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A Preliminary Analysis of the Current Situation in West Bengal

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Incomplete Citizenship, Statelessness and Human Trafficking: A Preliminary Analysis of the Current Situation in West Bengal, India

Pascale McLean

2011

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Over the centuries, people have migrated to survive in response to natural disasters, famine, conflicts, discrimination against minorities, ethnic and religion tensions or economic hardship. What is specific to the contemporary period is the scale and magnitude of such movements. In 2005, the International Organization for Migration (IOM) prepared a report called “World migration: costs and benefits of international migration” where the organization affirms that in the year 2000, there were nearly 200 million international migrants, including 9.2 million refugees, which would represent 3% of the global population. Almost half of those migrants (48.6%) are women. Since migration policies frequently exclude the unskilled from legal migration, a lot of them seek alternative livelihood options through illegal means. Women are particularly affected by this situation. IOM estimates that 2.5 to 4 million migrants cross the borders without authorization every year. There are about 20 million irregular migrants living in India (Ibid). Although international levels are high, internal migration far exceeds these. This is the case in South Asia, where the internal migration is very high. Concerning human trafficking, the estimates of women and children trafficked every year are between 700,000 and four million (UNFPA, 2003). The numbers are mere estimates and the gap with reality is important; trafficking is difficult to estimate as it is an illegal activity and the definition of trafficking may vary from place to place. Human trafficking is the third illegal business in the world after trafficking of drugs and weapons (UNICEF, 2007).

Women may decide to migrate, inside or outside their country, in search of better living conditions because of low employment prospects, lack of opportunities and discrimination against them. Internal or international migration can be an opportunity for women to become more independent. However, when women have no marketable skills or education, and are exposed to health risks, their capacity to secure sustainable livelihoods is limited and they are more at risk to be exploited. We argue that in the case of migration, women face multiple vulnerabilities which can emanate from: their marginalization, cultural and ethnic barriers or their occupations which have low status or low pay. These female migrants become more vulnerable to exploitation and to human trafficking which can result in an incomplete citizenship representing one without the same rights and privileges than other citizens. It may even results to a *de facto* stateless status. When they are stateless or when their citizenship is incomplete, they are more at risk to being exploited and then trafficked. This seems to reflect a dynamic in which all the factors mutually reinforce themselves. The factors of vulnerability

are not exclusive: when they are compounded, there is a bigger risk for exploitation and statelessness.

In order to better understand the relationship between women's migration, their vulnerability to exploitation and/or trafficking and their incomplete citizenship or statelessness status, I did a field study in West Bengal from August to December 2008. I was based in Kolkata. I went to Darjeeling and Jalpaiguri as well as Malda and 24 North Parganas to meet rescued victims, parents of missing children and some women's and female teenagers' groups. I had information from Non Governmental Organizations (NGO) working in Kolkata as well as in other districts of West Bengal. I also met police at a local level as well as members of the Anti-Unit trafficking Unit in Kolkata. I met some members of the panchayat², of the state government, some researchers and some people working from different United Nations agencies. The names of the persons interviewed as well as those of the institutions are kept confidential for the moment. This paper is the result of a preliminary analysis and research effected in India. The complete and detailed analysis will be done within the master thesis.

I will firstly get into the definition and the characteristics of trafficking of girls and women. Secondly, I will explore the grounds for a complete citizenship. Thirdly, statelessness as a de jure phenomenon or a de facto reality will be examined. Fourthly, the focus on trafficking of girls and women will be on West Bengal. Before concluding, I will examine the relationship between trafficking and statelessness within refugee camps.

Trafficking of Girls and Women

The phenomenon of human trafficking is not new in itself. However, in the last decades, it acquired grave dimensions world wide as human trafficking has boomed in the context of globalization and victims are mostly women and children from the developing world (UNIFEM, 1999). In South Asia, there are approximately 150,000 victims every year (UNFPA, 2003).

To prevent this phenomenon, at the end of 2000, a United Nations Convention against human trafficking was signed: the *Protocol to Prevent, Suppress, Punish trafficking in Persons, especially in women and children* (hereafter the UN trafficking Protocol). Article 3 of this Protocol defines trafficking in persons:

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

In fact, human trafficking includes transportation of humans, without taking into consideration the consent of the victim. The exploitation is continuous, that is, from the time of recruitment and afterward. It can be transnational or within a State. The goal is a financial advantage that derives from the exploitation.

