



# **HUMAN TRAFFICKING AS A NON- TRADITIONAL SECURITY THREAT: A STUDY ON CROSS-BORDER TRAFFICKING BETWEEN INDIA AND NEPAL**

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## **Introduction**

Human trafficking, which is also referred to as ‘modern-day slavery’, has been one of the fastest growing criminal industry in the world in the last few decades. As per the global crime records, it is the third largest form of organised crime against humanity, and has now become one of the most common non-traditional security threats plaguing the world. South Asia is also not free from the menace of this inhumane practice. Within South Asia, illicit human trafficking is most rife in the Eastern Himalayan region. The region has all the necessary elements that facilitate this crime like source, transit and destination countries located side by side, and with relatively unmanned borders. This makes it very easy for the traffickers to move freely across borders. Resultantly, over a period of time, the region has witnessed rapid growth in human trafficking.

In the wider context, human trafficking can be interpreted as the illegal trade of human beings for the purposes of slavery, forced and bonded labor, child labor and above all, commercial sexual exploitations. Among the various forms of human trafficking, sexual exploitation is most common and it carries many negative implications on the lives of women and children affected by this menace. Human trafficking is an organized crime involving the overt and covert participation of several criminals at various places at different points of time. The major ingredients of the process of human trafficking are recruitment or hiring or transfer; exploitation, and commercialization of human beings (Nair, 2010). Unlike drugs that can be consumed only once, the exploitation of same human commodities brings enormous profits that span over a long period of time. Various methods employed to dupe and recruit victims into such forms of trafficking include false promises of better economic prospects in foreign countries, false marriage proposals, consent-selling of girls into sex industries by their relatives, parents, husbands, etc., and forced kidnap by traffickers. Due to its transnational nature, the global reach of human trafficking is very wide. The Stop Violence Against Women (SVAW) project has divided trafficking points into ‘source’, ‘transit’ and ‘destination’

countries. The source countries refer to the country of origin of a trafficking victim where traffickers recruit. The transit countries are intermediary points from where traffickers move their victims, often for extended periods, where they are sometimes forced to work. Traffickers choose transit countries that are situated near border areas and specifically those that have weak border controls, where corruption among immigration officials and police personnel is rampant, because these factors are conducive, in that they offer the space needed for this organized crime. Destination countries are those that receive trafficking victims; they are mostly economically prosperous countries who have a thriving commercial sex industry.

Definitions of trafficking have varied according to countries and laws. However, the following UN definition is generally accepted and recognized by all the countries through which the standard of human trafficking was measured. It states that:

Trafficking in persons'- shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs (United Nations Trafficking Protocol, 2000).

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was adopted by the United Nations General Assembly in 2000, and came into force on 25 December 2003. The Protocol is important because it lays emphasis on protection to prostitutes from prosecution for the acts they are forced into, and talks explicitly over preventive measures, victim compensation, repatriation, etc (Ghosh, 2009). The Protocol also contains various articles that effectively address the issue. Article 2 of the Protocol on Trafficking sets three purposes:

- To prevent and combat trafficking in persons, paying particular attention to women and children.
- To protect and assist the victims of such trafficking, with full respect for their human rights.
- To promote cooperation among state parties in order to meet the objectives.

### **Human Trafficking as a Non-Traditional Security Threat**

The preceding centuries or a traditional paradigm was a paradigm that deals with conventional issues, which refers to a realist construct of security in which the referent entity of security is the nation state. This was the era when security was seen as protection from attack or war from other states. In the twenty first century, this is no longer the case. The understanding of non-traditional security studies in the twenty-first century presents new paradigms to security. It reflect the changing nature of traditional and non-traditional crises in the twenty-first century as complex and inter-connected that cannot be addressed by any single government. They are generally non-military

in nature, transnational in scope, transmitted rapidly due to globalization and pose threats to the survival of humankind as a whole (Emmers, 2004). In a way, human trafficking or transnational organized crime has been one of the vital processes of non-traditional security threats. The victims of human trafficking are deprived of his/her will and forced to enter into slavery-like conditions or involuntary servitude.

