of involuntariness, either through deception, force or intimidation, whereas illegal migration often occurs with the free co-operation, if not the instigation of the illegal migrant. There are, however, linkages between the two activities. Contemporary developments have caused population movements due to war, persecution, and violations of human rights, natural disasters, or very poor economic conditions. A number of countries have imposed more stringent measures for border control and entry requirements and have reduced opportunities for legal migration. Such measures, however, do not alter the demand in these countries for cheaper sources of labour in the informal sector which gives rise to irregular, trans-border movement.

The process of ‘*migrant trafficking*’ occurs in at least two phases - recruitment and transportation, and confinement to the site of work under exploitative conditions; when a migrant and unsuspecting victim is recruited and/or transported and delivered to a site of work which is different from the one promised by the agent involved in it or, when such migrant is subjected to such conditions of work about which she/he had no prior knowledge and therefore did not consent to. A greater number of cases under this category are those that fall on the borderline of illegal migration, smuggling of persons and trafficking. It is difficult to distinguish between the three as they have certain common elements. One common factor is that the ‘victim’ is invariably a ‘willing’ traveller, though it is well documented that the ‘willingness’ is based on a variety of reasons e.g. promise of a well paying job (which later turns out to be false), deception and fraud. (Sanghera. 2000). Chances are that these illegal migrants fall into bondage.

“The term ‘trafficking’ needs to be distinguished from ‘smuggling’, which refers to services provided in unlawful border crossing, while trafficking includes complex organisation of contacts”. (First Report of the Special Rapporteur on Human Rights of Migrant Workers. April. 2000).

From the above summary of working definitions of sale, trafficking and migration for trafficking, and the above discussion, there emerge some basic elements, which seem to be widely agreed upon. They include:

- ⊙ Some degree of involuntariness on the part of the person being trafficked, either through the employment of deceit or fraud.
- ⊙ Coercion or actual force, abuse of authority.
- ⊙ Involvement of exchange of money or any other form of consideration.
- ⊙ Subjection to situations of abuse and exploitation.
- ⊙ Confiscation of travel documents, or debt bondage.

One question on which the above definitions are in dispute is whether trafficking for other than illicit reasons should give rise to criminal culpability and whether the situation of person is always worse than before? Trafficking of children for adoption wherein they may be adopted by a better placed family is such an example.

The Special Rapporteur Ms. Santos, firmly believes that, as in the sale of a person, trafficking of a person reduces that person to the level of a commercial commodity and is therefore inherently condemnable, regardless of the ultimate purpose for which it is carried out. Thus, the argument that in most cases of adoption the children end up in much improved living conditions, would not in any way justify the trafficking of babies and children. Another issue that still remains unsettled is whether trafficking necessarily involves movement or transportation from one place to another and, if so, if it has to be across borders.

IS THIS TRAFFICKING OF CHILDREN?

"Defeated by acute starvation, Broto Kumar Reang sold his four year old son for food. Broto Kumar Reang reportedly sold his child to a well-off tribal in exchange for 10 kgs. of rice..... The tribals in the area mostly belong to the Reang community and they practice traditional Jhum (shifting) cultivation. The Jhum crops they produced last season were not adequate and this created a severe crisis. They have to depend on State Government reliefs. But, many claim that the officials did not distribute adequate relief to dispel hunger. "Starved tribals in distress areas are now in a desperate mood to go to any extent for food", Mr. Jadu Mohan, former executive member of Tripura Tribal Autonomous District Council added."

(The Hindustan Times. 22 March, 1999)

On February 6, Shyamlal Tandi of Kundabutla village in Bongumunda block of Bolangir sold his six-year-old daughter Hema, for Rs. 5000 to a moneylender. The deal is complete with a written document that states the transaction clearly. Ramprasad Mangaraj, on his part says he has "adopted" and "bought" the child...Shyamlal has been ailing for the last four years. He says I needed the money for treatment and food. My wife also could not work. I was left with no option but to give away my third daughter... Shyamlal was forced to take loan of Rs. 2500 from Ramprasad Agarwal. When that finished he approached Ramprasad yet again for Rs. 1000. When he needed money for the third time, he gave his child in return for Rs. 1500...Shyamlal says he has no regrets and that at least one child can have secure life."

(The Hindustan Times. 19 February, 2001)

These are not strictly cases of trafficking in the way it is commonly understood. There has been no cross-border movement. But in both the cases described above there has been a "transaction" amounting to 'sale' as has been defined by the Special Rapporteur, there is involuntariness on the part of the victim, putting the child at risk. Besides, there is even the possibility of cross-border movement.

What makes the issue of trafficking complex is that very often it is difficult to distinguish between the cause and purpose of trafficking. For example, while children are trafficked *for* religious prostitution, the cultural and religious sanction is the *cause* of trafficking. Similarly, marriage may be the *means* to traffic young girls for labour or prostitution, but trafficking may be *for the purpose* of marriage. A similar situation applies to adoption.

DEFINING TRAFFICKING OF CHILDREN

For purposes of this analysis, we have defined trafficking of children as:

“Sale and purchase of children for gain, within the country (intra-country) and across borders (inter-country), by deceit, fraud or force, resulting in exploitation of the person trafficked”.

In the light of the ongoing movement by those involved in the sex trade to be recognized as “sex-workers” and their work be treated at par with “industry” it is crucial that trafficking of children be seen as distinct and separate from trafficking of adults. It is in this light that we need to also see the trafficking of children for adoption (as discussed earlier), even though they might have a better life after being adopted. Only when this distinction is clear will we be able to address the issue of trafficking of children and design our strategies accordingly.

Purpose of Child Trafficking – The various forms it takes

Child trafficking across the globe has failed to receive adequate attention even though it takes place in large numbers and in various forms, for various purposes, some of them being absolutely gruesome. While data available on child trafficking is inadequate and scattered, it surely provides useful insights on the various forms and purposes of trafficking in children. An attempt has been made in this analysis to present them systematically and as explicitly as possible.

Based on available literature, the following comprehensive list may be drawn:

❑ Sexual Exploitation

- ⊙ Forced prostitution
- ⊙ Socially and religiously sanctified forms of prostitution
- ⊙ Sex tourism
- ⊙ Pornography

❑ Illegal Activities

- ⊙ Begging
- ⊙ Organ trade
- ⊙ Drug peddling and smuggling

Labour

- ⊙ Bonded labour
- ⊙ Domestic work
- ⊙ Agricultural labour
- ⊙ Construction work
- ⊙ Carpet industry, garment industry, fish/shrimp export as well as other sites of work in the formal and informal economy.

Entertainment and Sports

Adoption

Marriage

Sexual Exploitation

Forced Prostitution: Prostitution is the most documented and visible form of trafficking. In the case of children, it is always forced prostitution and therefore must not be used interchangeably with 'sex-work', which may be undertaken voluntarily also.

"Their playground is the brothel, they are the playthings and toys of lust. India reportedly has the world's largest concentration of child prostitutes, accounting for one in every four of the global number. India's children are no strangers to exploitation, but none of it is as brutish as the terror to which these particularly unfortunate kids have been subjected. Raped at 10, tortured and starved to submission at 11, an abortion at 12 - and sexually violated 15 times a day till age and AIDS throws them on to the streets.

(The Sunday Times of India. 15 November, 1998)

A large number of child prostitutes in India are girls from Nepal and Bangladesh. Almost 15 percent of the prostitutes enter the profession before the age of 15, and 25 percent enter between 15 and 18 years. Around 60 per cent of the prostitutes belong to the scheduled castes, tribes and backward classes (*UNICEF. 1995*) Amongst those trafficked into India from Nepal for prostitution, it is said, "most females are girls under 16. Many are also between 12 and 15 years, some as young as 8. Young girls are lucrative sale (*MAITI-Nepal. 1999*).

Majority of the Indian girls into prostitution belong to the Scheduled Caste (SC) and Scheduled Tribe (ST) communities. (*Times Of India. 10 November, 1998*). A significant number of children in prostitution are children of prostitutes.

Religious Prostitution : Religious prostitution is practised in various parts of India and Nepal. *Devadasi* cults are found in Southern India and there are reports of temple prostitution being also practised in other parts of the country such as Uttar Pradesh and Orissa.

Pre-pubertal girls, aged between five and nine years, from poor, low caste homes go through an initiation rite at the local temple during full moon where they are dedicated to the deity. After a girl is married to the deity by the *tali* rite, she is branded with a hot iron on both shoulders and her breast. The temple priest then employs her. Sometimes, even before menarche, she is auctioned for her virginity; the deflowering ceremony known as *udilumbuvadu* becomes the privilege of the highest bidder. The market value of a girl falls after she attains puberty, when she is said to have no recourse other than prostitution. Yellama is represented as the principal goddess who is worshipped but, as recent research has shown, the practice of *devadasi* is prevalent in many other temple towns and other deities such as Meenakshi, Jagannath and Hanuman are also prostituted. Religious prostitution is known by different names such as *Venkatasani, Jogini, Nailis, Muralis* and *Theradiyan* (Bahni, 1989; Marglin, 1985; Mowli, 1992; Story, 1987 quoted in *Children and Prostitution - Part I: Literature review. Unsourced*).

"The playful 12 year old was excited about the new clothes bought for her. Rajamani, a fifth standard girl of Nirmal town, had no inkling that her mother was forcing her into prostitution. Fifteen year old Begari Devamma was being readied to be dedicated to 'Mahalaxmi devudu' on March 3. The dedication only meant that village men could physically exploit her. Despite a law against forcing girls to become 'jogins', the practice continues in several districts of the State, particularly in the Telengana Districts of Adilabad, Karimnagar, Warangal, Rangareddy and Mahboobnagar. 'The life of a jogin is miserable ...she is expected to give in to the demands of men in the village and sometimes dance in front of dead bodies. She is not even allowed to have footwear'."

(*The Times of India. 27 December, 2000*)

The victims of religious prostitution, the Jogins and Devadasis join at a very early age. 95 percent of Harijan (Scheduled Caste) families send about 5-10 thousand girls every year in this practice. (*Sinha.1996*).

Sex-tourism: Any child without a physical handicap, irrespective of caste or class can be pushed into satisfying the sexual needs of the tourists. Conversations with groups working on sex tourism reveal that the tourists lure children with small toys, trinkets and fancy gifts.

Goa, one of the hottest tourist spots in the country is known for child-sex tourism. "Goa is a known destination for sex tourists", says the Special Rapporteur, Ms. Ofelia Calcetas-Santos (*op. cit.*).

There are now reports of tourists moving from Goa to areas of North Karnataka such as Gokarna and Karwar, which are presently being developed for tourism. Foreign tourists have settled permanently in the Om and Kudle beaches, which have become hideout points and these are also areas where the tourists are sexually exploiting children. Another two popular destinations that are emerging for paedophilic activity are Kovalam and Mamallapuram. Puri in Orissa is also another haven for the commercial sexual abuse of children. Other areas in the North, especially along the highways are also spots where trafficking of children happens.

The golden triangle of tourism on the Agra-Delhi-Jaipur belt has spawned a flourishing trade in child prostitution among Rajasthan's nomadic tribes of entertainers, with middlemen coercing the tribal communities to send girls as young as 10 years to serve in sex shops along the highway. The *dalals*, with an eye on the booming market among tourists, travelling businessmen and truck drivers who believe that sex with a young child may keep them safe from diseases, are forcing the community to send out their girl children, most of whom are between the age 10-14. "10 year old tribals forced into sex trade in Rajasthan". (*The Asian Age*, 20 June, 1997. As reported in *Jonaki*, Vol.1, No.2. September, 1997).

With the spread of the sex-tourism networks to all the well-known tourist destinations and with the alarming rise in HIV/AIDS in the country, the need to tackle this problem is becoming even more crucial. Recognising that children from Kovalam are being used for sex tourism, activists have found that people from other parts of Kerala are refusing to marry persons from there.

Pornography: Street children or children from poor families and middle class families fall prey to foreigners who attract them through the riches of the world and lure them into such exploitation.

In 1991, in Goa, Freddy Albert Peat was booked for using children for pornography and selling young boys to foreign paedophiles. He had managed to stay away from law, from being caught for over 25 years. (*Equations*. 2000).

In December 2000, Forum Against Child Sexual Exploitation (FACSE), a Mumbai based NGO, helped the police unearth a child pornography racket being operated by a Swiss Couple from a posh hotel "the Resort' at Marve Road, Madh Island, Mumbai.

According to FACSE, "Interactions with children on the streets of Mumbai indicate that the use of children in pornography exists in an alarming magnitude & there is an urgent need to break the silence that shields such heinous acts from the public eye. The street children have reported that such incidents of children being picked up are very common. A fact that was confirmed by the street boys is that girls are picked up more often and receive more expensive gifts than boys. Often the impoverished parents of such children are in collusion with the offenders in lieu of the expensive gifts and other remuneration they are provided with. There have been cases wherein children have gone with such gifts alluring people more than once. The Police too admit their suspicions about the widespread existence of such rackets in Mumbai".

(FACSE. 2000)

Illegal Activities

Begging: The children with a handicap are more vulnerable in a situation where trafficking is for the purpose of begging. Poverty and handicap is the ideal combination for the children to be trafficked in the belief that the handicap will induce sympathy in the giver. That belief puts the child beggar at serious risk of being deliberately maimed in order to increase his or her earning potential. Street children, who are easily available to be picked up, are another vulnerable category.

In 1997, a large number of Bengali children were deported to India from Saudi Arabia, where they had been taken on the pretence that they would visit Mecca. Instead they remained in the country, forced to beg every day from the many pilgrims there. On their return to India, it was discovered that several of them had broken limbs.

(Ofelia Calcetas-Santos. 1999)

Organ Trading: Although very little information is available on this aspect of trafficking, newspaper reports and anecdotal reports from persons working on trafficking issues clearly indicate that trafficking of children for organ replacements for persons who can afford to buy them is a "lucrative business" for the traffickers.

"Akram hailing from Bareilly in Uttar Pradesh was approached by a person named R.C. Gupta in Lucknow who lured him with a promise of a job. He took him to Jalandhar where he reportedly had Akram's kidney removed and transplanted to his wife, a patient of renal failure". Akram today is 22, he was 18 when his kidney had been forcibly removed.