Geographically, human trafficking consists of a place of origin which is the place of recruitment and exportation. There is a place of transit which consists of transport and the

place of destination which is the place of exploitation. Worldwide, places of origin are mainly in Asia and in the States of the Ex-USSR and some African countries. The transit places are mostly from the European countries while the destination places are mostly the European countries, North America, Oceania and some Asian countries (UNODC, 2006). In South Asia, Nepal and Bangladesh are mostly origin countries while India is an origin transit and destination place.

The *Collateral Damage* report, GAATW (2007) points out that trafficking in persons does not include only criminological issues but it is rather a multi-dimensional phenomenon including issues such as social, economical and criminological ones linked with issues like gender, health, migration, development and economic, more specifically in the informal sector.

GAATW also mentions that there are laws and policies that have negative consequences on the people they want to protect. They are grouped by types of impact: 1) those providing assistance for trafficked persons conditional on cooperation with law enforcement officials, 2) the anti-trafficking measures affecting migrants and labor workers, and 3) the misuse of the concept of 'trafficking' to further the political agendas of governments, which refers also to the impact of a prevention campaign, conducted since 2001 in countries throughout the world by the United States government, more precisely on terrorism.

To fight against trafficking of women, GAATW suggests that different actions should be taken by the governments concerning their laws and policies such as the ones following:

- 1) To move to the migration framework. It would put emphasis on the fact that people have the right to migrate. It would move away from a focus on crime and show stronger empowerment for women. However, in the Asian context, legal migration does not guarantee safe working and living conditions for migrants. Also, it is said placing the focus on transborder movements might overshadow internal movements.
- 2) To move to the labor rights framework which would improve work conditions and proceed towards labor rights for all migrant workers? This argument views trafficking through a labor framework situating the migrant as the victim of labor rights violations. The problem raised with this framework could be that unions might be reluctant to engage with migrant labor, women are less likely to be involved in unions and there are problems around the informal sector in which many migrants are employed. Also, some sectors into which people are trafficked are not called "work" by society.
- 3) To link gender, migration, labor and trafficking because migrant women are not seeing all their rights met by the national governments. Restrictions on their movement, on the sector in which they may work, as well as obstacles to their access to justice are not making it easy for migrant women to fully realize their rights. It should not be forgotten that many migrants initiated this movement with the hope to find better living conditions and to find solutions to problems.
- 4) To look for a new combination of women's rights, rights for trafficked people, migrant's rights and labor rights and also legal, cultural and social assistance structures to support them.

Frans Nederstigt and Luciana Campello R. Almeida who wrote concerning the issues of trafficking in Brazil examined the root cause of migration of women (GAATW, 2007). They mention that in a globalised world where there is a lot of population movement, it is naïve to prevent people from migrating and it violates their right to freedom of movement. They

mention also that social inequalities and lack of work are the push factors for Brazilians to leave their home and their country, and that root cause should be the first observation on internal and international human trafficking. It thus reminds us that anti-trafficking efforts might not have any real effect on the continuing patterns of trafficking and exploitation. These patterns are due to current macroeconomic and social policies associated with unlimited capitalist growth and globalization based on free-market policies and a principle of non-intervention of the state.

In discussing social inequalities, it seems that the poorest of the poor will be more inclined to migrate in an unsafe manner and sell their services for a small amount of money. As the gap between wealth and poverty is widening, exploitation services are more accessible to more people. It would therefore become a priority to protect those that suffer the most from social inequalities by adopting laws for women migrant workers.

From GAATW's interventions, it seems that the UN Protocol responds to trafficking by criminalizing traffickers rather than by ensuring migrant's rights. Also, the Protocol failed to treat women as full citizens who should see their rights recognized.

Grounds for a Complete Citizenship

The question whether a person is a citizen of a State should establish the type of protection he/she will get from that State. The kind of relationship between the individual and the State also allows determining the quality of this relationship. The worst relationship a person could have with a State is the stateless status, while the best protection a person could have is a complete citizenship.