South Asia is one of the regions heavily affected by human trafficking. As per UN estimates, South Asia has the second largest number of internationally trafficked persons in the world, where around 150,000-200,000 people are trafficked every year (UNDP Regional HIV and Development Programme for Asia Pacific, 2007: 10).

South Asia is the most vulnerable region for human trafficking because of its huge population, growing urbanization, and relatively high poverty rate (Huda, 2006). According to the International Labour Organization, the prevalence of forced labor and sexual servitude is higher in Asia than anywhere else in the world, where nearly three in every 1,000 inhabitants have fallen victim to human trafficking (ILO, 2010). The International Organization for Migration (IOM) and the World Bank has shown that the majority of more than 200 million transnational migrants in the world are from Asia (IOM, 2005), and among those migrants, victims of sex and labor trafficking abound in plenty. Growing concerns about the violence against women and its connection with the sex industry, exploitative labor, HIV/AIDS and other forms of violence against women and children has forced the states in the region to take the issue more seriously. As reiterated above, it is an issue that has to be addressed collectively.

Over 150,000 people are trafficked within South Asia every year for sex work, labor, forced marriages, and organ trade; the wretched economic conditions of their lives propel them towards this means of livelihood. It taps into the vulnerabilities of young people, women and children. In South Asia, a large number of women and children are trafficked within and from regions where commercial sexual exploitation is most common and women forced into unprotected sexual acts with multiple partners.

The growing transnational organized criminal activity is a part of the darker side of globalization. Geographical proximity enunciated through porous borders has led to increased trafficking of women and children in South Asia. For instance, women and girls from Nepal and Bangladesh are trafficked to India, Pakistan, Middle East and other countries, where India plays the probable role of a source, transit, and destination point.

Human trafficking as a non-traditional security threat blatantly violates human rights, particularly of women and children who are the most vulnerable of all the groups in this commerce. The exploitative actions not only destroy their lives but leaves behind traumatic physical and psychological scars, which take years and in some cases, even a lifetime to overcome. Once the victims are drawn into the web of sexual abuse and trafficking, there is a significant chance of contracting HIV/AIDS because the victims lose control over their own bodies and by that extension, their lives. In South Asia alone, it has been estimated that almost 40 percent of women and children who have been rescued from brothels have tested positive for HIV/AIDS (UNICEF, 2003). Social evils like stigmatisation,

discrimination and marginalisation do not help the cause either. Societal responses to those affected by HIV/AIDS are harsh and this takes away any chance of co-existing peacefully with one another. They are further deprived of the basic rights/freedoms including rights to mobility and residence, the right to essential services, right to confidentiality, right to freedom of association, and of sexual and reproductive rights (UNRISD, 2002).

### **Major Causes of Human Trafficking between India and Nepal**

In South Asia, cross-border trafficking for commercial sexual exploitation is the most dangerous and common form of trafficking that is taking place. The illegal movement of young girls from Bangladesh, Pakistan, Sri Lanka and Nepal to India and then to Middle Eastern countries is a common practice in South Asia. The major reasons for this alarmingly high rate of human trafficking are high poverty rate, unemployment, illiteracy, internal displacement because of conflicts or civil wars, social discrimination on the basis of gender, class, caste etc.

Almost every country is undergoing rapid social changes owing to the unstoppable forces of globalisation, and the cost of such social changes is that, intentionally or not, a section of individuals become vulnerable and susceptible to commercial exploitation. The major issue that influences human trafficking in Nepal and India is the open and porous border. This has significantly increased cross border migration. In Nepal, majority of trafficking victims are women and girls, who are more vulnerable due to limited economic opportunities, illiteracy, low socio-economic and cultural status in their home country. These financial constraints and economic hardships facilitate the flow of individuals from one region to another (although mostly for inhumane purposes). Added to the above list, problems like gender discrimination, lack of access to education and information, domestic violence and disintegration of the family have also been identified as causes of human trafficking in South Asia and Nepal in particular. Nepal is the major source country of human trafficking in South Asia, and India is the main destination for trafficked men, women and children who are later subjected to forced labor and commercial sex. Sex trafficking is particularly rampant within Nepal with as many as 5,000- 10,000 women and girls being trafficked to India alone each year (Maiti Nepal, 2011).