(The Hindustan Times. 20 April, 2001)

Drug peddling and smuggling: Use of children for drug peddling is common because it is assumed that they would be suspected the least. Children are initiated into drugs and then used as conduits for peddling. It appears that the major factor pushing girls from Nagaland in the North East towards sex trade is drugs. (*The Telegraph. 13 July, 1997. As reported in Jonaki. Vol1. No.2. September, 1997*).

A study carried out by Butterflies, a Delhi based NGO, reveals that “girl children as young as nine or ten are initiated into drugs and sexually abused. They are also used as couriers, as they are rarely frisked by the cops” (*Butterflies. Undated.*)

Activists of the Kerala Samskarika Sangham alleged that 31 boys have been reported missing in Malappuram and 19 in Kozhikode. According to popular belief the boys were now in the grip of an organized mafia gang, which pushes them into earning a living as drug peddlers, pimps and touts. Some of them were allegedly forced into homosexual activities. The mafia targets unsuspecting boys who leave home or those returning late night. 'The boys are pampered with money and drugged heavily, inducing them to become addicts', says P.A. Pouran, State General Secretary of the People's Union for Civil Liberties. Later, the boys are trained to become carriers of drugs and gold".

*(The Indian Express. 7 May, 1997
As reported in Jonaki. Vol. 1. No. 2. September, 1997)*

Trafficking for Labour

Bonded labour, domestic work, hotels and small shops etc.: This is a highly unorganised sector and also an invisible one. Children are often brought into employment by family, relatives and friends. While some of them are brought to work as “friendly gesture”, there are times when these children are sold and trafficked. Very often it is the parents themselves who send their children for work, sometimes in exchange for debt, thereby putting the child into bondage. Many children from poor, low caste families engaged in agricultural labour, work in bondage.

Since domestic labour or labour in hotels and small shops do not fall under the category of hazardous occupations, very little attention gets focussed on this sector. However, incidents of abuse and torture, even death of child domestic workers have been appearing in the news with increasing frequency and drawing attention to the fact that it is as “hazardous” as all those listed in the schedule of the Child Labour (Prohibition and Regulation) Act, 1986.

"For the destitute children of Bodh Gaya villages, it is a case of deprived childhood. Their hapless parents reeling under abject poverty find it convenient to sell them off for a paltry sum to ready 'buyers'. And the buyers happen to be none other than the Tibetan Buddhists now settled in Bangalore, who take the young ones for doing household chores"

(The Hindustan Times. 19 February, 1999)

Labour in Industry: Cross-border trafficking of children for labour, especially from Nepal and Bangladesh is very common. Even within the country, children are trafficked from one State to another to be employed in industries like carpet-weaving, silk-reeling, fishing etc.

Children working in the carpet weaving looms of Mirzapur come from adjoining areas of Madhya Pradesh and Bihar or other backward districts of Uttar Pradesh. Young girls are trafficked in Kerala to the shrimp factories. Here they work for long hours cleaning shrimps mostly for the export market. They work in in-human and hazardous conditions leading to severe skin infections. Similarly, children in Tamil Nadu are being trafficked to Shimoga for fishing.

Trafficking for Entertainment and Sports

Entertainment: Trafficking of children, especially young girls, for entertainment as part of dancing troupes –*Nautanki* in North India and *Jatra* in the East (Bengal and Orissa) has been going on traditionally. Much of this is now taking more "modern forms" in the cities as these young girls dance in clubs and hotels or are taken into the circus as acrobats. It has been found that Nepali girls are lured to join Indian circus under the pretext of getting to learn work, earn and also study. Parents themselves leave their children with the Indian circus owners or circus agents because they see no harm. But, they never find their children again as the circus is always travelling and never get to know what their children suffer. *(Maiti. 2000)*.

The incidence of minor girls being trafficked to Dubai for dancing as "nautch girls" came to fore when the Delhi High Court gave its judgement on a petition filed by one Mohd. Ahmed, that his wife and two daughters were forcibly taken to Mumbai by their maternal uncle, who later forcibly sent off his daughters to Dubai on forged passports. The two girls were made to dance and sing in Dubai. The Court had ordered the Union Government to inform what measures were being taken to protect innocent girls from falling into the clutches of gangs. The judges enquired whether the Government had any intention of amending the Passport Act to protect such girls from being sent abroad.

(The Hindustan Times. 28 August, 2000)

Camel racing: Only young boys are trafficked to serve as camel jockeys. They have to be young and small built in order to be light on the camel's back. They are tied to the back of the camels during a race so that they do not jump off in fright. The camels are made to run down a track. The camels often go mad and berserk, killing the boys on their back. Children who fall risk being trampled to death by the other camels on the track, and if they refuse to ride the camels, they are beaten and forced to ride anyway.

In a children's home in Delhi where the members of HAQ were working, two children rescued from the airport on their way to Saudi Arabia had been kept there till they could be sent back to Bangladesh. Agents had brought them to India from Bangladesh, and from here they were to be flown to Saudi Arabia. These boys were between 9-11 years of age and had been brought by persons whom they identified as "uncles".

In 1993, the Camel Jockey Association of the United Arab Emirates finally prohibited the use of children as jockeys. New evidence, however, clearly indicates that the rules are being blatantly ignored. In February 1998, ten Bangladeshi boys, aged between five and eight, were rescued in India while being smuggled to become camel jockeys. The boys had been lured away from their poor families with the promise of high-paying jobs. Reported in Hindu Daily, 20 February 1998. Also in 1998, airport officials rescued two boys being taken to Dubai from Sri Lanka by two men who were later charged with their kidnapping. (*Calcetas-Santos. op.cit*)

Adoption

Children who are orphans or born out of wedlock or born into families that cannot afford to bring them up are put up for adoption. This adoption is meant to be through registered agencies that are meant to ensure the antecedents of the adopting couple and ensure that the child is protected in its adopted home. The complexity with trafficking for adoption is that the children may often land up in situations where they are much better off than they would have been in an orphanage, or even being put in foster care within the country. Nonetheless, the very nature of the transaction wherein there is sale and purchase of the child, makes it trafficking.

Much attention was drawn to trafficking of children through adoption when two voluntary organizations in Hyderabad were booked for selling children to foreigners in the name of adoption. This was highlighted by the media as "child-export racket" and "child smuggling racket" that was busted in Andhra Pradesh and 172 children rescued.

The police raided a crèche run by the Good Samaritan Evangelical and Social Welfare Association in Mahendra Hills, Hyderabad to find that 56 infants, 52 of them girls, procured from poor tribals and other families were kept there for adoption by childless couples from foreign countries. According to the police, the Director of the Association was selling the infants to foreigners for US\$2,000-3,000 per child.

Another organisation, Action for Social Development, set up in 1985 in Gandhinagar in Hyderabad, got permission from CARA in 1991 to give children in adoption to foreigners. The organization was running three crèches at that time. In their Gandhinagar crèche there were 124 children (114 girls and 10 boys) aged 7 years to less than 1 year. Many were infants from Mahbubnagar, Rangareddy and East Godavari District of Andhra Pradesh. In 1993, a case was registered against the NGO for irregularities in documentation of adoption. Their license was suspended, but in 1998 it was renewed while the case was still pending investigation.

(Maiti. Vol.2 No. 1. Jan.-March, 2000. 15)

According to newspaper reports, the organisations involved used to employ agents to procure children from poor tribal families by offering hefty amounts. The forged 'willingness affidavits' procured from the parents by these organizations to obtain visas for the infants were found.

In April 2001, another such racket being run by the wife of an IPS officer, Ms. Amita Sen, was busted in Andhra Pradesh. This recent case has for the first time exposed the intra-State proportions of trafficking for and through adoption. John Abraham Memorial Home, the Tandur based NGO caught this time, was also found to be active in Gulbarga district of Karnataka.

"The Andhra Pradesh government has finally woken up to child trafficking and has decided to tighten the rules of adoption. The action follows the recovery of 34 babies from a fake child adoption agency in the city on Friday evening and also reports that 28 children have died during the last two months in a children's home at Tandur, run by a so-called NGO... Child trafficking activity was reported from five districts—Mahbubnagar, Nalgonda, Rangareddy, Medak and Hyderabad. Parents, those belonging to tribal groups and poor classes are being exploited for 'relinquishment' of their children on grounds of poverty and for their better placement with adopting parents abroad".

(The Hindustan Times. 22 April, 2001)

Arguing against trafficking for and through adoption does not imply putting an end to adoption or discouraging people from adopting by making the adoption procedures difficult for the common man. It is only to say that adoption procedures need to be streamlined and there has to be regular monitoring of the process.

The Special Rapporteur Ms. Santos elaborates that those who argue that inter-country adoption is exploitative, complain that it encourages the purchase of children, which in turn thwarts the development of children's services in the developing world and is destructive of a child's heritage. (*Calcetas-Santos.op.cit.*)

Trafficking for and through marriage

Trafficking for marriage is an inter-country and intra-country phenomenon. What makes this form of trafficking very difficult to challenge under law is that there is formalisation of the marriage. Young girls from poor families are taken in marriage to another state or country. Adhikar, a human rights group based in Bhubaneswar, discovered that a number of girls were being taken as brides from the Nayagarh district of Orissa, after paying bride price, and married to young men in Jhansi. They managed to rescue some of them, but there are still many who are untraced.

From Bangladesh, women are trafficked out to India for marriage to Indian men who find it difficult to marry for reasons of dower payment. In Chapainabaganj alone, over 10,000 women have been trafficked to Lucknow, Firozabad, and other places in India for marriage reasons during last 15 years. (*UBINIG.1996*). In this case, women includes young adolescent girls.

"Hundreds of Bengali women and teenage girls are routinely brought into the Kashmir Valley every year to be sold to aspiring grooms, who are often poor, old and physically disabled and thus unable to find a local bride. Some aspirants prefer to marry in such a fashion because they cannot afford the huge expenditure involved in performing local customs. In most Kashmiri villages, a groom has to meet the expenses of marriage and even buy gold ornaments and other expensive gifts for the bride. Dalals were very active before the onset of militancy and would smuggle women into the Kashmir Valley mainly from West Bengal's Murshidabad district in large numbers. Their activities had seen a shrimp when military had reached its peak. However, with some improvement in the law and order situation, the middlemen have resurfaced. Some women form part of the racket involved in the sex-trade. These women are recruits of dalals who sell and re-sell them to prospective grooms on commission basis. Each girl or woman, depending on her age and physical

features, is bought between Rs, 2,000 and Rs. 15,000, and then sold to a customer for double that amount. The racketeers lure the poor parents of underage girls in West Bengal and Bihar with promises that their daughters will be married off to wealthy people in Kashmir. The parents, stricken by poverty, fall prey to such enticements. In order to avoid penal action under the laws pertaining to trafficking in women, the sale is given a legal colour by solemnizing the 'marriage' through the institution of nikah" (*The Asian Age, 1999*).

Not all trafficking that happens in the name of 'marriage' is for the purpose of marriage. Marriage may also be a means to get young girls into prostitution or for labour.

The whole racket of trafficking for marriage came to light in August 1980 when the Statesman Weekly carried a news story titled "Marriages Not Made In Heaven". This was about Muslim girls from Hyderabad being married off to Arab nationals for anything between Rs. 5,000/- to Rs. 10,000/-, depending on their age and appearance. The story narrated the plight of 25 year old Raheema Begum, who managed to escape from the clutches of her 75 year old Arab husband after she slaved him for over five years and bore him two children. Raheema's parents had received Rs. 5,000/- from her husband in lieu of their marriage. It further said, "Bride-running from Hyderabad to the Gulf countries has been a lucrative business and on an average 200 girls leave the city every month, according to the regional passport office here. Marriage brokers have sprung up in the city. Some of the Arabs marry as many as three to four girls on a single trip. Arabs who come to Hyderabad in search of young brides are not the oil-rich sheikhs. They are small time businessmen or petty traders. In a number of cases these young brides never leave the Indian shores. They are taken to Bombay and when the Arab visitor's tourist visa expires, he leaves the country, promising to send her a ticket on reaching home. The girl never hears from him".

After ten years from then, in October 1991, the newspapers carried another story of 9-year-old Ameena from Hyderabad. Ameena was married off to 60-year-old Arab Sheikh Yahyah-al-Sageih, who paid Rs. 10,000/- to buy her from her parents in the name of marriage. Ameena was Yahyah's fourth victim in the last six-months.

(*Sinha. 1996*)

Clearly, the nature of the problem is wide in spectrum and the cruelty of the situation varies according to the form and purpose of child trafficking.

"Even now, two children below 16 years are reported missing everyday from West Bengal - and a majority of them are eventually sold in brothels or sent to Arab countries to work as petty slaves. In February this year, several children from the Murshidabad district were brought back from a few Arab countries. The children, including girls, were tortured and maimed by their abductors and forced to beg on the streets of Riyadh and Dubai.

(The Sunday Statesman. 17 January, 1999)

The report of the South Asian Workshop on Trafficking in Women and Children, Formulating Strategies of Resistance stressed: **"It is important to distinguish between different forms of trafficking in terms of the final use of the 'goods', as the traffickers say. This distinction is necessary to understand that it may not be always useful to discuss the internal and trans-boundary migration of people under a single term like "trafficking". It is obvious that the issue such as organ trade requires completely different type of attention than other forms of trafficking. The children and women are ending up being sexual slaves, but there are also cases where they are legally or illegally married to a person".**

(UBINIG. op. cit.)

MAGNITUDE OF THE PROBLEM

There is no comprehensive statistical data available on child trafficking in all its forms and purposes as such. All available statistical data is related to women and children in prostitution. Here again, the figures vary from one source to another. Most of them are based on micro studies and to a large extent are projections and estimates.

The following are some estimates available:

- ❑ Dr. Ishwar Prasad Gilada reports that:
 - ⊙ Incidence of child prostitution through abduction is estimated to be 40 percent.
 - ⊙ The percentage of Devadasis amongst the Bombay Prostitution is 15-20 percent; in Nagpur, Delhi and Hyderabad – 10 percent; in Pune it is 50 percent and in the urban centres bordering Belgaum District (Kolhapur, Sangli, Satara, Miraj etc.) its up to 80 percent of the total number in prostitution.
 - ⊙ About 5 percent of the children coming to prostitution, come after the incidence of Rape.
 - ⊙ About 8 percent of children come to prostitution because of the incidence of Incest.
 - ⊙ About 10 percent of child prostitutes are children of prostitutes.