Guy Rocher (2000) affirms that an important contribution to the concept of citizenship, from a socio-juridical point of view, was brought by T.H. Marshall (1893-1981) and his work "Citizenship and social Class" published in 1963. Marshall wanted to understand how the concept of citizenship developed in England in the last centuries. He came to the conclusion that citizenship was developed in three steps in the 18th, 19th and 20th centuries which touch three different components. In the 18th century, citizenship is related to the civil dimension of recognition of rights and more particularly the right of property, liberty of expression and finally, right to justice (Rocher, 2000). In the 19th century, the concept takes a wider meaning, including the political dimension of rights such as right to vote and the right to participate in the political power. In the 20th century, the economic security, health care and social services, and free education were added to the concept of citizenship.

These three steps of citizenship according to Marshall represent a succession of progress that goes through a better equality of rights of citizens and diminish different forms of social exclusion. For him, citizenship is a status attributed to all the community members, members that have to be equal in terms of rights and obligations (Coutu, 2000). He believes that the major hindrance for the full and equal citizenship for all is the existence of social class (Rocher, 2000). Another important aspect of citizenship according to Marshall concerns specific institutions: tribunals for civil rights, Parliament and local political institutions for political rights, health, education and social services for social rights (Coutu, 2000). These institutions allow full citizenship. With these institutions, the citizen should be able to assert his full citizenship. To be able to appreciate and measure the true value of citizenship, one must examine what the public and private institutions offer to the citizen in order to have access to the rights that are available to

the majority and how the minority can in fact have access to those rights. It makes the difference between a minority with an incomplete or minimal citizenship and one with full and complete citizenship (Rocher, 2000).

The notion of citizenship evolves. In the 19th century, citizenship was held by males belonging to the dominant ethnic and religious group. The “Etat confessionnel” dominated politics. Governments were only tolerant with minorities and there were only restrictive policies concerning their rights and freedom. This was the case for Catholics, Protestants societies, as well as Jews societies. Marshall wrote on three centuries of evolution concerning citizenship but was silent concerning cultural rights and gender because these issues are recent in Western history. The modern liberal theories suggest that all individuals, as part of the state community, have equal rights to be in the public sphere, minorities as well as the majority. In order to render citizenship a contemporary notion, those cultural rights have to be included. Globalization also must be taken into consideration since it plays an important role in the world. With globalization, it seems that there is a construction of civic spaces that are not necessarily in accordance with the territorial framework of the national state. Spatial dimension of citizenship would have all its significance. Citizen allegiance must then work with other types of allegiance, either “infraétatique” or “supraétatique” in which new social practices or new spaces of interactions could emerge (Nootens, 2001).

While discussing citizenship, it is essential to question the patriarchal concept of citizenship and the issue of gender because a citizen does not exist without a gender. (Longo, 2001). Modern societies are steeped in patriarchal traditions which promote male dominations and privileges (Roy, 2005). The fact that, in many cases, women still receive lower income than men for the same employment is an illustration of male privileges acquired still today in our modern societies. Also, the equal rights of citizens to the public sphere are often denied because the contemporary world does not believe that it is necessary to give the same rights and privileges to the ones that are less “adapted” or less “responsible” (McDowell, 1999). Comments suggesting that women are irresponsible when they get raped because they should know better that they cannot be alone outside at night are good examples. Some groups are excluded from the public sphere on the basis of their behavior or on the basis of protection from the public sphere. It is on the latter basis that women are excluded from the public scene (McDowell, 1999). Unlike men, since women are not included within the public sphere, they do not see all their rights to citizenship recognized.

In general, the situation of women in South Asia is similar to what is described above since their societies are patriarchal. More specifically, the States in South Asia aim to create a homogeneous citizenship: a certain type of citizenship is privileged, the one that is unifying and accepts the role of the central elite. It is in that context that being a woman allows for only an incomplete citizenship, as the social structures are organized by men, for men, where the ideal citizen is a male from the dominant group. Women are therefore not considered equal partners (Banerjee, 2006a). Banerjee (2005) states that although there are laws that prioritize the autonomy of women the reality, however, is different. She invokes that in 1955, the “Citizenship Act”, based on a masculine discourse, was supposed to create universal citizenship. In 1975, Indian women activist analyzed the situation of women in India. They came to the conclusion that, despite the progress realized on a legal point of view, there were still political, economical and social inequalities between men and women. Many women today are still on the periphery of citizenship. Neither the legislation nor the women’s representation has been able to satisfy the

desire of autonomy of women. The principal feminist movements remain unable to release women from the patriarchal system that discriminates against them (Banerjee, 2005).