Lack of an effective anti-trafficking legislation and absence of proper enforcement mechanism are some of the other important factors that contribute to increased trafficking. There is widespread corruption among the persons who have been given the mantle of responsibility to combat trafficking in the origin, transit and destination countries. Within South Asia, the legal regime is diverse and all the countries have taken decisive measures in the right direction to combat human trafficking; however, there are certain gaps that have been identified which, if addressed systematically, can curb trafficking prospects to a large extent. For example, the penalty system for traffickers varies according to the domestic laws of each state, which ultimately brings the penalty on trafficking to a minimum. As Gabhan argues, despite its criminal nature, the risk of prosecution is usually negligible in such cases; the penalties and punishments against traffickers are very minimal (Gabhan, 2006).

## Open/Porous Border and its Implications on Human Trafficking

Human trafficking for commercial sexual exploitation has also been responsible for the huge number of people infected with HIV/AIDS in South Asia. This surge in the number of HIV/AIDS infected persons has not been stalled because the open/porous borders are equipped with weak legal mechanisms that do little to combat human trafficking. These two factors are proving to be two important determinants of human trafficking in the region between India and Nepal.

It has been assumed that from the mid-twentieth century, the problems of human trafficking and cross-border criminal activity started after the *Peace and Friendship Treaty*, 1950 was signed between Nepal and India, which established an open border between the two countries (Tamang, 2011). Article 7 of the Peace and Friendship Treaty 1950 states that “the Governments of India and Nepal agree to grant, on a reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement that privileges of a similar nature” (Bhattarai, 2007). This treaty became one of the reasons due to which there has been no immigration control of Nepalese people migrating to Indian and vice versa.

The open border agreement between Nepal and India was predominantly designed to facilitate trade and transit between the two countries, but traffickers took advantage of the open, unobstructed border to easily transport victims from Nepal to India. Due to this porous border, trafficking of women and girls has become one of the easiest and less risky crimes, even as a number of women and children are trafficked to Indian brothels regularly. There is no proper law enforcement mechanism between Nepal and India for border surveillance to systematically prevent trafficking of women and children. Infact, none of the treaties between India and Nepal even makes a mention of the procedures for the regulation of the Indo-Nepal border (Deane, 2010).

The progress of technology and global cooperation has made this world a world without borders, a world that encourages migration and fosters integration, but the traffickers are manipulating these ideas in order to suit their needs. Such an open border has also created a condition of insecurity and unrest in the country. Cross-border nexus has made both the countries vulnerable to human trafficking and smuggling of drugs and arms from Nepal to India. It has been estimated that around 1,268 unmanned routes along the Indo-Nepal border facilitate human trafficking (Pushpita Das, 2008: 887). Because of these parallels, it is imperative for the region to practice strict legal constraints.

### Legal Mechanisms to Combat Trafficking: Case of Nepal and India

In view of the growing magnitude of the problem, and the concern for safeguarding basic human rights of ordinary people in Nepal and India, many laws and regulations have been initiated in both countries. These laws have been specifically designed to control the trafficking and sexual exploitation of women and children. Since 1964, Nepal



has had the legislation against the trafficking of women and girls for sexual exploitation as a social evil such as New Muluki Ain (Code of Law) of 1964, the *Human Trafficking Control Act of 1986*, the *Children Act of 1992* and the *Special Provisions of Human Trafficking Act (1996)* (Paudel & Carryer, 2010). Similarly, some of the important laws against human trafficking in India are enshrined in the *Indian penal Code (1860)*, the *Immoral Trafficking Prevention Act 1986*, the *Juvenile Justice (Care and Protection of Children) Act, 2000*.

Despite the existence of these various laws and strategies in combating human trafficking, both the governments of Nepal and India are not able to effectively handle the problem. Nepal and India have been placed on a Tier 2 Watch List for their failure to combat trafficking in persons (US Department of State, 2008). A country on the Tier 2 Watch List, also known as the “Special Watch List” is a country where the quantity of victims of this crime is considerably high, or is on an increasing trend (ILO, 2001).