("Child Prostitution: A Blot on Humanity, a paper by Dr. Ishwar Prasad Gilada, Hon. Secy., Indian Health Association, Bombay, at Institute of Psychological and Educational Research. 1993)

The numbers must have certainly gone up since 1993. Some of the latest available figures are as under:

- ⊙ Quoting some of the valuable sources, UNIFEM's resource book on *Trade in Human Misery, Trafficking in Women and Children, Asia Region* points out "At least 25,000 children are engaged in prostitution in the major metropolitan cities: Bangalore, Calcutta, Delhi, Hyderabad, Mumbai and Chennai" (Government of India, 1991). Other sources quote that 500,000 girl children below 18 years are victims of trafficking in India (*India Today Magazine. 1990*).
- ⊙ The Central Social Welfare Board of India estimates at least 500,000 women in India to be engaged in prostitution. Among them the percentage of Bangladeshi women in India is 2.7 (i.e. 13,500). Concentration of women from Bangladesh engaged in prostitution is highest in Calcutta. The percentage of Bangladeshi women active as sex workers in Calcutta is 13.5. In Mumbai it is 0.2, and in Delhi 2.6. Bangladeshi women are trafficked to India through the bordering districts: Satkhira, Jessore, Jhenidah, Meherpur, Rajshahi, Nawabganj, Joypurhat" (*UBINIG. Op.cit.*).
- ⊙ According to a study by the Centre of Concern for Child Labour, New Delhi, "Of the 9 lakh estimated number of prostitutes in India, 30% are children, numbering between 2,70,000 to 4,00,000. Number of children below 14 years in 'commercial prostitution' is increasing at the rate of 8%-10% per annum" (*Times of India. 10 November, 1998*).
- ⊙ Other estimates suggest the participation of more than 2 million women in commercial sex-work of whom 25 percent are below 18 years. More than 90 per cent of them are of Indian origin, and about 5 per cent from Bangladesh and Nepal (*UNIFEM South Asia Regional Office. 1998*).

In Bombay alone, "40,000 girls between the ages 10-16 years are selling their bodies from their doorsteps" (*National Commission for Women, 1997*).

There are about 1,00,000-2,00,000 Nepali girls in Indian brothels alone, with about 5,000 to 7,000 being sold every year. (*MAITI-Nepal. September. 1999*).

"Sketchy information estimates that 100,000-160,000 Nepali girls are working as sex workers in different brothels of India alone. Roughly 20% of the girls are under 20 years of age and 35% are abducted to India under the pretext of marriage or good jobs. Studies point out that the age of the girls being trafficked to India is declining and the demand of virgin girls is increasing. About 5,000-7,000 young Nepalese girls are said to be trafficked to India every year. About 40,000-45,000 Nepali girls are in Bombay alone. Another report suggests that more than 40,000 girls in Calcutta's Sonargachhi red light area are Nepalese".
(*UBINIG. op. cit.*)

But all these figures are related to prostitution. Very little information is available on the other forms of trafficking.

In India, the National Crime Records Bureau (NCRB) that comes under the Ministry of Home Affairs produces data on crimes reported to the police. It is the most authentic government source for information on crime. In its latest publication titled "Crime in India, 1998", data has been compiled for certain offences against children as mentioned in the Indian Penal Code (IPC). These are - **procurement** of minor girls for inducement to force or seduce, to illicit intercourse etc.; **selling** and **buying** of girls for prostitution - the three crimes that directly fall within the ambit of child trafficking. Procurement of minors does not always happen through cash transaction, whereas selling and buying cannot and does not happen without cash transaction.

Examination of the percentage change in incidence of procurement of minor girls and selling and buying of girls for prostitution between 1994-98 indicates that there is a decline of 7% in the incidence of *procurement*, and a decline of 67.6% in the incidence of *selling* of girls for prostitution. But, there is an increase in the incidence of *buying* of girls for prostitution by 225% in these years. (NCRB. 1998). The reasons for this are not clear and have not been mentioned.

If one was to look at the change in the incidence of these three crimes between the years 1997 and 1998, it is evident that in 1998, cases reported on procurement of minor girls went up by 96.6 % from the previous year. There was a 22.2 % increase in the cases reported on selling of girls for prostitution between 1997-98, while there was no change in this period in the number of cases on buying of girls for prostitution.

Based on the NCRB data, one finds that Bihar, Maharashtra and Madhya Pradesh are the three states from where the largest number of minor girls is procured. As regards selling of girls into prostitution, West Bengal and Karnataka are the two main States contributing to this crime. In the case of buying of girls for prostitution, West Bengal again stands as the major "contributor", followed by Maharashtra.

The Indian law addresses several other crimes that would fall under child trafficking. Some such crimes punishable under the Indian Penal Code (IPC) are in the category of offences relating to kidnapping and abduction and sexual offences. However, the NCRB does not provide data on each of these IPC crimes separately. For instance, it clubs all the kidnapping and abduction offences into one category and provides aggregated data for the entire category. As a result, there is no separate information on kidnapping for begging, kidnapping/abduction for slavery etc., which are two distinct IPC crimes under Sec. 363 A and 367 respectively.

Similarly, while there is data in the NCRB report on crimes that are addressed

through certain special legislations like the SC/ST Prevention of Atrocities Act, 1989, some other special legislations like the Karnataka Devadasis (Prohibition of Dedication) Act, 1982, have been clearly left out, as it is a State law and not a Central Legislation. Therefore, despite a law dealing with trafficking for religious prostitution, there is no data available on it.

It must however be remembered that the NCRB only produces information on the basis of crimes reported to the police. In other words all those incidences of procurement, buying or selling that go unreported to the police are not included in the above table. As a result, although a definite reflection of the trend, it is not a complete reflection of the exact magnitude of the problem, much of which goes unreported.

Clearly, it is difficult to assess the magnitude of child trafficking because:

- ⊙ Most cases go unreported
- ⊙ There is no one law to address the issue
- ⊙ Even when there are legal provisions addressing different forms of child trafficking, data is not always compiled in terms of cases that are reported under each of these provisions
- ⊙ Compilation of data by Government Sources is limited to certain IPC crimes and some special laws that are central legislations only.

"Large scale movement of refugees and migrants along the Bangladeshi, India and Chinese borders remains largely undocumented. Approximately, two-thirds of the Rohingya Muslim population of Burma are in self-exile. There are approximately 400,000 Rohingya Muslims in India, and 700,000 in Bangladesh". These Burmese fled from Burma, travelling to Pakistan through Bangladesh and India. A significant portion of these populations is believed to be trafficked.

(UBINIG. op. cit.)

WHY ARE CHILDREN TRAFFICKED?

The root causes of trafficking in children are multiple and complex. However, some of the more frequently cited are poverty, lack of employment opportunities, low social status of the girl child, a general lack of education and awareness, inadequate legislation in the countries concerned, and weak law enforcement machinery. Political uprisings are now emerging as a factor responsible for trafficking for prostitution, labour and also as child soldiers to fight for the

“cause”. There are also certain cultural factors that are responsible. Sometimes it becomes difficult to distinguish between the cause and the purpose, as is with the case of prostitution which has religious sanction.

Some of the causes for child trafficking and vulnerable groups identified by various persons working on this issue are:

- ⊙ **Lower socio-economic status.** The lower socio-economic status of certain groups makes them easy targets for traffickers from outside as well as from within the family and community.

In India, trafficking is also a caste issue. It has been found that 61 percent of commercial sex workers in India belong to Scheduled Castes, other backward classes and Scheduled Tribes.

(Situation Report India. 1998)

“The children of indigenous peoples and ethnic minorities are especially vulnerable to trafficking. They often do not share the language, educational access or even the right to citizenship of the majority population. So they lack the economic opportunities, the knowledge and the rights which could help protect them from traffickers and pimps”.

(UNICEF. 1995)

- ⊙ **Traditional religious and cultural practices.** Prostitution is traditionally and culturally sanctioned in some parts of the region and is a contributing factor to the phenomenon of trafficking. It derives customary sanction from oppressive upper-caste temple traditions.

“Every year thousands of girls are dedicated to goddess ‘Yellamma’, ‘Renuka’ (mostly in the state of Karnataka and Maharashtra) and after a brief period of concubinage, they become accessible to urban prostitution. Within these mechanics we find that three socialised instruments perpetuate the fate of these women, namely: Economic Organisation, Brute Force and the Religious Rituals”.

(Ishwarprasad Gilada. 1993)

- ⊙ **The status of women, the discriminatory laws against women and children, denial of property rights** have created a condition wherein women are seen as a burden on the family, thereby making them more vulnerable as a prey to the flesh traders. The current laws in South Asian countries ignore exploitation of children by their own family.

- ⊙ **Globalisation and Commodification of children in the market economy.** “Disintegration of the rural communities and the grim reality of the poor and the marginal people, mainly women and children, is the primary cause of trafficking. Globalisation has severed the traditional socio-economic relations and has made women and children vulnerable. They are increasingly becoming a commodity to be sold in the World market” (UBINIG. 1996). “Greater media exposure and the representation of women as sex objects have been identified as one of the causes of increasing trafficking of women and children. Media representation of women reinforces the notion that women are sex objects for the gratification of men”. (ibid.1996).

In a scenario wherein every thing is based on market value and purchasing power, sale of human beings for parts of their body, or buying a “baby” is almost “acceptable”.

- ⊙ **Trafficking is a lucrative trade.** Trafficking of humans, especially for labour, is not new. People have been taken as indentured labour from India from the colonial times. Now, trafficking for other purposes too is becoming profitable. As with countries such as Thailand, sex-work is being recognised as an industry and therefore trafficking of children for prostitution is increasing. According to Mr. Joseph Gathia of Centre of Concern For Child Labour (CCFCL), “Flesh trade is the biggest industry in India”. “Prostitution in India is a Rs. 40,000 Crore annual business. 30% of sex-workers are children, who earn a whopping Rs. 11,000 Crore”. (The Times Of India. 10 November, 1998). Other purposes such as adoption, organ trade are also gaining marketability.

It is now widely admitted that global trafficking of women and children today is more profitable than arms or drugs smuggling...In South Asia trafficking is already a multi-million dollar business and a lucrative commercial sector for investment”.

(UBINIG. OP.CIT.)

- ⊙ **Growth of tourism.** Tourism is a fast growing industry in India, especially since India became a part of the global market economy. Rise in demand for children for pornography seems to be linked with tourism. The growth of tourism has led to an increase in demand for children as sex objects. Tourists come to the developing countries from different parts of the world for easy and cheap sexual gratification. Not only is it the perverse psyche that makes them use children as objects of sex, but it is also the scare of AIDS that generates a demand for virgin girls.

The Indian Government’s decision to make tourism the second largest foreign exchange earner has increased threat to the dignity and safety of our children.

- ⊙ **Growing demand for adoption.** With birth rates falling in many of the developed worlds, adoption from developing countries with higher fertility rates is common. The “need” for children has put pressure on sending countries to respond quickly to the growing demand, often without having the necessary infrastructure and mechanisms to proceed properly. This situation has led to abuses and the creation of a veritable international market for adoptable children. Trafficking of children for the purpose of adoption is continuously increasing, and in some countries it is reported that the fees charged by intermediaries to handle adoptions range from \$5,000 to \$30,000 per child.

Trafficking for and through adoption is not only an inter-country phenomenon. Even within the country the childless couples are opting for adoption, leading to growth of adoption rackets or infant sale rackets.

- ⊙ **Obscure beliefs like ‘sex with virgin’ will cure STDs and sexual dysfunctions** etc. increase the vulnerability of children, especially the girl child. Children are trafficked for sexual exploitation because of the belief that they have lesser chances of being HIV/STD carriers.

“Studies point out that the age of the girls being trafficked to India is declining and the demand for virgin girls is increasing”. (*UBINIG. op. cit.*)

- ⊙ **Trafficking tends to worsen in conflict or post-conflict and other emergency situations.** Any situation of calamity or disaster (natural calamities like earthquakes, floods, cyclones or conflict situations and wars) makes women and children more vulnerable to being trafficked. “Traffickers exploit the situation, in particular of the fact that many persons are in vulnerable situations, undocumented and separated from their families”. (*Pandit, Undated*). Children who are without families are the first targets for labour, prostitution and adoption. In a situation of economic distress caused by the disaster, parents too have been found to be parties to the trafficking. Loss of family and ideological brainwashing also results in the trafficking of children as “child soldiers”. In situations of conflict children are recruited as child-soldiers and used in armed conflict.

“With the advent of the security forces, prostitution has emerged as a growing menace in Nagaland. Added to these are the means of drugs and alcohol, easily available in the state. Despite police denial, many feel that a trafficking network exists, connecting Tezpur, Nagaon, Goalpara and Dimapur. Local residents confirm the presence of middlemen who deal in girls. (*The Telegraph. 13 July, 1997. As reported in Jonaki. Vol. 1. No. 2. September, 1997*)

"Militarisation has created brothels in our country (Mumbai-Kamathipura) Women and young girls have always been abused, trafficked and pushed into prostitution due to militarisation. (*Jonaki. Vol. 1. No.2. 1997*)

To sum up:

"The broad economic, social, political, religious and cultural conditions along with the globalisation process has contributed significantly to the process. As a broad scenario, trafficking of women and children cannot be stopped without understanding how capitalist patriarchy, the phenomenon of modernisation, concept of nation state, militarisation, concept of development, growth model, etc. are contributing to the increase in this trade. At the political level, there is no commitment. Language and attitude towards the women and children who are trafficked are not positive".

(*UBINIG, op. cit.*)

WHO ARE THE TRAFFICKED CHILDREN?

It is quite well established by now that both girls and boys are trafficked depending upon the purpose of trafficking. Nonetheless, it goes without saying that girls are more vulnerable than boys.

The children trafficked are young as the "*the younger the child the more money she/he will fetch*". Therefore, whether trafficking is for prostitution or for domestic work or camel racing or begging or pornography, whatever the purpose may be, the younger children are preferred to their older counterparts. In the case of adoption, almost always it is the infant who is trafficked.

Here are some of the common characteristics of the victims of trafficking to be found:

- ⊙ They are illiterate or with very low levels of illiteracy
- ⊙ They by and large belong to poor families
- ⊙ Many of them belong to the marginalised sections of the society such as the scheduled castes, the scheduled tribes and the other backward communities.
- ⊙ Many of them are victims of natural disasters/calamities
- ⊙ Some are those displaced due to development projects
- ⊙ They are child victims of militarisation and political conflict
- ⊙ They are street children

WHO ARE THE TRAFFICKERS?