Historically, in South Asia, women experienced migration, abduction and destitution during partition, and the State's responses to it show the correlation between the position of women as marginal participants in state politics and gender subordination as perpetrated by the State (South Asia Forum for Human Rights, 2002a). In fact, the State marginalized women from the decision making process and made them non-participants by the fact that the abducted women could lose the power to represent themselves and had to be represented. It was men that could assume the prerogative of control. Women were put not only under cultural control but also political control. They transformed into a non-autonomous and dependent category of victims. As victims, they had no political voices. Their identity became that of their communities. Also, the attitude towards women seems to have been guided by "mystified notions of chastity" which has led to the acceptance that South Asian Woman belong to their communities (Samir Das, "Ethnic Assertion and Women's Question in Northeastern-India," A.K. Jana, ed., Indian Politics at the Crossroads (New Delhi: 1998). There is also a lack of institutional responses concerning the issues of citizenship and safe migration for girls and women, while there are many compounded vulnerability factors in the case of migration.

For Longo (2001), as long as equality will be based on men's life as a model, the integration of women in citizenship will be under their conditions. Feminine differences were used until now to make sure that women were subordinate to men. It would be time to think of a new citizenship in which each sex is a full citizen and the citizenship with the same value if being a man or a woman. Women are not minorities; they are approximately half of humanity. To assure that women are included in citizenship equally, human rights must be sensitive to differences related to gender and aim to have an important impact in women's life. This would add to the political, economic and social citizenship that would better represent women's reality. The institutions should be rethought. The goal of equality is not competition to the men's world but to transform the patriarchal structures of societies (Longo, 2001). This equality would be an important step to prevent trafficking of girls and women in itself and to avoid the status of statelessness to some women.

Statelessness: *de jure* Phenomenon and *de facto* Reality

Article 1 of the 1954 Convention relating to the Status of Stateless Persons defines the notion of statelessness as "a person who is not considered as a national by any State under the operation of its law". It defines, in a narrow, direct and concise manner, a specific group of people called *de jure* stateless. It is a quantifiable fact: either a person is, or is not, a national by operation of a State's law. Quality and attributes of citizenship are not included, even implicitly in the definition. It is only a question of fact (Batchelor, 1995 b).

On the other hand, there is the notion of *de facto* stateless which refers to a person with an ineffective nationality or one who cannot prove he/she is legally stateless (Batchelor, 1995 a). According to Carol Batchelor, (1995 b) the division of the notion of statelessness was the result of two things:

The first was the desire to extend protection to those who legally had a nationality but had none of the attributes of a nationality. The second was a misconception regarding who would qualify, at the time and over the years, as a refugee. The assumption was that de facto stateless persons were

refugees. As such, they were already granted international protection. The recommendations in the Final Acts of the 1954 and 1961 Conventions were made as humanitarian gestures. Sympathetic States may then extend provisions to de facto stateless when so inclined...

Further, the provisions of the 1954 Convention could easily be extended to those who, due to a change in political circumstances, cannot provide evidence of their nationality or are clearly lacking national protection. In particular, special consideration should be given in situations where the status of large ethnic groups is prejudiced and may result in displacement.

The terminology of statelessness was initially related to lack of effective protection rather than lack of citizenship. It was not merely a legal one. It takes its origin from the case of *de facto* stateless German Jews who under the Reich laws, were classed as nationals and non-citizens. Statelessness was described as being a lack of the usual attributes of citizenship, including lack of protection and this, even if the person were still holding a citizenship (Batchelor, 1995 b). This is also how a distinction was made between *de jure* and *de facto* stateless persons.

However, still today, an individual who does not qualify as a refugee in conformity with the definition of the Refugee convention and who cannot qualify as a *de jure* stateless under the statelessness conventions will not qualify for any assistance, despite the lack of national protection. There is still a gap, a grey zone, where an unprotected person does not fit into any conventions. There remain a large number of people who are without effective national protection, but for whom neither the refugee nor the statelessness conventions apply (Batchelor, 1995 b). In many contexts the right to nationality is not recognized. Discriminatory denial of citizenship for certain sectors of the population is an ongoing problem in some States, while conflicts of law result in gaps in legislation leading to statelessness in other States (Idem).