By a similar token, Nepal and India are also party to several international conventions that seek to curb human trafficking. These include the *Convention on Suppression of Trafficking* and the *Convention on Exploitation of the Prostitution of Others*, 1949, the *Convention on the Elimination of all Forms of Discrimination against Women*, 1979, the *Convention of Rights of Child*, 1990 and the *UN Protocol to Prevent Suppress and Punish Trafficking in Persons, especially Women and Children*, 2000. At the regional level, India and Nepal as members of the *South Asian Association for Regional Cooperation*, strongly supported regional instruments such as the *SAARC Convention on Regional Arrangements on Child Welfare in South Asia* and the *Regional Convention on Combating the Crime of Trafficking in Women and Children for Prostitution*, 2002, an agreement that was signed by all SAARC member states.

In spite of such efforts, the rate of trafficking continues to rise in both India and Nepal. The major reason for this is the depressing socio-economic realities, the details of which have been elucidated earlier in this chapter. These aspects that render people vulnerable to trafficking must be eliminated and this can only be done by changing society's perceptions of the menace and by imposing severe punishment on offenders of laws and human rights (Deane, 2010: 507). The cross border phenomenon between Nepal and India cannot always be dealt effectively, because till now there is no effective extradition agreement relating to trafficking between these countries (American Bar Association, Nepal, 2011). In both the countries there is a problem of differentiation between the laws (rules) and the legal procedures of implementation of the strategy. For instance, some sexual activities that are illegal in Nepal are not illegal in India (Deane, 2010). The absence of a common international law to address this issue is problematic. Once the concerned countries ratify the common international law, they can work together to combat trafficking (Mehta, 2001).

NGOs and activists, including governmental agencies, are becoming actively involved to prevent this crime. If there is no real commitment to implement the laws, or no increase of international pressure, trafficking of women will continue to be on the rise. Unless the experiences of the region are taken into consideration and the negligence and

enforcement of laws and legislation given proper focus, there is always a danger that rescued victims might be re-trafficked.

Lack in the understanding of what it means to be trafficked is a major issue in the existing laws and legislation processes in the South Asian region. For example, those who believe that all women who are brought to another country to work as prostitutes are trafficked, harbor a much larger number of trafficked persons than those countries that accept a woman's consent to work as a prostitute (Deane, 2010).

Despite the failure of the enforcement of law and legislation in Nepal and India, major initiatives to prevent human trafficking is being undertaken by civil society networks who allow NGOs to play an important role. Some of the reputed NGOs of India in this area are Sanlaap, Child Helpline, Prajwala, Rescue Foundation, Child in Need Institute (CINI), etc. these NGOs have contributed significantly to raise voice against the practice of exploitation of women and children from being victims of human trafficking in India. Every major anti trafficking initiatives in India have been taken by these NGOs by providing protection, prevention, prosecution, rescue and rehabilitation programs.

In Nepal, NGOs are more effectively dealing with the issue of human trafficking than government agencies. The experience of the NGO Maiti Nepal is just one.

Maiti Nepal, set up on 1993 as a non-profit making, children and women's rights social organization, aimed at fighting sustainable solutions to issues related to the trafficking of women and children. It is affiliated to ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) and to the Nepal chapter of ATSEC (Action against Trafficking and Sexual Exploitation of Children). Maiti Nepal has its headquarter in Kathmandu and three regional offices located in Kakarvitta, Bharatpur, and Bhairawa in the Eastern, Central and Western regions of the country respectively. So far, Maiti Nepal has rescued more than 12,000 Nepali women and girls from the hands of human traffickers and rehabilitated them. Its special focus has always been on preventing trafficking for forced prostitution, rescuing flesh trade victims and rehabilitating them. Its key activity sectors are prevention, advocacy, rescue, and rehabilitation. This social organisation also actively works to find justice for the victimized lot of girls and women by engaging in criminal investigation and waging legal battles against the criminals (Maiti Nepal 2010). Maiti Nepal has highlighted the trafficking issue with the strong advocacy from the local to national and international levels.