"Family, the brokers, the pimps and owners, the police, the political connections and criminalised elements of society help to perpetuate and sustain the system".

(UBINIG. op.cit.)

Trafficking of children usually happens through very well organised networks. This may be in the form of syndicates or family/friends/community networks.

"Notorious for selling Nepali girls to Indian brothels, a gang of traffickers fell into the police hands. The victim, a 20 year old girl from Sindhuli was brought to Gaur by her sibling and brother-in-law tricking into finding her a rich husband in the terai (plains) area.While they were on their way to India-tricking her into going for shopping for wedding dresses-they were arrested after interrogation by the police at the Gaur Immigration Check Post".

(Maiti. Vol.2, No. 1. Jan-March 2000. 14)

In India, a study by the Joint Women's Programme in 1986 documented that parents are selling unborn female children. According to this study, of those sold – 33 percent had been sold by parents and relatives, 19 percent by gangs, 10 percent by strangers, 6 percent by friends and another 6 percent by lawyers, doctors and other professionals. The study is believed to be the most authoritative and reliable report on prostitution to date, documenting the situation in twelve of India's twenty-three states and two federally administrated territories. The study claims that some deals are made when foetuses are three months old, commanding a price of Rs. 3,500. When born, most of these girl children are sold into prostitution. *(Reproductive and Genetic Engineering Vol. 2. No. 1. 1989 (U.S.A.). As quoted in Jonaki. Vol.1. No. 2. September, 1997).*

Parents sell their children into labour and there are instances of fathers sexually abusing their daughters and then putting them into prostitution. The purpose of trafficking determines some of the other specific characteristics of the traffickers. For instance, in the case of trafficking for and through marriages, **the grooms** are equally involved in trafficking. They may or may not be the ultimate buyers. It has been found that such men later sell their wife to others or directly force them into prostitution. "Many young tribal women of the region are **sold off by parents** into marriage with strangers from outside the state. After marriage, the women are treated like slaves by in-laws, and sometimes forced into prostitution" *(The Statesman. 26 May, 1997. As reported in Jonaki. Vol1. No.2. September, 1997).*

Similarly, in the case of 'Devadasis', the list of traffickers also includes the temple priests and in the case of sex-tourism or child pornography, traffickers are the tourists along with others who may be a staff of some hotel involved in the game or any other agent.

Sometimes, peer group and friends help to procure children for the traffickers, turning into traffickers themselves. A young girl of about 10-12 years, who used to be a rag picker was brought to a home run by catholic nuns. She came back after 3 years with nice clothes, fancy junk jewellery and asked to be allowed to stay. Three months later, she ran away again, this time taking another girl with her. She came back again, convinced the nuns to let her stay, only to take away another girl. Whether such peer group and friends are traffickers or not and how should they be treated is a question worth consideration.

From a child's own parents and relatives to the most highly positioned government officials and politicians as well as institutions, it can be any and all of them. It is not any one person, but a chain of persons who are involved in trafficking of children, responsible for child trafficking and should be treated legally as traffickers.

Both men and women are involved in the trafficking racket. There is no doubt that the traffickers are persons who can exercise some degree of power/control/authority on the child. This power/authority may be attributed to various sources such as the age factor (the age differential between the trafficker and the child being trafficked), the socio-economic position of the trafficker, power derived from patriarchy and its structures, it could also be sheer muscle power.

"60% of the girl child among traditional entertainer groups in Madhya Pradesh, Rajasthan, Andhra Pradesh and Karnataka are ushered in the sex profession by family members".

(The Times of India. 10 November, 1998)

If 'trafficking' is to be defined in terms of 'procurement, sale, purchase, recruitment and transportation, import and export of a person/persons through deceit, fraud, force, for purposes of exploitation, and, include such exposure and abandonment of a person by her/his lawful guardian which is likely to bring profits to another person', then, the term 'traffickers' must include everyone involved in any one or more of these acts.

One may distinguish between 'traffickers' and 'abettors to the crime of trafficking'. Government officials and politicians for instance are often not directly involved in the acts that can be said to constitute trafficking. Nevertheless, they support the crime in many ways and hence become abettors to the crime. This

distinction however should only be used for determining the role played by the various people involved in trafficking, directly or indirectly. For the purposes of legal action, in the case of child trafficking in particular, they should all be treated under the same rubric of 'traffickers' as they are all responsible for violating the rights of the children, denying them their childhood, their right to live with dignity and freedom from exploitation.

Traffickers include:

Family

- ⊙ Parents
- ⊙ Relatives
- ⊙ Husband

Community

- ⊙ Friends
- ⊙ School teachers
- ⊙ Local politicians
- ⊙ Villagers and village headmen
- ⊙ Unemployed adults who become agents in flesh trade as they find it a lucrative business
- ⊙ Temple priests in case of prostitution with religious sanction

Organised Crime Syndicates

- ⊙ Employment agents
- ⊙ Local criminal nexus
- ⊙ Corrupt officials, including local police, border police, officials on duty at the airport, passport officials etc.
- ⊙ Traffickers operating as social workers
- ⊙ Government and non-governmental institutions such as children's homes, crèches etc.
- ⊙ Pimps
- ⊙ Women who are already in the flesh trade
- ⊙ Brothel owners
- ⊙ Customers/clients of prostitutes
- ⊙ Tourists and travel agencies
- ⊙ Labour contractors
- ⊙ Doctors and medical personnel who run adoption agencies or baby firms
- ⊙ Paedophiles

Paedophiles are people with sexual desires for children. There are two types: the preferential and the situational abusers. A minority of abusers are women, who mainly go for adolescent boys.

Preferential paedophiles are those who have a clear yearning for sex with children. Situational abusers prefer an adult partner, but find a child less threatening to their self-esteem.

Preferential abusers go great lengths to accommodate their preference, networking among themselves and travelling to countries where their behaviour will not attract penalties. They justify themselves saying that sex with a child is a good way of showing them love.

*(from THE WEEK, 4 August, 1996.
As reported in Jonaki, Vol. 1 No.1, November 1996)*

Medical Persons

The famous Margao case of Goa in 1998 brought to light the large-scale sale and illegal disposal of abandoned babies in nursing homes. Activists of a local NGO called Bilancho Saad, visited the nursing home as decoys and settled a deal for an abandoned child with the head nurse and the doctor for Rs. 15,000. The police had already been informed about the trap. An advance of Rs. 2,000 was given to the head nurse. Just as she was counting the money the police raided the nursing home and saved a month old baby from being sold for Rs. 15,000.

Tourist couple, **Wilhelm Albin Marty** (59) & his wife **Loshiar Mary Lily Marty** (56), have been visiting India at least once a year to shoot pornographic material that they confess to selling at a handsome price abroad, including websites on the Internet. Police say the couple have been visiting other countries including Thailand & Sri Lanka, for the same purpose.

The duo was caught red handed in the act when the police raided the room. Two girls aged 8 & 9 years were present in the room. The police also seized a sophisticated camera, a laptop, & a VCD from the hotel room, which were used to store the offensive material.

It must be remembered that Child Trafficking networks are highly organised and often operate underground. They are out of the reach of law or they operate in connivance with the authorities. They are particularly active during periods of crisis in any area, which could be due to a natural calamity or riots etc. They can be very threatening to people working on the issue. As the threat looms large, they often remain undiscovered. By and large they do not have a criminal record in the books of law.

TRAFFICKING ROUTES & MODUS OPERANDI

Trafficking takes place within the country and also across borders. As far as international trafficking is concerned, India is not only a receiving and sending country but also a transit point. The traffickers are using India and Pakistan as their route to the U.A.E. For instance, India receives from Nepal and Bangladesh and sends to the Gulf countries as well as some European countries for inter-country adoption. Some maps on trafficking routes are attached to this report in *Annexure I*.

The demand for children is increasing in the cities for all forms and purposes of trafficking. Major cities like Delhi, Mumbai, Calcutta, Bangalore, Hyderabad and Chennai are both consuming areas as well as transit grounds, as children are sent to the Arab countries through these cities. Delhi and Mumbai are of course the main transit grounds for international trafficking. Tripura has emerged as a safe passage for those who are involved in child trafficking business from Bangladesh to West Asia, especially Dubai. (*"Tripura: a safe passage for child traffickers"*. *Jonaki*. Vol.1. No.1. September 1997)

Bangladeshi women and children are trafficked to India through the bordering districts: Satkhira, Jessore, Jhenidah, Meherpur, Rajshahi, Nawabganj, Joypurhat (sending route in Bangladesh).

Indo-Bangla international border at Khojadanga in the North 24 Paraganas in West Bengal is the receiving area in India.

There are reports from NGOs in Bangladesh of young girls and women being trafficked to Lucknow and Firozabad districts in Uttar Pradesh.

The trafficking from Nepal largely takes place thorough the adjoining border districts of Bihar and West Bengal, from where they make an entry into other places in India. The Nepal-U.P. border is also another easy entry point.

Prostitution is a fairly well documented form of trafficking. Groups working on women and children in prostitution have been able to throw light on the areas where it is concentrated the most.

Trade centres bordering India and cities with easy road linkages are flourishing with flesh trade because they serve as transit and training centres for women liable for trafficking.

Major cities like Mumbai (Kamathipura), Delhi (G.B. Road), Calcutta (Sonargachi, Bahubazar, Toliganj, Kalighat), Bangalore, Hyderabad and Chennai have the largest concentration of prostitutes.

In the State of Karnataka, Belgaum, Raichur, Bijapur are some of the districts where the Devadasi tradition is practised. In other words these districts also send out (or sell out) some Devadasis into commercial sex-work in the cities.

Some districts of Andhra Pradesh and Maharashtra are also known for religious prostitution (Joginis).

According to a study by Centre of Concern For Child Labour – “Child Prostitution in India”, 1998,

Four pockets in India are said to be recruiting grounds:

- ⊙ Andhra Pradesh – Adilabad, Kurmul, Enadi
- ⊙ Bihar- Dhanbad, Dumka, Sahebganj, Ranchi, Purnea
- ⊙ West Bengal – Murshidabad, Nadia, Jalpaiguri
- ⊙ Karnataka – Belgaum, Raichur
- ⊙ Tamil Nadu – Madurai, Coimbatore

The situation is acute in:

- ⊙ The ‘pink triangle’ – Delhi-Jaipur-Agra
- ⊙ Goods transport routes like Calcutta-Siliguri-Guwahati-Shillong and Khandla-Rajkot-Udaipur-Jaipur-Delhi.

As regards sex-tourism and pornography, besides Goa, other tourist destinations such as the Puri beach in Orissa, some of the new tourist spots like Gokarna and Karwar in North Karnataka, Kovalam and Mammallapuram in Kerala, and some areas in the Delhi-Agra-Jaipur triangle have become a centre of operation.

In the case of adoption, reports are available from Hyderabad, especially the areas with concentration of some nomadic tribes such as the lambadas, on children being sold to in the name of adoption to prospective parents from both outside and within the country. Similar reports have also come in from Goa.

Children are trafficked for labour mostly from areas where poverty levels are high and parents are amenable to sending off their children. They may be transported within the State or outside. For purposes of entertainment, they are trafficked to other countries.

As has been already mentioned, trafficking is by deceit, fraud or force. In the case of children particularly, there is no element of voluntariness involved on their part. Children, when procured, are taken from place to place and kept captive in alien locations, to avoid being apprehended.

The traffickers operate in a very organised manner. Some of the techniques used by them are:

- ⊙ Approaching the family of the victim as well-wishers.
- ⊙ Seeking the help of a local person or contact to approach the victim's family.
- ⊙ Making contacts with unsuspecting women and children at bus stands and railway stations.
- ⊙ Making friends with children while at play or in school.
- ⊙ Approaching poverty stricken families and persuading them into parting with their child. This is how they get the parents to sell their children.
- ⊙ Luring women and children with false promises of well-paid jobs or marriage with rich men.
- ⊙ Forcing the parents to sell their child in order to meet their debts. They use false debt bonds.
- ⊙ Using false documents and passports to traffic people from one country to another.
- ⊙ Paying bribes to the officials to procure false documents or escape from legal entangles.
- ⊙ Kidnapping/abduction
- ⊙ Rape or other forms of sexual abuse

"Children are brought through abduction but it is much easier to bring through marriage or for jobs", says Indrani Sinha, Chief Editor, *Jonaki*, a Journal by Sanlaap, Calcutta.

"The pimps today do not have to use deception, instead they use concern, affirmation, friendship and emotional manipulation to bring/lure these children into prostitution" (*Child Prostitution: Sanlaap's Experience. Jonaki. Vol.1. No. 1. November, 1996*).

An example of the methods adopted by people involved in trafficking for pornography can be found in the case of the Swiss couple caught red handed in Mumbai in December 2000. "Luring street children, creating a bond of friendship, giving them good food and clothes, giving them toys and free rides

in swanky cars, trendy clothes, money and other perks. After gaining their confidence, they lead them to a posh hotel in the western suburbs of the city, where they were bathed, stripped and told to perform various sexual acts, some involving the couple themselves. These acts were then filmed for the purpose of commercial pornography" (*FACSE op.cit.*).

The traffickers know their job quite well and they often do not fail with their techniques.

INTERVENTIONS ON TRAFFICKING IN CHILDREN

Government initiatives

India pays attention to the problem of trafficking through its Department of Women and Child Development as well as through the National Commission for Women.

Both the Centre and the States have undertaken some initiatives to combat child trafficking. The *Central Government's initiatives* include:

- ⊙ In pursuance of the Supreme Court Directives of 1990, the Government of India constituted a **Central Advisory Committee on Child Prostitution in 1994**, comprised of government and non-governmental agencies to examine the issue of sexual exploitation of children particularly girls and identify policy and programme interventions. A desk has been set up in the Department of Women and Child Development to implement the recommendations of the Advisory Committee.
- ⊙ In 1997, under the directive of Supreme Court, a **Committee on Prostitution, Child Prostitution and Children of Prostitutes** headed by the Secretary of Department of Women and Child Development, was set up. This committee looks into the problems of prostitution and trafficking of women and children in order to evolve suitable programmes.
- ⊙ The government under section 21 of ITPA has established **Protective Homes for girls and women** detained under this act. Currently there are 80 such homes, which provide custodial care, education, vocational training and rehabilitation including arranging marriages for the inmates.
- ⊙ A network of **short stay homes** under the sponsorship of the Department of Women and Child Development and **juvenile homes** under the Juvenile Justice Act have been established for the protection and rehabilitation of victims. Medical services and counselling are made available at these homes.
- ⊙ The Central Social Welfare Board provides financial assistance to NGOs to run development and care centres for the children of prostitutes.