We maintain that girls and women become stateless persons when they are caught in a trafficking space; not in the sense of *de jure* statelessness, as they do not fit into the definition of the Stateless Convention which is very restrictive. They are not stateless persons as refugees either because they do not fit in the definition of refugee in conformity with the Refugee Convention: fear of death is a ground for asylum while fear of rape is not (South Asia Forum for Human Rights, 2002a). It seems that crimes perpetrated particularly against women are often trivialized. We put forth that trafficked girls and women are *de facto* stateless, just like the displaced minorities that are not cared for and remain unprotected from their State. They are also stateless persons like the German Jews who were classed as nationals but non-citizens, and received no protection from the State (Batchelor, 1995b). We argue that trafficked girls and women are stateless persons because of the reinforcement of all the vulnerability factors added during their displacement, between the place of origin and at the place of destination.

Trafficking of Girls and Women in West Bengal

The various interviews conducted in West Bengal and the field visits helped to determine the vulnerability factors of girls and women being trafficked and their effect on citizenship.

West Bengal is the fourth biggest State in India in terms of population with 80 million people. The density of the population is the highest with 903 persons per square kilometre, while the average is 302 for the country. It shares international borders with Bhutan, Nepal and Bangladesh. The capital is Kolkata with more than 10 million people. North Bengal is well known for its great transport connections in Jalpaiguri where trains, buses and one airport give easy access to the North-East States as well as all the country, from North to South and to

neighboring countries such as Bangladesh and Nepal. Some stakeholders in that area mentioned that because of this connection facility, a lot of human trafficking occurs in North Bengal.

West Bengal is an origin, transit and destination place for trafficking, since girls and women can transit from Nepal and Bangladesh to go to the rest of the country, while they can also remain in the state and more precisely in Kolkata. They can also come from rural areas of West Bengal, either to go to Kolkata or to move to other big cities, such as Delhi, Mumbai or Pune.

With the increase of poverty, food insecurity and livelihood insecurity, populations are forced to migrate to other villages or cities and more particularly, girls and women because they assume the responsibility of the family. Upala Devi Banerjee (2003) affirms that poverty and globalization are important factors for human trafficking in South Asia. :

The accelerated pace of globalization associated with trade liberalization in the last decade has had far reaching effects worldwide and nowhere have the effects been more pronounced than in South Asia. Loan conditionalities coupled with structural adjustment programs have rapidly disintegrated rural communities in South Asia and the impacts have been felt the most by women and children.

According to all the persons met in the different districts of West Bengal, from the victims themselves, to the community, the panchayat members, the NGOs, the administrative representatives, researchers and United Nations agencies, the most important cause of unsafe migration that leads to trafficking is poverty. During the course of an interview in North Bengal, the representative of an NGO explained the story of some girls in a nearby shelter home. They were rescued from the brothels after being lured by false job opportunities while their family did not earn enough income from the tea gardens to feed them. Some media has also reported on the crisis in the tea gardens in North Bengal related with human trafficking because of starvation³

Another important factor that renders girls and women vulnerable to trafficking is the lack of education. Most of the stakeholders interviewed spoke about the fact that most vulnerable women are illiterate and unskilled. It renders them limited to work mostly in the informal sector or to work as maids. According to Masud Ali (2005:142), migrant women workers, who are more likely to find low-status and low-paid jobs in the unorganized sectors, are extremely vulnerable to exploitation and trafficking in such instances.

Some stakeholders pointed out that because of the vision given by media about cities, more people from rural areas think they will have a better life in the city and better job opportunities. They do not have information about the reality faced by many migrants when they arrive in the cities. Also, the lack of knowledge on the risks associated with migration renders women more vulnerable. Therefore, many NGOs work with panchayat members and vigilance committees⁴ to conduct awareness programs in villages to prevent trafficking of girls and women. For example, they conduct plays on trafficking or other activities to inform villagers. The goal is not to discourage migration but to inform people about the risk of trafficking and to assure that they will take measures to avoid unsafe migration for the girls and women. In some areas, there is a registry board of people migrating from villages that is updated every month by panchayat members. They verify if the migrant individuals continue to inform the family of their news.

Masud Ali (2005:142) considers also that women are forced to leave their community because of discrimination such as a divorce, a second marriage of their husband, issues related

to a dowry or a wedding when the girl is too young. He considers that the low status accorded to young girls and women in the social sphere render them vulnerable to unsafe migration. During my interviews, some NGOs, administration representatives and UN agencies also brought up the discrimination against girls and women as being a cause of girls' and women's vulnerability. Some of these stakeholders mentioned that their work on trafficking and consciousness-raising on gender discrimination will not show immediate results but will show for the next generation. In the course of a meeting in a rural area with a group of girl teenagers to talk about human trafficking, one asked what could be done to abolish the dowry system since poor parents will let their girls migrate to avoid paying that dowry. Another woman from a group met in a village also spoke about the fact that they are now aware to avoid child marriage with an unknown person who could use that child for trafficking purposes instead of the purpose of real marriage. According to Unicef (2007), child marriage is still common in West Bengal.