Maiti Nepal as an organisation, has made a big difference in curtailing the number of girls being trafficked to India. The NGOs in the region play the leading role in anti-trafficking initiatives directed towards the prevention of trafficking, protection of post trafficked persons and prosecutions of traffickers (Samarasinghe and Burton, 2007).

In order to raise social awareness about the issues, Maiti Nepal has taken different measures like by organising street plays and advocating safe migration programmes. It has provided shelters for post-trafficked women and

girls; it collaborates with law enforcement agencies, and stops traffickers or victims at border crossing points. It also provides programmes on rehabilitation and reintegration to post-trafficked victims with the implementation of income generating projects. The organisation stresses that the root cause of trafficking in Nepal has been the following points: rural poverty, gender inequality in the society, the open/porous border with India, corruption, weak enforcement of law, lack of training of police personnel, and stresses on bureaucrats and government policy makers to initiate and implement effective anti-trafficking policy and programmes. Maiti Nepal also runs a school of their own, with the view to uplift people from poverty and to end all kinds of gender, class and caste discriminations. They also conduct awareness campaigning projects in schools and government offices in order to debunk the cultural stereotypes of women and girls, and to promote social mobility.

Maiti Nepal has made it very clear that the organisation is dedicated to fight against social evils such as domestic violence, trafficking for flesh trade, child prostitution, child labor and various other forms of exploitation and torture. Through its preventive measures, mass awareness programmes, safe migration programmes, youth participatory projects and formal and informal education, the organisation is actively involved in the efforts to curtail the menace. Maiti Nepal has worked extensively to eradicate the social evil of human trafficking and has shown the importance of civil society in addressing social evils.

### Major Policy Recommendations

Various Government agencies and NGOs are effectively patrolling the borders with a full-fledged dedication to control human trafficking. It has been successful thus far, however, there is still room for improvement, which can additionally undercut the amount of trafficking taking place along the border.

Some of them are identified in this study, with a possible route to prevent such acts in future are:

First, the trafficking of individuals mostly takes place by taking detour routes to sub-routes that eventually enter India. These sub-routes provide a safe passage for traffickers and their victims. While Maiti Nepal has proved to be effective in keeping the border free of such inhumane activities, the sub-routes largely remain unmanned and unpatrolled. Therefore, there is an urgent need to patrol those sub-routes used by the perpetrators to control trafficking. This will significantly bring down the number of individuals being exported to India for commercial purposes.

Second, legal jurisdiction to provide safeguard against such crimes is not fully implemented in the South Asian region. For instance, the SAARC Convention on *Combating the Crime of Trafficking in Women and Children for Prostitution*, 2002 has been ratified but not implemented in an effective manner till now. The various signatories have agreed upon the strengthening of the same, but such initiatives exist only in paper, and not in actual practice.



Any negligence on the enforcement of laws and legislations results in the breakdown in the workings of such laws and provisions designed for the noble cause. The loose provisions of such laws also lead to the re-trafficking of the rescued victims.

Apart from this, there are many domestic laws in every country in South Asia that is addressed to combat human trafficking, but those existing laws are not executed and exercised in orderly fashion. The existing laws have not been properly defined and there are several loopholes in them due to which the perpetrators of human trafficking escape from being effectively punished.

Third, poor families in Nepal cannot afford to file their cases in the courts because of lengthy legal processes and high processing fees. More often than not, the victims' parents are afraid to file cases because of their ignorance of the legal process and lack of information and awareness of trafficking. Most of the rural areas in Nepal also lack proper road networks, which make it very difficult for the parents of the victims to file their cases and have an effective court hearing in their respective wards.

In this light, the need to set up a special court to deal exclusively with such cases in the border area becomes very important. The presence of such a court can shorten the case hearing duration and curtail the processing fees involved in the cases related to human trafficking. It would also be more convenient for the poor people to complain and file their respective cases with minimum expenditure and this further help control human trafficking from far-flung, border areas. The lengthy legal process should be shortened in order to strike a speedy verdict on traffickers. Human trafficking is one of the busiest crimes in the world affecting many vulnerable people; therefore, if speedy and strict actions are made available against traffickers it will drastically lower the magnitude of human trafficking.