Some of the States have undertaken their own initiatives in addition to interventions being designed at the Central level. These *State Government initiatives* are:

- ⊙ Like the Central Advisory Committee on Child Prostitution set up in 1994, the State governments have also set up **State Advisory Committees**. Advisory boards of social workers and NGOs in red light districts conduct regular raids and take measures for the protection and rehabilitation of trafficked victims.
- ⊙ West Bengal, Maharashtra, Uttar Pradesh, Bihar as well as some of the southern states have their own stated policies on trafficking of women and children, especially into the sex industry. Certain interventions on the part of Uttar Pradesh, West Bengal and Bihar include cross border component as well, with Nepal and Bangladesh.
- ⊙ The Government of Karnataka has initiated Devdasi rehabilitation and training schemes. A component of this includes moral education and social upliftment.
- ⊙ The Government of Andhra Pradesh has sanctioned a project in 1997-98 for the rehabilitation of victims of prostitution who are HIV positive.
- ⊙ The Government of Maharashtra has set up special juvenile homes with facilities for counselling, vocational training and health unit for child prostitutes infected with *HIV*.
- ⊙ The Government of Madhya Pradesh has initiated a scheme called 'Jawali Yojna' in 1992-93 targeting the 'Bedias' (community in the prostitution trade). The programme emphasises primary education for girls at age six, middle school, and/or vocational education and training.
- ⊙ State Governments have also demonstrated their active engagement on this issue by organising raids and rescuing 'victims' of prostitution.

NGO initiatives and other programmes

More than 80 NGOs in 10 states of India work actively among sex workers, and play a major role in advocacy to influence policy reforms (*UNIFEM. 1998*). There are other NGOs that are working on trafficking of children for labour, against children being used for pornography and sex tourism. They are involved in investigative research, documentation, advocacy, running health and education programmes and rehabilitation efforts. Most of the studies, data and activity in the field of anti-trafficking work in the country have focussed on trafficking into the sex industry.

The National Human Rights Commission (NHRC) has also constituted a core group only to study the problem of child prostitution in Delhi and Karnataka in order to formulate preventive and rehabilitative strategies.

A lot of research and documentation as well as interventions are being undertaken on child labour, but not within the framework of trafficking.

The efforts of these groups have led to some significant prosecutions and raising of awareness. In many cases such as in Goa, NGOs are working in co-operation with the government to tackle this issue. In 1997, the Directorate of Social Welfare set up an advisory committee in Goa and notified NGOs were issued identity cards by the police and included in the committee.

NGOs have played a significant role in rehabilitation of the victims of trafficking. However, the biggest challenge before them comes when they send the victims back to their family, who do not accept them due to the social stigma. As a result the victims often fall back into the trap of getting further victimised. NGOs realise that unless there are adequate "back-up" systems, simply rescuing the victims through "raids" by the police only drives the victims further into bondage. This is true also of child labour, but even more desperate for children in prostitution.

As yet there is no formal network of groups that work on the issue of child trafficking in its entirety. This is because the nature of the problem is so vast, disparate and multi-dimensional. Some of these groups who are working on labour issues are members of the various child labour campaigns that exist in the country.

The United States Administration is leading key international efforts to stop trafficking of women and children around the world. The State Department and the U.S. Agency for International Development recently launched four new programs totaling nearly \$1.6 million to assist non-governmental organisations (NGOs) in implementing prevention efforts, providing assistance to victims, and improving coordination between law enforcement officials and local NGOs.

USAID has approved a \$1.3 million grant to the U.N. Development Fund for Women (UNIFEM) for a program to combat trafficking of women and children in South Asia.

This three-year grant is to undertake regional activities that directly complement the bilateral efforts of USAID mission programs in India, Nepal, Bangladesh, and Sri Lanka. The grant will assist grassroots, national, and regional NGOs in South Asia to expand their advocacy activities and strengthen their networks against trafficking. Regional prevention efforts will increase public awareness about the realities of trafficking.

The UNIFEM regional office in Delhi has initiated a regional campaign on trafficking of women and children.

UNIFEM will assist NGOs to design and evaluate models of successful prevention efforts. A South Asia Anti-Trafficking Information Center is being established in the region to promote stronger collaboration among NGOs working on anti-trafficking projects and greater exchange of information on prevention and prosecution programs.

With UNIFEM taking the initiative, it is likely that there may be more networking that will emerge between the various groups because they are also creating a database on the various groups and agencies working on this issue.

The Bureau for International Narcotics and Law Enforcement Affairs (INL) at the U.S. Department of State has approved an aid (\$70,000) for two Indian NGO projects to develop and conduct training programs to improve anti-trafficking coordination among law enforcement officials and local NGOs.

Strengthened law enforcement and prosecution of traffickers is critical because the crime remains a high-profit, relatively low-risk transnational criminal enterprise. Improving coordination among law enforcement officials and NGOs serving victims ensures that traffickers are detected and punished, and that victims are afforded the protection and assistance they need to rebuild their lives.

This funding will support interactive training for border officers, police, prosecutors and judges in Calcutta and New Delhi. Police and judicial officials will participate in workshops designed to assist in building successful prosecutions of traffickers and abettors. Border officers will also receive in-depth instruction on recognising potential trafficking situations.

The State Department is contributing \$200,000 to anti-trafficking activities specifically in India. This additional funding is part of a \$1.5 million effort in the South Asia region using Economic Support Funds (ESF). Central to the strategy in India will be: strengthening enforcement of existing laws, supporting NGO shelters for victims of trafficking, and supporting rehabilitative programs, including skills training and income-generating activities.

But, to reiterate, these efforts do not touch all forms and purposes of child trafficking and are rather limited to child prostitution or trafficking of children for sexual exploitation.

LAW AND POLICY

Legal Framework

The laws and legislations do not seem to be adequate or comprehensive in dealing with the various forms of trafficking and often frees the culprit and penalises the victim.

India is a signatory to several international covenants, conventions and treaties dealing with exploitation of women and children. A list of various international mechanisms that can be used to deal with the issues of child trafficking is elaborately presented in *Annexure II*. The most important amongst these, in the case of children is the UN Convention on the Rights of the Child (CRC), 1989, ratified by India in 1992 (Articles 3, 11, 21, 34, 35, 36, 39 and 44 of the CRC). The CRC provides a platform for NGOs to bring their child rights concerns to notice in the form of alternate reports that can be sent to the UN Committee on the Rights of the Child for consideration. Besides, it also clearly provides for the State Parties to consult NGOs in the preparation of the Country Report to be presented before the Committee so that issues concerning children get adequately addressed.

As regards the national scene, it must be pointed out that we have a Constitution that is applauded all over the world, but, while Article 51 A in the Constitution of India makes it a fundamental obligation on all citizens to renounce practices derogatory to the dignity of women, it does not lay down the same in the case of children. Neither has one known of any trafficking case coming up before the court of law on grounds of violation of the fundamental duty laid down in the Constitution.

As women and children are considered a weaker section of the society, the Constitution, following the principle of protective discrimination, allows for making and implementing laws specific to them, for their protection and well being. The Immoral Traffic (Prevention) Act of 1956 (ITPA) is in line with this principle. Unfortunately, this Act deals only with trafficking of girls and women for prostitution. It does not cover trafficking of boys for sexual purposes. As the laws stand, the only legal provision that can be invoked to combat trafficking of boys is Section 377 of the IPC, which deals with “unnatural offences”, and covers sodomy. The Karnataka Devadasi Prohibition Act deals with trafficking of girls for religious purposes. Some of the other laws relating to trafficking are the Juvenile Justice Act, 1986, a number of Begging Prevention laws e.g. the Bombay Begging Prevention Act, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1989, the Bonded Labour Act and so on. (For details see annexure). Besides the criminal law of India i.e. the Indian Penal Code, the Criminal Procedure Code and the Indian Evidence Act provide for

various forms of trafficking (refer to *Annexure III* for details). However, there are enough loopholes in the laws and the legal system that result in the crime being perpetuated without fear.

Gaps in the existing legal framework

The existing legal framework is limited to defining trafficking only in terms of trafficking for prostitution. There is no comprehensive legal framework to cover trafficking of children for labour, begging, pornography etc. In trafficking, it is not just the “moving” of children from one place to another, it is also breach of trust and it is the pain and agony and trauma suffered by the victim both while being trafficked and thereafter. We need a law that addresses all these concerns.

All other forms of trafficking other than prostitution is currently covered under the Indian Penal Code (IPC). **The IPC has no specific provision on trafficking.** IPC provisions that can be used to deal with a case of trafficking are the provisions relating to kidnapping and abduction, procurement and importation of minor girls for illicit intercourse, selling and buying of girls for prostitution, slavery and forced labour contained in sections 360, 361, 362, 363 A, 365, 366, 366 A, 366 B, 367, 369, 370, 371, 372, 373 and 374.

The IPC does not contain any provision for **abetment** to trafficking or **attempt** to trafficking in any form whatsoever.

In the case of Freddy Peats, the paedophile caught in Goa, the police initially brought the case under Section 377 of IPC dealing with unnatural offences as well as sections 291 and 293 of the IPC dealing with dissemination of obscene pictures, especially of minors. In such cases a bail cannot be granted, but Freddy Peats managed to get released on bail. After much struggle Peat was sentenced to life.

There is a need for a comprehensive legislation on child trafficking, which goes beyond child prostitution and addresses other grave forms and purposes of trafficking of children.

Policies and Plans

There is a need for a comprehensive policy on child trafficking. Unlike the National Policy on Child Labour, 1986, or the National Policies on Health, Education and Nutrition (adopted in the years 1983, 1986 and 1993 respectively), there is no National Policy to Combat Child Trafficking or Trafficking as such. India however, does have an old National Policy for Children of 1974, which has not been changed in all these years. This policy does not contain anything specifically for child victims of trafficking though it does talk about protection of children against neglect, cruelty and exploitation.

One of the major goals of the National of Action is *Improved protection of children in especially difficult circumstances*, which includes tackling the root causes leading to such situations. This category of children is comprised of physically handicapped; mentally handicapped; drug addicts, victims of natural and man-made disasters, refugee children, street children, slum & migrant children, orphans & destitutes; children suffering from AIDS, children of parents with AIDS & AIDS orphans, children of prostitutes and child prostitutes and juvenile delinquents and child labour.

Although the National Plan of Action, 1992 deals with children in prostitution and children of prostitutes in its section concerning children in especially difficult circumstances, like most other government documents it does not recognise child trafficking per se as an issue for action.

ISSUES OF CONCERN

In relation to the above analysis, there are some *issues* of concern identified:

- ⊙ Child trafficking should be understood and addressed separately from trafficking of adults and treating children as “sex-workers” gives trafficking for sex-work legitimacy. Clearly, using children for prostitution is a criminal offence amounting to rape, and must be understood in this light. This is particularly significant in the light of the organising of adult sex-workers for their rights and their right to practice sex-work.
- ⊙ There is lack of awareness and apathy not only among the general public but also the concerned government officials.
- ⊙ What kind of co-ordination needs to exist between the Government, the media and the police so that the victim is not further victimised?
- ⊙ What must the legal framework be to provide a more holistic protection to the children?
- ⊙ What are the responsibilities of other civic groups like the management of the hotels? What role is expected of them in preventing such incidence?
- ⊙ What can be done to expedite legal procedures?
- ⊙ What kind of vigilance is possible in the context of prevention and control of trafficking?
- ⊙ There are repeated instances being heard from all over of the exploitation of children and women in the developing nations by individuals of

developed countries. What is the role-played by both the developing and the developed countries in relation to detecting and preventing trafficking for child pornography, adoption, labour and sex tourism?

- ⊙ If child rights are a common concern and we are signatories of the UN Convention on the Rights of the Child (CRC), why can't there be a uniform law to deal with it? (Protection of the child from all kinds of exploitation including sexual exploitation in Article 34, 35, and 36 of the CRC)
- ⊙ How can we build the pressure on the police and the government to tackle this as an "issue" rather than deal with it through a case-by-case approach?
- ⊙ What can the Embassy of the concerned countries (those who come as clients and also the other South Asian countries from where trafficking is taking place) do?
- ⊙ Can there be regional approach/ policy along with a national one?
- ⊙ This is an issue that needs definite state intervention and punitive action against the perpetrators. What must the role of NGOs be?

WHAT IS BEING DEMANDED

As with all issues concerning children the guiding principle for dealing with children must be the "best interest of the child". Interventions are required at various levels and all of them need to be undertaken simultaneously. Only law and policy reform will not serve any purpose unless there is simultaneous attitudinal change based on recognition of rights and needs of children. Families and communities need to be sensitised, as do officials dealing with trafficked children. Clearly, interventions have to be "preventive" or long-term and "reactive" or immediate. Change in law and policy and putting into place programmes, right to education of all children and awareness generation and advocacy would be preventive.

But simultaneously rescue and rehabilitation of children who are trafficked has to continue. This is a tricky issue because sometimes persons who are the child's guardians (including parents) and incharge of the well being of the children are the ones responsible for trafficking them.

It is based on this overall understanding that demands for tackling the issue of trafficking are being made:

- ⊙ Consensus on the definition of 'Trafficking' is required to clarify legal framework, develop systematic research, and guidelines for intervention and reach agreement between countries to prevent trans-border trafficking.