Another important observation was how community members and parents of victims spoke about the hypothetical return of a trafficked girl. Most of them said that if a girl wants to come back to her family, either the community or the family will not accept her back. The girl knows that if she leaves the trafficking space, she might have no place to go because it is possible that she will be rejected by her community and by her family and she will have no place to stay and work at the destination place. During our meetings with village members and parents of victims, it was said clearly that most of the time; either the family itself or the community would not accept a girl who went away for a long period. One girl who went to Delhi said herself that when she came back to her village, the community did not want her back; she had to fight to be there but she got married and this is how she was finally accepted. Another girl explained how her father felt free to abuse her when she returned home, since she had already serviced other men before. She was finally placed in a foster home. A man who was sad and concerned about his missing daughter said with emotion that he would not take her back if she were to return.

In situations where women are forced to be displaced because of natural disaster or because of conflict, they are again at risk to be trafficked because they become more vulnerable. In September 2008, a devastating flood took place in Bihar. Some people died and thousands were displaced without being able to bring any of their belongings. During that displacement, there were concerns in some media that women might be trafficked⁵. Global warming will also increase migration of people, especially in Bangladesh. Therefore, more poor unskilled people will want to go to India and will be ready to migrate in an unsafe manner; the risk of trafficking will increase. Concerning conflicts, Nepal, with the ongoing effects of the Maoists war is an example where many women are trafficked.

We maintain that the more there are vulnerability factors at the place of origin compounded with displacement make girls and women more at risk of trafficking and responsible for their loss of citizenship. We argue that girls and women cannot take actions to get their rights of citizenship recognized when they are caught into a trafficking space. In fact, many girls and women become powerless and at the mercy of their employer when they migrate. Many of them who got trafficked, do not know the language at the destination place, neither the city where they are. With no networks to get help or money to leave, it becomes difficult, even impossible, for them to get their rights recognized. A lot of those girls and women are also confined to

an environment which prevents them from leaving. Often, the employer will tell them that they will be free to leave only once their debt is paid off. On that aspect of indebtedness, Terre Des Hommes made a study on Nepalese girls trafficked to Mumbai and Kolkata (2005). This study mentions:

The fiction of the “indebtedness” dominates the discourse of the tsukris⁶ and the brothel owners, much as it dominates the discourse of anti-trafficking organizations working in South Asia. From the beginning, girls are told that they are in the brothel “to repay their debt”, and “being in debt” (hindi: karja, pura) was the common term in which sex workers in Mumbai referred to their situation (those in Kolkata referred to the situation as being a tsukri). The term “debt” is inappropriate for all tsukris who or whose families have not directly incurred a debt to the brothel owner – in this study, all respondents. The exact term is “slavery”, as neither the girl nor her family has incurred a debt, yet the girl is forced to work against her will, in confinement, and under penalty of severe physical punishment. For those whose families have sold them directly to the brothel owner, the term “debt bondage” is appropriate.

As long as such “debt bondage” money will not be reimbursed, the girls will have to work. They become powerless and unable to quit their job. Society also marginalizes women because of their job. Certain persons in authority such as policemen and those from Border Security Force are not sensitive to gender issues and have no respect for sex workers. If the girls are arrested, they will be put in jail. The brothel owner will pay the fine, bail or bribe to get the women out. Consequently, the women have a bigger amount to reimburse to the brothel owner (Idem).

During my interviews, many representatives of NGOs said that they receive barely any help from the police force whose officers are often corrupt and not gender sensitive. In fact, an interview took place with a sub-inspector of police at the local level and he denied the importance of missing women and children in that rural area. That police station just began to have a program on anti-trafficking organized by a NGO of the area which conducted a two day training on trafficking issues for the police force including awareness on trafficking, law and gender consciousness. Some stakeholders even mentioned that certain Border Security Forces are involved in trafficking and thus cannot be helpful. On the other hand, certain administrative people said that some NGOs do not work seriously enough and were concerned about the lack of cooperation between stakeholders. A representative of a NGO said that “*a trafficked girl has no voice. For her, to get out of there is a difficult task: if there is a NGO working, she can get a bit of help or if there is a dedicated police, she can get a bit of help. Otherwise, it is difficult*”.