Fourth, human trafficking must be struck in its root. If the Governments in South Asia, especially Nepal and India, take an active role in curbing these menacing crimes in unison with active NGOs, the efforts will give additional leverage to such initiatives. The Government can also contribute to the process by extending much needed help in the rehabilitation process of the victims and work along with NGOs. By engaging in such an endeavour, a proper management to control such crime will be successful.

Fifth, there is an absence of joint regional strategy between the governments in the region especially of Nepal and India. A more effective cooperation between Nepal as a source, and India as destination state, is required. Effective investigations in the cases involving human trafficking should be carried out. There is also an urgent need of a joint initiative between both the governments of India and Nepal in terms of providing legal assistance to the victims; and providing information on safe migration to cross-border victims; and joint investigations to reduce the ongoing scale of human trafficking from both the nation is urgently required. A cooperation mechanism with a rapid action plan between countries must be set up to restrict cross border trafficking.

Sixth, an initiative for human trafficking has to be taken not only in the regional organization level like SAARC, but also within government and civil society at the local and regional level. Though civil society is playing important role in this regard, it would become a much easier task to take legal actions against such crimes with the additional help of the government.

Seventh, Maiti Nepal has been generously working with the border issue but there is an absence of such NGOs from the Indian side, which works at the ground level areas of human trafficking. NGOs of India should mimic the role facilitated by Maiti Nepal and guard individuals from being trafficked. The efforts of NGOs from India are limited to railway stations, bus stations and public places only, and there is no surveillance in the border. The groundwork for interaction has already been made; in recent times, NGOs of India like Kanchanjunga Uddhar Kendra and Maiti Nepal with SSB, Police and custom officers organised various interaction programmes in combating human trafficking. There is an urgent need of a similar kind of border patrol along the Indian side of the border. Since India is a major centre of destination for traffickers and the trafficked in the South Asian region, the government of India should take speedy measures to secure India's border by ensuring strict surveillance.

Eighth, there is an acute need to develop new legal and institutional frameworks to promote regional cooperation and combat trafficking in South Asia as a whole. The existing SAARC Convention on Combating the Crime of Trafficking of Women and Children for Prostitution has to be put into practice. There is also the need of an effective measure for the prevention, rescue, prosecution and repatriation of victims by both Nepal and India. More collective action from governments of the region is required in this regard.

Ninth, there is a need to promote cooperation between civil society organisations and national law enforcement agencies of both Nepal and India. Civil society organizations have already proven to be more effective than government agencies in exposing human trafficking networks in South Asia. Both these entities should work together to ensure the rehabilitation of the victims in terms of providing them healthcare, education, self-esteem measures and other employment opportunities. In this way, a weakness in one of the institutions could be compensated by the other, if they work together by sharing information and extending legal jurisdictions whenever and wherever needed.

## Conclusion

Human trafficking has been one of the vital threat and an impediment to the security and smooth functioning of the state, and state control of borders in South Asia. In this regard, the process globalization can be seen as both a bane and boon to human trafficking. Although globalization has opened new channels for the development of underdeveloped and developing countries the world over through free and fair movement of people, goods and services, it has also brought its fair share of problems. The inflow of non-traditional security issues such as human

trafficking, is simply one of them. Arms, drugs and above all, the issue of human trafficking has become a global concern because if it remains unchecked, it has the potential to destabilize the nation state and impinge upon interstate relations in South Asia. It is therefore imperative for the states in the region to jointly discuss and deliberate on this problem, because of the fact that the sheer magnitude of this hurdle cannot be resolved by any country or group unilaterally. In addition, the inter and intra joint efforts of civil societies and respective governments of India and Nepal need to be in the forefront of such issues, when they are being addressed. As the chapter elucidates, only a collective action by governments and civil society groups, which categorically addresses the negative consequences of open borders, can effectively tackle the issue of human trafficking in South Asia.