- ⊙ Undertake review of laws, legal practices and methods of law enforcement with respect to trafficking, particularly child trafficking.
- ⊙ Deepen the understanding of the constituent elements of trafficking by identifying the ones that already exist as crimes, in order to identify gaps and develop new legislation and policy.
- ⊙ Undertake review of common law and local practices, as well as the ethical guidelines that are popularly employed in understanding and dealing with trafficking and related issues.
- ⊙ The Child victim is very different from adults. The focus of the law/Act must be broad enough to cover needs of children and address the problem in a sensitive and child-friendly manner.
- ⊙ Develop guidelines to separate legislation for trafficking from prostitution laws.
- ⊙ Undertake a thorough historical review of 1949 Anti-trafficking Convention and the manner in which its provisions are applied and implemented.
- ⊙ Simultaneously with the review and formulation of more comprehensive and appropriate laws for combating child trafficking, special officers have to be appointed at every police station, who must also co-ordinate between police and the concerned government department.
- ⊙ With every possible quickness and efficiency children must be rescued and must also be given safe custody.
- ⊙ Following the Supreme Court order (dated 2nd may, 1999), such children must be sent on priority basis to the centres and homes run by the government and non-governmental organisations, and extended help of social workers, psychiatrists and physicians. Government should come forward and extend a helping hand so that proper care is taken of their health and education. Evaluating how these homes (both governmental and non-governmental) are administered is as important so as to make them run on humanitarian grounds. It must always be borne in mind that their main responsibility is to introduce the inmates of these homes to the societal mainstream.
- ⊙ While institutional care as it exists in the country today is not a very pleasant alternative, there nevertheless is a need for ensuring adequate number of homes and rehabilitation centres for such children, and also to ensure that

they are run in a child-friendly manner.

- ⊙ Child sensitisation programmes must be conducted for law enforcement agencies by the Police Training Schools, the National Judicial Academy and other such institutions with the assistance of NGOs.
- ⊙ There should be a unified immigration law in SAARC countries, Also immigration laws must be updated to provide amnesty for trafficked persons who are mainly women and children.
- ⊙ There is need for training for law enforcement, immigration and border officials in countries of origin to help them identify patterns and methods of trafficking and to prevent trafficking through effective investigation and prosecution.
- ⊙ Witness protection procedures and victim services should be developed in countries of origin for cases of repatriation, including training for law enforcement officials and assistance to non-governmental organisations that provide victim services.
- ⊙ Victims of trafficking must be guaranteed freedom from persecution or harassment by those in positions of authority and access to free legal assistance and qualified interpreters during all legal proceedings.
- ⊙ Establish an information cell, which can provide information - collected from concerned NGOs, activists, journalists, and lawyers - on trafficking issues.
- ⊙ Media sensitisation workshops are required in order to bridge the 'hostile' gap between journalists and NGOs and to provide media persons with a better, deeper understanding of the issues involved in trafficking.
- ⊙ Depict trafficking as a regional issue. Form a directory of people, journalists, activists, organisations, institutions, lawyers' groups working against trafficking so that information from different countries can be provided when needed. Information networks should be formed between sender and receiver countries like Pakistan and Bangladesh and, Nepal and India.

(Based on recommendations made by UNIFEM, Dr. Jyoti Sanghera, Bailancho Saad, Sanlaap and others in their papers, reports and newsletters; Report on South Asian Workshop on Trafficking in Women and Children: Formulating Strategies of Resistance held in Bangladesh; Report of the Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography, Ms. Ofelia Calcetas-Santos and activists in India.)

CONCLUSION

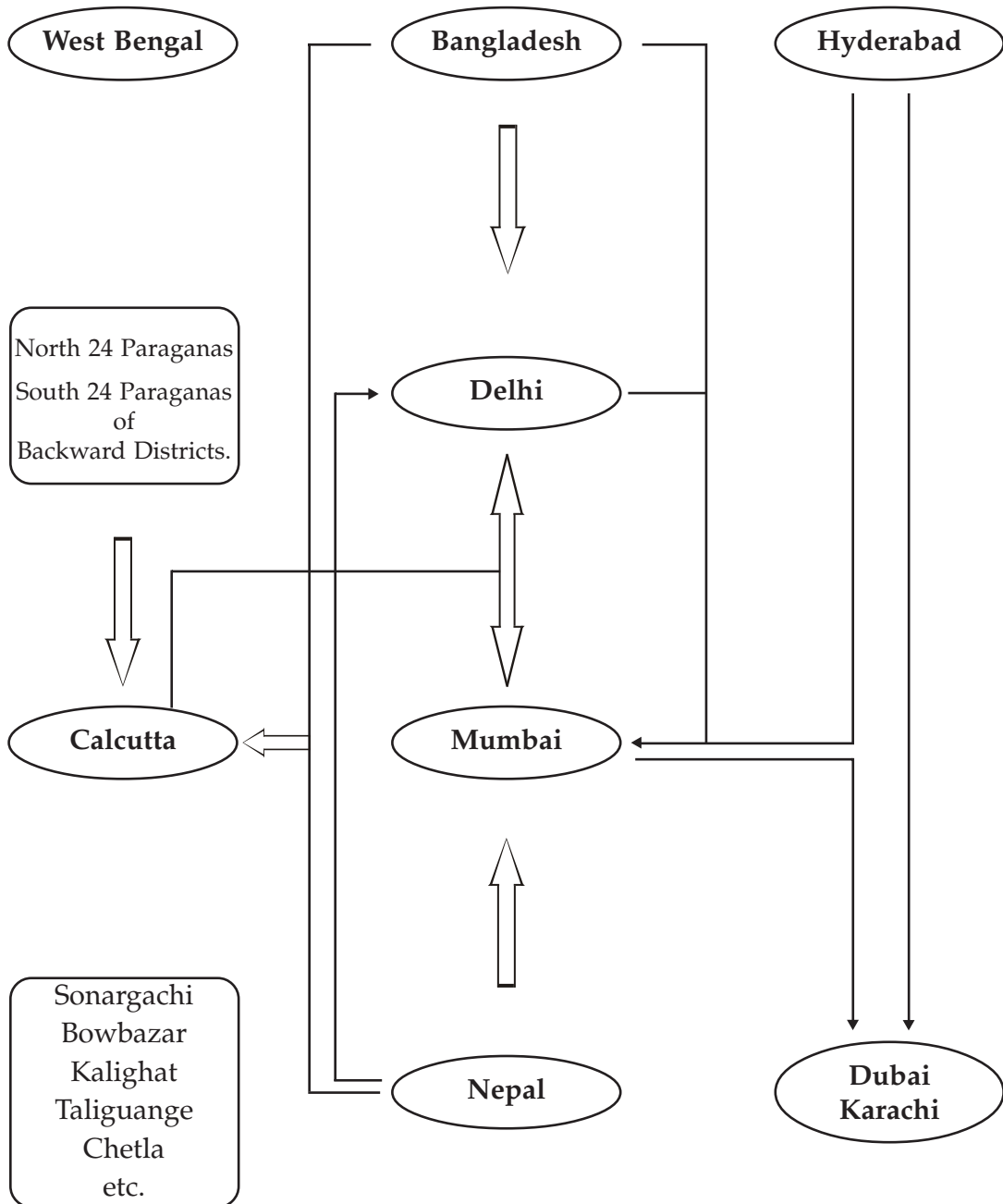
Clearly, trafficking takes place for a range of purposes. Prostitution is but the most visible form of this abusive and degrading trade of women and children. At the same time, trafficking of children also takes place for labour such as work at construction sites, work in the carpet industry, domestic work, pushing children into bonded bondage, begging, marriage, to provide jockeys for camel races in the Gulf countries, for pornography etc. The purpose and method or cause are sometimes closely linked for example in the case of marriage or religious prostitution. The number of victims of trafficking and the purpose to which they are put, depend on global trading patterns and the demand and supply trends of a particular economy.

Women as adults have a right to decide for themselves and the ways they want to earn money, while that is not the case with children who are trafficked. Women are in a better position to demand for and get better working conditions than the child victims of trafficking. In cases of child trafficking, there can be no element of 'willingness' or 'voluntariness' on the part of the trafficked child. Those already trafficked need to be rescued and rehabilitated. The best interest of the child has to be the governing principle.

There are number of reports and documents on the issue of child trafficking, but there is very little systematic effort so far to collate them. As a result, although there are interventions being made across the country by various groups and individuals, not much is known about these efforts. With UNIFEM's information centre being set up, this gap is going to be filled to some extent. However, a co-ordinated effort among the groups working on this issue is necessary if any change in law and policy has to be brought about. Besides, trafficking being an area that is extremely difficult to work in because of the type of person involved, the organised nature of the crime and the modns operandi, networking provides a support and back up to the individual groups concerned.

Trafficking in Children

Important Routes



International Mechanisms

International law forbids trafficking, slavery, forced labour, debt bondage, torture, arbitrary detention, and many other practices associated with trafficking. The Organisation of American States, The Organisation of African Unity, the Council of Europe, the South Asian Association for Regional Cooperation and the Association of South East Asian Nations and their affiliated organisations are creating conditions and spreading awareness for further actions in their respective regions. Despite the existence of a variety of instruments containing rules and regulations to combat trafficking, there is no universal international instrument covering all aspects of trafficking in persons.

The issue of trafficking is now high on the international agenda. At the international level, the members of the United Nations have adopted two protocols to the Convention on Transnational Organised Crime.

Effective eradication and prevention of trafficking is possible only if it is linked with the protection of the rights of the trafficked person, and prosecution followed by punishment to traffickers.

The main weakness of the international anti-trafficking law is the lack of a comprehensive definition of trafficking.

❑ UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

Adopted and proclaimed by United Nations General Assembly Resolution 217A(II) on 10 December 1948.

Article 4

No one shall be held slavery or servitude: Slavery and the slave trade shall be prohibited in all their forms.

❑ INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

Adopted by the UN General Assembly on 16 December 1966. Entered into force on 23 March 1976. As of 1 January 1999, the Covenant has been ratified by 142 countries.

Article 8(1,2)

Signatory States have an obligation to ensure that 'no one is held in slavery and servitude'.

Article 8(3)

Signatory States have an obligation to ensure 'that no one shall be required to perform forced or compulsory labour'.

This provision is similar to the one incorporated in Article 4 of the Universal Declaration of Human Rights. The important factor is that this provision is non-derogable (art. 4(2)) and the States are under permanent obligation to give effect to the provisions of Article 8 of the ICCPR.

Article 40

The State parties are obliged to submit periodic reports to the Human Rights Committee.

In the last twenty years, the committee has referred to only two incidences of Trafficking, one in relation to Spain in 1991, and one with respect to Peru in 1994.

The first **Optional Protocol to the ICCPR** was adopted on 16 December 1966 and entered into force on 23rd March, 1967. The Optional Protocol to the ICCPR enables individuals to submit complaints regarding alleged violations of their rights under the Covenant directly to the UN Human Rights Committee. Despite this provision, the individual complaint mechanism has never been used to address a situation involving Trafficking in women or children.

❑ **INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966**

Adopted by the UN General assembly on 16 December 1966. Entered into force on 3 January, 1976.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) does not directly address trafficking. However it refers to matters that would help in preventing trafficking of persons, including women. It contains numerous rights central to women's livelihood, such as the right to gain their living through work they have freely chosen, the right to just and favourable conditions of work and the right to social security (art. 6,7,9). The non-discrimination provision (art. 2(2)) requires that all these rights have to be executed without any discrimination, including the one based on sex.

The Committee on Economic, Social and Cultural Rights is the central organ established by the Economic and Social Council (ECOSOC) to monitor implementation of the ICESCR. It reviews the reports submitted by the State Parties, makes recommendations to the States, and issues comments on Economic, Social and Cultural rights prevailing in individual States, in addition to issuing an annual report.

❑ **CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN PERSONS AND OF THE EXPLOITATION OF THE PROSTITUTION OF OTHERS, 1949**

The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949 (the Suppression of Traffic Convention) consolidated the earlier instruments relating to the White Slave Trade and Traffic in Women and Children. This is the first international instrument to conceive of trafficking in gender-neutral terms by referring to 'traffic in persons' without restricting the scope to women or children. It came into force on 25th July 1951. India had signed the convention on 9th May 1950.

Article 1

The parties to the present Convention agree to punish any person who, to gratify the passions of another:

1. Procures, entices or leads away, for purposes of prostitution, another person, even if it is with the consent of that person or,
2. Exploits the prostitution of another person, even if it is with the consent of that person.

The Suppression of Traffic Convention does not cover any other kind of trafficking that does not constitute direct recruitment into prostitution.

Article 2

Any person who keeps, manages, or finances a brothel is liable for punishment.

Article 17

The Parties to the present Convention undertake, in connection with immigration and emigration, to adopt or maintain such measures as are required, ... to check the traffic in persons of either sex for the purpose of prostitution.

To make such regulations as are necessary for the protection of immigrants or emigrants ... in particular, women and children, both at the place of arrival and departure and while en route....The Suppression of Traffic Convention does not require that the trafficking has to be across international borders. However the parties are required to monitor immigration and emigration routes in order to halt trafficking for prostitution.

Article 19

The Parties ... undertake ... Pending the completion of arrangements for the repatriation of destitute victims of international traffic in persons for the purpose of prostitution, to make suitable provisions for their temporary care and maintenance...

'Trafficked persons are to be repatriated if they so wish or if the 'expulsion' is ordered in conformity with the law (art. 19 (2)). Immigrants with an irregular resident status in a country are likely to be expelled under this clause.'

Article 21

State parties are required to report to the UN Secretary-General annually, indicating laws, regulations and other measures they have adopted with respect to trafficking.

The enforcement mechanisms provided by the Suppression of Traffic Convention are weak.

The UN Secretary General is required to publish these communications periodically. Since 1974, state parties have been required to submit reports regarding slavery and trafficking to the UN Sub-Commission for the Promotion and Protection of Human Rights. There is neither an independent supervisory body to monitor implementation of the provisions of the Trafficking Convention, nor is there any provision for anybody to receive or act on petitions brought by or on behalf of victims of trafficking. This weakness of the Suppression of Traffic Convention is further aggravated by the fact that relatively few countries have ratified it. 72 states have ratified the Convention.

❑ **DECLARATION OF THE RIGHTS OF THE CHILD, 1959**

Adopted by the UN General Assembly subsequent to the Geneva Declaration of the Rights of the Child, 1924.

Principle 2

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of law for this purpose, the best interests of the child shall be of paramount consideration.

Principle 8

The child shall under all circumstances be among the first to receive protection and relief.

Principle 9

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in an occupation or employment, which would prejudice his health and education, or interfere with his physical, mental or moral development.

❑ **CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW), 1979**

Adopted and opened for signature, ratification, and accession by United National General Assembly resolution 34/180 on 18 December 1979. Entered into force on 3 September 1981 in accordance with article 27(1).

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

The State parties to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) are under international legal obligation to remove obstacles and provide conditions for women to exercise their human rights.