Ratna Kapur wrote an article concerning the anti-trafficking framework in India and goes over the legal aspects of trafficking which focuses more on the method of rescue and rehabilitation of women and girls who have been trafficked for the purpose of prostitution (GAATW, 2007). She explains that the primary response to victims of trafficking is detention, whether in a protective home or a corrective institution which would ultimately drive those women and girls back into sex work. Concerning the brothel raids, she affirms that they could be politically motivated by anti-migrant groups since most sex workers are from lower casts, tribal groups or neighbouring countries. As a strategy for anti-trafficking prevention, Kapur suggests to address the underlying causes of trafficking and to make a distinction between facilitating the migration for more wealthy people and those who are less well off for whom a migration policy is needed to ensure safe and legal passage. She states (GAATW, 2007:137):

*The anti-trafficking laws in India display a profound misunderstanding of the phenomenon of human trafficking. Failing to make a distinction between human smuggling, irregular movement, illegal migration and trafficking, denies the agency of those who choose to migrate for better life opportunities and undermines the gravity of the abuses suffered by trafficked persons. Criminalizing various aspects of prostitution in order to prevent trafficking, as is the case with the existing law or criminalizing the purchase of sexual services, as is being proposed by the government penalizes those trafficked for sexual exploitation rather than their traffickers. It renders persons trafficked for sexual exploitation **more vulnerable** to their traffickers, their clients and the police. Finally, failing to expand the application of anti-trafficking legislation beyond cases of trafficking for sexual exploitation has the effect of denying the harm done to persons who experience similar abuses but who are trafficked for other purposes.*

Some researchers also affirm that, even if there are laws against trafficking, there is no concrete implementation. Dhungana (2006) says that despite the fact that the Nepalese government signed several international conventions on trafficking, there are no concrete applications of those conventions. For example, India and Nepal are both signatories of international and regional (SAARC) conventions, but the governments did not take any bilateral agreement to prevent trafficking. According to Yousaf (2006), South Asian governments are slow to recognize the issues related to trafficking. He affirms that major initiatives come from the civil society and that the NGOs are the ones that did most of the work, even if their commitment is recent and their services are limited. While most of the interviewed said that since recently there is more involvement from the government, they agree that still more have to be done. Many also said that trafficking is not presently a priority for the national government but have hope that it will become more important in a near future. Certain stakeholders are mostly satisfied about the law in place while other said that the legislation should be redone. Others said that even if there are new laws, the most important is to assure the implementation of them.

It also has to be taken into consideration that most trafficked girls and women do not carry their own documents proving their legal identity which makes them also stateless and extremely vulnerable (Banerjee, 2006 b). The paperless state or lack of identity papers reduces them to a state of semi-bondage. Given their statelessness, they can hardly ever protest against such rampant exploitation of not just their body but also their dignity. Without legal documents, they are unable to exercise their rights. They do not have unions to protect their rights nor any link with any institutions from their country. Most of them come from poor families that are unable to protect them and some of the families may even be responsible in selling them. When they need assistance, they are unable to turn to the government, community or family.

On the other side, Banerjee (2006b) addresses the lack of protection of vulnerable girls and women in another manner:

In South Asia, a lack of legal mechanisms for addressing the problem of statelessness is compounded by the endemic poverty of the region leading to greater pauperization of women, heightened conflict leading to increased violence against women and a general proclivity of all these states for treating women as second-class nationals have all contributed to a great increase in the trafficking of women. Further, there are many South Asian women who are stateless. If stateless then women are at a greater risk to fall prey to traffickers and when they are trafficked they become de facto stateless people.

Even though there are legal mechanisms to assure the respect of women's rights, and assure that they can enjoy their citizenship, there is still a lot of abuse on women who seem virtually stateless in many cases and the governments do not treat this issue as a priority. Concerning legal mechanisms to stop trafficking, the efforts undertaken until now also show that

there is still a lot more to do by all the stakeholders involved in the protection of girls and women that migrate and that are at risk of trafficking and for whom a more complete citizenship is required.