The term 'trafficking' encompasses a broader range of cases than those covered by the Suppression of Traffic Convention. CEDAW covers trafficking into domestic labour or forced marriages in addition to incriminating the exploitation of prostitution of women

Article 18

The State parties are required to submit periodic reports on measures they have taken to implement the provisions of CEDAW.

In 1999, an Optional Protocol to CEDAW established a complaint and an Inquiry procedure. By now, 23 states have signed the Protocol, and there have been no ratification deposited yet. Once the Protocol enters into force, a woman or a group of women, acting on behalf of a woman, may lodge a complaint before the CEDAW Committee, claiming that there have been violations of rights guaranteed under CEDAW, including the violations under article 6. The Committee may proceed with the inquiry, if it has reliable information on grave or systematic violations of the CEDAW provisions by a State party. The application of both procedures requires that the state concerned is a party to both the CEDAW and its protocol.

❑ THE CONVENTION ON THE RIGHTS OF THE CHILD, 1989.

Adopted by the United Nations General Assembly on 20 November 1989
The Convention on the Rights of the Child (CRC) has been ratified by almost all the UN Member States. It entered into force on 2 September 1990 in accordance with article 49(1). India ratified the CRC in 1992.

Article 3

1. In all actions concerning children the best interests of the child shall be a primary concern
2. State Parties undertake to ensure the child such protection and care as is necessary for his or her well being

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements of accession to existing agreements.

Article 20

1. It requires State Parties to recognise and/or permit the system of adoption and ensure that best interest of the child is the paramount consideration.
2. Adoption of a child is to be authorised by competent authorities.
3. Safeguards and standards are to be laid by the State Parties for inter-country adoptions, especially to ensure that the placement does not result in improper financial gain for those involved.

Article 34

State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent.

- a) The inducement or coercion of a child to engage in any unlawful sexual activity.
- b) The exploitative use of children in prostitution or other unlawful sexual practices;
- c) The exploitative use of children in pornographic performances and materials.

Article 35

States parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form.

Article 36

State Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 39

It requires the State Parties to "take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts". It further requires the State Parties to ensure that "such recovery and reintegration shall take place in an environment which fosters health, self-respect and dignity of the child".

Article 44

The primary mechanism for monitoring implementation of the CRC is the State reporting procedure. The first country report is to be submitted to the UN Committee on Rights of the Child after 5 years of ratification and thereafter every two years. While reviewing the periodic reports submitted by the States, the Committee under CRC raises concerns about trafficking in children. The Committee also encourages the NGOs to submit alternate or shadow reports on the situation of children in their countries

Optional Protocol To The Convention On The Rights Of The Child - The optional protocol relates only and particularly to sale of children, child prostitution and child pornography. The optional protocol to the CRC has not been signed by India.

❑ **INTERNATIONAL LABOUR ORGANISATION FORCED LABOUR CONVENTIONS**

⊙ **ILO CONVENTION NO 29**

The ILO Forced Labour Convention, 1930 is the most widely ratified ILO convention with 139 States parties.

The Forced Labour Convention, 1930 (Convention No. 29) provides for the abolition of forced labour. It defines forced or compulsory labour in article 2(1) as meaning "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." It is clear from this description

that forced labour as understood by the international community does not include a concept of ownership as does slavery. Yet, the practice imposes a similar degree of restriction on the individual's freedom — often achieved through violent means.

⊙ **ILO CONVENTION NO. 105**

The Abolition of Forced Labour Convention, 1957 entered into force on 17 January 1959.

Article 1

Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

Article 4

The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.

The Abolition of Forced Labour Convention, 1957 (Convention No. 105) provides for the immediate and complete eradication of forced labour in specific circumstances.

ILO Convention No. 29 and ILO Convention No. 105 (collectively referred to as the “ILO forced labour conventions”) concerning the abolition and control of forced labour are essentially the only international instruments that set out a definition of forced labour, although its prohibition is endorsed by many treaties, both international and regional.

The use of forced labour has been condemned by the international community as a practice similar to, but distinct from slavery. The League of Nations and the United Nations have made a distinction between slavery and forced or compulsory labour and the International Labour Organization was given principal responsibility for the abolition of the latter.

⊙ **ILO CONVENTION NO. 182.**

Convention Concerning The Prohibition And Immediate Action For The Elimination Of The Worst Forms Of Child Labour. Adopted by the ILO General Conference on 17 June 1999.

The ILO Committee of Experts on the Application of Conventions and Recommendations identified the use of children for prostitution as one

of the worst forms of forced labour. Consequently, the focus of the ILO's efforts in the area of forced labour has been on trafficking in children. In June 1999, the ILO adopted the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (the Worst Forms of Child Labour Convention), banning the worst forms of child labour, including slavery and trafficking. The Worst Forms of Child Labour Convention aims to protect those under 18 and targets child slavery, forced labour, trafficking, debt bondage, serfdom, prostitution, pornography and exploitative work in industries using dangerous machinery and hazardous substances (art. 3).

Under article 19(5(e) and 6(d)) of the ILO Constitution, the governing body may request reports from each Member State on the position of its laws and practice in regard to the matters dealt with in the basic ILO Human Rights Conventions (or Recommendation) whether ratified or not. The Worst Forms of Child Labour Convention has been recognised as one of such basic ILO conventions. These reports are also examined by the Committee of Experts and forms the subject of a 'General Survey' which is examined each year by the conference.

❑ **VARIOUS CONVENTIONS RELATING TO SLAVERY**

Definition of both slavery and trafficking has caused controversy since the beginning of prevention of these activities started by the international community. Various forms of slavery have been identified by the Temporary Slavery Convention in 1924 and later approved by the League of Nations. After the Second World War the United Nations continued working towards the elimination of slavery, and as a result it has now become a well-established principle of international law. UN Working Group on Contemporary Forms of Slavery in 1974, stresses that the trade of women is a new way of slavery, trafficking in women and children has been recognised as a form of slavery and the international anti-slavery treaties also cover trafficking.

⊙ **SLAVERY CONVENTION, 1926.**

Article 1(1)

It defined slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised".

Article 1(2)

It defined the slave trade as "all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts

involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves”

A definition of slavery first appeared in an international agreement in the League of Nations’ Slavery Convention of 25 September 1926. The Convention also distinguished forced labour, stipulating that “forced labour may only be exacted for public purposes” and requiring States parties “to prevent compulsory or forced labour from developing into conditions analogous to slavery” (art. 5).

Despite the requirements made by the Slavery Convention, and although governments are required to submit reports to the UN Secretary General with respect to the relevant laws enacted and enforcement mechanisms provided at the national level there is no supervisory body in place to monitor the implementation of the provisions of the Slavery Convention.

⊙ **SUPPLEMENTARY CONVENTION ON THE ABOLITION OF SLAVERY, THE SLAVE TRADE, AND INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY, 1956.**

Article 1

Each of the State Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about.. the complete abolition or abandonment of the following institutions and practices

- a) Debt bondage...
- b) Serfdom ...
- c) Any institution or practice whereby:
 - i. A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group....
- d) Child labour

The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956 (the Supplementary Convention) “went further and covered more ground than the 1926 Convention.” It obliged State parties to abolish, in addition to slavery, the institutions and practices, identified collectively as “servile status”.

Article 8(2)

According to the reporting mechanism established by the Supplementary Convention, the States simply undertake to send to the UN Secretary General “copies of any laws, regulations and administrative measures enacted or put into effect to implement the provisions of this Convention”. The Secretary General must then communicate the information received through this process to the State parties, as well as to the ECOSOC for consideration regarding further recommendations that ECOSOC might make on abolishing slavery.

❑ **CONVENTIONS RELATING TO TRAFFICKING AMONG MIGRANTS**

Migrant workers are subjected to a wide range of abuse and discrimination, most of which do not constitute slavery, servitude, or forced labour e.g. confiscating workers’ passports and, particularly in the case of domestic workers, keeping them in virtual captivity. The ‘International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families’, was adopted by the United Nations in 1990 in order to counter these practices. But it has not yet entered into force. The ILO has also adopted a series of conventions to address the employment of migrant workers, ILO Conventions nos. 97 and 143.

⊙ **INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES**

Article 2

The term ‘migrant worker’ is defined as: “...a person who is to be engaged, is engaged or has been engaged in a remunerative activity in a State of which he is not a national”.

This definition refers exclusively to migrant workers, who are outside their own country.

Article 2(2)

It contains definition of several categories of migrant workers such as frontier workers, season workers, seafarers, workers on offshore installations, itinerant workers, project-tied workers, and self employed workers. This list however does not include the economic migrants who are moving in search of better living possibilities in different locations, both within and outside the countries. The definition includes undocumented workers who enjoy certain rights as recognised in part III of the Convention.

❑ CONVENTIONS ADDRESSING TRAFFICKING IN THE CONTEXT OF ARMED CONFLICTS

⊙ GENEVA CONVENTIONS AND THE PROTOCOLS – THE INTERNATIONAL HUMANITARIAN LAW

- ⊙ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Adopted on 12 August 1949. Entered into force on 21 October 1950.
- ⊙ Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Adopted on 12 August, 1949. Entered into force on 21 October, 1950.
- ⊙ Geneva Conventions relative to the Treatment of Prisoners of War. Adopted on 12 August, 1949. Entered into force on 21 October, 1950.
- ⊙ Geneva Convention on the Protection of Civilian Persons in Time of War. Adopted on 12 August 1949. Entered into force on 21 October 1950.
- ⊙ Additional Protocol I relating to the Protection of Victims of International Armed Conflicts. Adopted on 8 June 1977. Entered into force on 7 December 1978.
- ⊙ Additional Protocol II relating to the Protection of Victims of Non-international Armed Conflicts. Adopted on 8 June 1977. Entered into force on 7 December 1978.

⊙ Geneva Convention on the Protection of Civilian Persons in Time of War

Article 27(4)

It requires the protection of women against “rape, enforced prostitution, or any form of indecent assault”.

Similar provisions applicable to non-international armed conflicts can be found in the common **article 3** of the four Geneva Conventions and article 4 (2(e)) of Protocol II to the Geneva Conventions.

Enforced prostitution and other acts of sexual violence against women committed during armed conflict are prohibited under international humanitarian law. Acts of “Torture or inhuman treatment” and “wilfully causing great suffering or serious injury to body or health” committed in international armed conflicts constitute grave breaches of the Geneva Conventions.

❑ STATUTE OF THE INTERNATIONAL CRIMINAL COURT

The statute has not yet entered into force, as this requires ratification by at least 60 states. Currently, 96 states have signed and nine of them have ratified the ICC Statute.

Under the ICC Statute, acts of trafficking in human beings and forcing persons into prostitution can be prosecuted as crimes against humanity and as war crimes.

Article 7

Enslavement is defined as the “exercise of any or all of the powers attaching to the right of ownership over a person and includes [...] trafficking in persons, in particular women and children.”

It enumerates enslavement and lists of crimes against humanity including rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence, whether committed in peacetime or in armed conflict.

The acts enumerated constitute crimes against humanity under the jurisdiction of the ICC, if they are “part of a widespread or systematic attack against any civilian population”.

Article 8

It enumerates inter alia acts of “rape, sexual slavery, enforced prostitution, forced pregnancy [...], enforced sterilization” and other forms of sexual violence violating international humanitarian law (the Geneva Conventions), as war crimes to be prosecuted by the ICC.

In periods of armed conflict, acts of forced prostitution, and trafficking in persons can be prosecuted as war crimes. The ICC shall have jurisdiction in respect of war crimes in particular when committed as a part of plan or policy or as part of a large-scale commission of such crimes.

It is important to note that the explicit enumeration of crimes of sexual assault in the ICC Statute has not brought any changes to existing international law, under which these crimes are already prohibited.

❑ SOME OTHER INTERNATIONAL INSTRUMENTS RELEVANT TO CHILD TRAFFICKING

⊙ HAGUE CONVENTION ON THE PROTECTION OF CHILDREN AND COOPERATION WITH RESPECT TO INTER-COUNTRY ADOPTION

⊙ HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

- ⊙ **HAGUE CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND COOPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN**

MORE ABOUT INTERNATIONAL MONITORING MECHANISMS

Under the authority of the Charter of the United Nations rather than on the basis of a specific human rights treaty, the United Nations Commission on Human Rights has developed several additional mechanisms for monitoring human rights. One of the most visible measures, which the Commission has taken with respect to a violating Government, is to authorize a special rapporteur, special representative, or a working group to investigate and publish a report on the situation. The Commission has also established thematic special rapporteurs and working groups to deal with particular kinds of violations, for example on the sale of children.

Generally, these thematic mechanisms have the capacity to receive information from individuals, to make direct appeals to Governments, to visit countries, and ultimately to seek an end to specific violations. Their prompt action and capacity to act in regard to all countries — regardless of whether the country has ratified a specific treaty — make the thematic procedures one of the most effective human rights tools in the United Nations system and covering wide range of topics, e.g. helping to save lives, to stop torture, to find disappeared people, and otherwise to protect individuals. The rapporteurs provide comprehensive reports each year to the Commission.

UN TREATY BODIES

Since the adoption of the International Covenant on Civil and Political Rights in 1966 all major human rights treaties have provided for an expert body, such as

- ⊙ The Human Rights Committee under the International Covenant on Civil and Political Rights
- ⊙ The Committee on the Elimination of Racial Discrimination
- ⊙ Committee against Torture
- ⊙ The Committee on the Elimination of All Forms of Discrimination against Women.

These Committees are responsible for overseeing implementation of their respective multilateral conventions by receiving and reviewing periodic reports from the Governments, that have ratified the relevant treaties. Most of the treaty bodies issue conclusions and recommendations after reviewing each State party's report. Most of the treaty bodies also occasionally issue general comments or recommendations that authoritatively construe provisions of their treaties and

summarize their experience in reviewing States parties' reports.

Further, they may receive communications from individuals, complaining about violations of those treaties and thus issue adjudicative decisions, interpreting and applying treaty provisions. However, the Committee on Elimination of All Forms of Discrimination against Women will be able to do so only when the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, gets sufficient ratifications and it enters into force.

UN WORKING GROUP ON CONTEMPORARY FORMS OF SLAVERY

The mandate of the Working Group on Contemporary forms of Slavery is to monitor the existence of "slavery and the slave trade in all their practices and manifestations." The Working Group operates with a large degree of flexibility and receives information from Member States and non-governmental organizations (NGOs) relating to slavery, servitude, forced labour and other slavery-like practices. Although the slavery conventions provide for Member States to submit reports to the United Nations, the Working Group has developed a practice of receiving information from whichever Governments may wish to present information. Normally, at each session the Working Group receives information from NGOs and then promptly informs the relevant Governments that they have been mentioned and may wish to submit further information. Since the Governments are rarely given more than a couple of days' notice, their responses are often spontaneous and they often offer to submit further information when it can be obtained.

The Working Group, has emerged as an informal forum within which States and non-governmental organizations can discuss issues of slavery or related practices but it has not developed effective procedures to follow up conclusions reached and recommendations adopted. The Working Group has interpreted its mandate in an expansive manner and has been creative in its interpretation of what constitutes slavery to cover a wide range of issues, for example problems concerning the rights of women, children and migrant workers.

SPECIAL RAPORTEURS AND INDEPENDENT EXPERTS APPOINTED UNDER THE UN SYSTEM

- ⊙ **The Special Rapporteur on Violence against Women its Causes and Consequences**
- ⊙ **The Special Rapporteur on Human Rights of Migrants**
- ⊙ **The Special Rapporteur on the Sale of Children, Child Prostitution and Child pornography**

Among the Special Rapporteurs and independent experts that are appointed by the Commission of Human Rights, the above listed three rapporteurs cover the

topic of 'Trafficking' under their mandate.

ILO MECHANISM

The ILO conventions have more effective mechanisms for monitoring enforcement and compliance than the other conventions discussed above. This includes a reporting requirement, provisions of advisory services to State parties, and a Committee of Experts on the Application of Conventions and Recommendations. Its 20 members review state reports and make recommendations or requests for reply to relevant governments. Further, member States, employers and workers' organisations may file complaints or representations to the International Labour Office regarding a government's failure to comply with ratified conventions. NGOs have been recommending a provision enabling non-governmental groups or individuals to file complaints, something they are presently unable to do except in conjunction with the entitled parties.

INTERNATIONAL CONFERENCES AND MEETS

❑ WORLD CONGRESS AGAINST COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN, STOCKHOLM, AUGUST 1996.

This was attended by 119 countries, represented through their governments and non-governmental organisations. The main task of the World Congress was to find strategies to end child prostitution, child pornography and trafficking of children for sexual purpose. In this regard it adopted the following measures:

- ⊙ Programme of Action for the Prevention of Sale of Children, Child Prostitution and Child Pornography
- ⊙ Declaration and Agenda for Action – the declarations calls upon States in cooperation with national and international organisations and civil society, inter alia, to:
 - ⊙ **Accord high priority to action against the commercial sexual exploitation of children, and allocate adequate resources for this purpose;**
 - ⊙ **Criminalise the commercial sexual exploitation of children, and condemn and penalise all those offenders involved, whether local or foreign, while ensuring that the child victims of this practice are not penalised;**
 - ⊙ **Enforce laws, policies and programmes to protect children from commercial sexual exploitation and strengthen communication and cooperation between law enforcement authorities;**
 - ⊙ **Develop a climate through education, social mobilisation and development activities to ensure that parents and others legally**

responsible for children are to fulfil their rights, duties and responsibilities to protect children from commercial sexual exploitation;

- ⊙ **Enhance the role of popular participation, including that of children, in preventing and eliminating the commercial sexual exploitation of children**

❑ **INTERNATIONAL CONFERENCE ON COMBATTING CHILD PORNOGRAPHY ON THE INTERNET, VIENNA, 1999.**

REGIONAL EFFORTS

Realising that the issue of trafficking tends to be, but not restricted to 'transactional', more and more States are coming forward in search of bilateral and multilateral arrangements. Regional and sub-regional arrangements are emerging in order to compliment and strengthen the national and the international efforts.

REGIONAL AND SUB-REGIONAL ARRANGEMENTS RELEVANT FOR INDIA

- ⊙ **International Programme for the Elimination of Child Labour (IPEC), 1992.**

Under this programme the ILO-IPEC works with governments, workers' and employers' organisations, NGOs and Egos in over 60 countries of South Asia and South East Asia to combat child labour including trafficking of children.

- ⊙ **1997 ESCAP Resolution 53/4 on Elimination of Sexual Abuse and Exploitation of Children and Youth in Asia and Pacific**

The UN Economic and Social Commission for Asia and the Pacific (ESCAP) is also working on a regional level to address the issue of child trafficking. The ESCAP project focuses on sexual abuse and exploitation of children and therefore addresses only trafficking for the purposes of prostitution. Bangladesh, Cambodia, China, (Yunnan Province), India, Laos, Myanmar, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, and Vietnam are participating in this regional initiative. This programme aims to train social and health service providers who work with sexually abused/ exploited children. The programme would also address access to health and social services for these children, their reintegration into home, community and family and development of alternative income-generating skills.

- ⊙ **SAARC, Rawalpindi Resolution of 1996**

At the Sub – regional level the member States of the South Asian Association for the Regional Cooperation (SAARC) have drafted a regional Convention to combat inter and intra country trafficking in women and

children for prostitution. NGOs and UN agencies have commented on this draft and attracted the attention of the member States to the fact that the Draft has a very narrow approach to trafficking being limited to prostitution and that the draft ignores the other causes why people are trafficked (*A letter by the High Commissioner for Human Rights addressed to the Heads of Member of The SAARC dated July 5, 1999. The Position paper on the Draft SAARC Convention on Prevention and Combating Trafficking of Women and Children for Prostitution, submitted by the Special Rapporteur on Violence Against Women, dated Aug 27, 1999*).

⊙ **SAARC Summit in Male, 1997,**

At the Male summit, member states agreed to work together to eliminate trafficking, and towards this end create a regional Convention on trafficking.

⊙ **ASEAN Declaration, 1999.**

The Association of South East Asian States (ASEAN) has addressed child trafficking under the rubric of transnational crime. In 1997, ASEAN member States have adopted a declaration on Transnational Crime calling for joint efforts to combat transnational crime including, trafficking in children and women in the region. It also calls for the creation of an ASEAN Centre on Transnational Crime (ACTC) to co-ordinate regional efforts to fight such crimes. This declaration was adopted in 1999.

⊙ **The Year of the Girl Child, 1990**

The year 1990 was declared 'Year of the Girl Child' by the South Asian Association for Regional Cooperation (SAARC) and the UNICEF India Office. Two main themes of the year were prevention of child marriages and rehabilitation of child prostitutes.

National Laws and Policies to Combat Trafficking

LEGAL PROVISIONS

⊙ THE CONSTITUTION OF INDIA

It clearly states that the Right against Exploitation is a fundamental right. Under Article 23, traffic in human beings and 'beggar' (bonded labour) and other forms of forced labour are prohibited. Any contravention of this provision is a punishable offence.

⊙ THE IMMORAL TRAFFIC (PREVENTION) ACT 1956

The Government of India enacted the Suppression of Immoral Traffic in Women and Girls Act 1956. The Act was amended in 1986 and retitled as the Immoral Traffic (Prevention) Act, 1956. The amended Act widened the scope of the law to cover both the sexes exploited sexually for commercial purposes and provided, inter alia, enhanced penalties for offences involving children and minors. It continued to prohibit prostitution in its commercialized form without rendering prostitution per se an offence.

The Act, lays down penalties for keeping a brothel or allowing premises to be used as a brothel; living on earnings of prostitution; procuring, inducing and inducing person for the sake of prostitution; detaining a person in premises where prostitution is carried on; prostitution in or in the vicinity of public places; seducing or soliciting for purpose of prostitution; and, seduction of a person in custody. Besides contemplating a specialized machinery for its enforcement, the Act envisages a comprehensive scheme for rescue, protection and corrective treatment of prostitutes.

The Immoral Traffic (Prevention) Act, 1956 prescribes stringent action against those inducing children (below 16 years) and minors (16 to 18 years) in the offence of procuring, inducing or taking a person for the sake of prostitution. If the offence has been committed against a child, the punishment is rigorous imprisonment for a term of not less than 7 years, which may extend to life. If the victim is a minor, the punishment is from 7-14 years. The Act further provides that where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence of detaining a person in premises where prostitution is carried on. Similarly, when a child or minor found in a brothel, on medical examination, detected to have been sexually abused, it shall be presumed, unless the contrary is proved, that the child or minor has been detained for purposes of

prostitution or, as the case may be, has been sexually exploited for commercial purposes. The punishment consists of imprisonment of either description for a term which shall not be less than 7 years, but which may be for life or for a term, which may extend to 10 years and shall also be liable to fine, with a provision for less than 7 years under special circumstances.

◎ THE INDIAN PENAL CODE

The Indian Penal Code includes offences, among others, relating to exposure and abandonment of child under 12 years by parent or person having care of its wrongful restraint or wrongful confinement; kidnapping, abduction, slavery and forced labour: and sexual offences. Of particular significance are offences relating to kidnapping from lawful guardians (Section 361); kidnapping, abducting or inducing woman to compel her into marriage (Section 366); procurement of minor girls (Section 366 A); importation of girl from foreign country (Section 366B); selling minor girls for purposes of prostitution (Section 372); buying minor girls for propose of prostitution (Section 373); 'rape' (Section 375); and, 'unnatural offences' (Section 377). Sexual intercourse with a woman with or without her consent when she is under 16 years of age amounts to rape and the offender is punishable upto imprisonment for life.

Kidnapping and/or abduction for export (i.e. kidnapping out of India. Sec. 360 IPC), kidnapping for begging (Sec. 363-A IPC), kidnapping or abducting with intent secretly and wrongfully to confine person (Sec. 365 IPC), kidnapping to compel for marriage (Sec. 366 IPC), importation of girl from foreign country with intent to or knowledge that she might be forced or seduced to illicit intercourse (Sec. 366 B), kidnapping/abduction for slavery or to subject a person to grievous injury (such as in camel racing) etc. (Sec. 367 IPC), buying or disposing of any person as a slave (Sec. 370 IPC), habitual dealing in slaves (Sec. 371 IPC); are all punishable under the Indian Penal Code but there is no data compilation under these separately.

◎ THE JUVENILE JUSTICE ACT, 1986

The Juvenile Justice Act, 1986 has elaborate provisions for the care, protection, treatment, education, vocational training, development and rehabilitation of children rescued from those procuring, inducing on taking persons for the sake of prostitution and detaining persons in premises where prostitution is carried on. Such children are covered under the definition of "neglected juvenile which means, inter alia, a juvenile who lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution or is found to associate with any prostitute or any other person who lives an immoral, drunken or depraved life. Besides the police, any person or

organization authorized by the State Government may bring such a neglected juvenile before the Juvenile Welfare Board for a differential handling, processing and placement with a fit-person or a fit-institution, failing which, in a juvenile home. Voluntary institutions can also be recognized to function as protective homes and juvenile homes under the respective laws. These institutions have to serve on the basis of certain minimum standards of care and reformatory treatment.

⊙ **The Immoral Traffic (Prevention) Act (ITPA), 1956**

Supplemented by the Indian Penal code (IPC), this Act prohibits trafficking in human beings, including children, and lays down severe penalties. The ITPA and IPC prescribe punishments for crimes related to prostitution special feature included in the Act as amended is that the presumption of guilt is laid down on the accused in cases where children or minors are found in brothels and are proven to be sexually abused upon medical detection. The ITPA provides for enhanced punishments for offences in regards to minors. Under section 5 of this act, inducing or taking a child or minor for the sake of prostitution is punishable with rigorous imprisonment for a term of not less than 7 years extended upto 7 years extendable upto 10 years, and a fine.

Under section 13(4) of ITPA it was recommended that the Central government appoints a number of police officers and they shall discharge such functions and exercises such powers in the entire country.

One reason for the low level of prosecutions in cases of cross-border trafficking is that the women and children who could testify against the perpetrators are deported because of their irregular residential status.

POLICIES AND PLANS

Unlike the National Policy on Child Labour, 1986, or the National Policies on Health, Education and Nutrition (adopted in the years 1983, 1986 and 1993 respectively), there is no National Policy to Combat Child Trafficking or Trafficking as such. India however, does have an old National Policy for Children of 1974, which has not been changed in all these years. This policy does not contain anything specifically for child victims of trafficking though it does talk about protection of children in general.

Some of the relevant aspects contained in the **National Policy for Children** are:

- ⊙ Children shall be protected against neglect, cruelty and exploitation.
- ⊙ No child under 14 years shall be permitted to be engaged in any hazardous occupation or be made to undertake heavy work.
- ⊙ Facilities shall be provided for special treatment, education, rehabilitation and care of children who are physically handicapped, emotionally disturbed

or mentally retarded.

- ⊙ Children shall be given priority for protection and relief in times of distress or natural calamity.
- ⊙ Existing laws should be amended so that in all legal disputes whether between parents or institutions, the interests of children are given paramount consideration.
- ⊙ In organising services for children, efforts would be directed to strengthen family ties so that full potentialities of growth of children are realised within the normal family, neighbourhood and community environment.

The Government of India also has a National Plan of Action, 1992 as a commitment to children. This plan of action deals with children in prostitution and children of prostitution in its section concerning children in especially difficult circumstances. The major goal for this category of children is –

Improved protection of children in especially difficult circumstances.

Objective

Provision of protection of children in especially difficult circumstances and tackle the root cause leading to such situations. This would include children in following categories; physically handicapped; mentally handicapped; drug addicts, victims of natural and man-made disasters, refugee children, street children, slum & migrant children, orphans & destitutes; children suffering from AIDS, children of parents with AIDS & AIDS orphans, children of prostitutes and child prostitutes and juvenile delinquents and child labour.

Activities

- ⊙ Efforts will be made to build linkages between existing child care institutions and communities and society at large for greater community participation for children in especially difficult circumstances.
- ⊙ The staff of institutions and implementing bodies will receive pre and in-service training.
- ⊙ Interventions for street children and other children in difficult circumstances will be made with active support of the Municipal Bodies, Health Department, Education Department etc. through relevant programmes in the social service sector.
- ⊙ To strengthen prevention of Child Labour, emphasis will be on compulsory education for all children and on strengthening anti-poverty and development programmes and focussing them on at risk families.
- ⊙ Voluntary Organisations will be assisted to undertake projects for welfare and development of children in especially difficult circumstances.
- ⊙ National Child Labour Policy 1987 will be taken up more vigorously for implementation.

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