In all those circumstances, when girls and women are in a trafficking space, how can they get their rights as citizens recognized? How can they have their civil, political and social rights recognized? How can they ask the Court, Parliament or local political institutions to help them? How can they ask on their own for social services? They are voiceless. Who is there to protect them? During an interview, one stakeholder mentioned that *“if a trafficked girl is lucky, she will find a good policeman right after she gets into trafficking who will want to help her and bring her to a good shelter where she will receive good care. But it is not always the case”*. There is a lack of government intervention assuring that all citizens are protected, including trafficked girls and women.

Refugee Camps: Statelessness as a Cause of Trafficking

While discussing *de facto* stateless persons and refugees, we would like to add a few comments concerning the refugee women. In the context of my study in West Bengal, I did not meet girls and women that were in refugee camps. But this situation seems relevant in the course of the present paper because it shows in a different manner the relationship between gender, trafficking and statelessness. Female refugees experience displacements in a unique way, differently than male refugees. Gender, as a basis of analysis, allows us to contrast the lives of men and women within the context of the refugee experience. Their gender often works to their disadvantage and this is apparent in a number of ways (South Asian Forum for Human Rights, 2002b).

Women in refugee camps have rarely coped with such situations of displacements in the past. They are then often at a loss for necessary documents. The camps do not take into consideration the safety of women and they have no privacy. It is not recommended for women to take up employment outside the camps. When they are separated from male members of their family, they are vulnerable to sexual abuse. They also become particularly vulnerable to human traffickers who force women into prostitution. (South Asia Forum for Human Rights, 2002b). Refugee camps are then seen as a reservoir of the stateless and become a great opportunity for exploitation by human traffickers that have easy access to cheap flesh.

Many refugee women are also vulnerable because they are single or widowed. It is said that: *“the lack of safety that the refugee women experience is largely due to the altering of social and family structures which would otherwise have provided stability and protection. Many female refugees have become the heads of their household, not out of choice, but due to the loss of the male head of the family”* (South Asian Forum for Human Rights, 2002b). Many of these single or widowed refugee women have no other choice but to enter into non-consensual relationships in asylum countries in order to obtain protection and food security for their family or they are forced to engage in prostitution or illicit activities to survive (South Asian Forum for Human Rights, 2002b).

The practices of international organizations such as the UNHCR also refer to women as victims without working on their empowerment and without taking into account their point of view. It is said: *“The women have little or no say on policies that govern their lives and bodies even in camps run by the UNHCR. Albeit the UNHCR concern itself with the protection of these women but they do not work towards their agency”*. (South Asia Forum for Human Rights,

2002a). Although what is more troublesome is that without institutional support women become particularly vulnerable to human traffickers. In all cases of statelessness in South Asia, it seems clear that without institutional support, women become vulnerable to human traffickers.

Conclusion

According to Marshall, citizenship includes civil and political dimension of rights as well as rights related to the economical security, health care, social services and free education. It is a status that should be attributed to all the community members which should be equal in terms of rights and obligations. Social class could be an obstacle for a complete citizenship but specific institutions such as tribunals, Parliaments and local political institutions and health, education and social services are there to assure that the rights are respected. Citizenship is a notion that evolves in time. If the governments do not fulfill all their obligations in providing their citizens the rights that they are entitled to, the citizens instead fall in a situation of exploitation; they do not have full citizenship which could lead to *de facto* statelessness.

When girls and women end up in a trafficking space, they become *de facto* stateless persons. Being females in patriarchal structured societies make them more vulnerable, especially if they are from poor isolated rural areas. If they come from a place of origin where vulnerabilities can be added in their life, they become more vulnerable when they are displaced. When their destination is a trafficking space, girls and women become *de facto* stateless persons. We call them stateless persons because none of their rights are recognized, because they receive no protection from the national governments and because they are not treated as equal citizens. Some think that these girls and women should seek services on their own from different institutions such as tribunals, parliaments or local political institutions or social institutions. We believe that they cannot seek by themselves for those services because they are enslaved and voiceless. It is therefore the government's responsibility to make it a priority and to assure that the laws and policies will protect them in an efficient manner. The combination of human rights, labor law, immigration policies within a gender perspective is absolutely necessary to get women out of the trafficking space and to prevent trafficking in general. We do not think that the issue will be resolved only by criminalizing the perpetrators that can also be part of the family of these women or their community.

In order to protect the stateless and trafficked women, the national and local governments must realize that they are contributing to important violations of human rights by not assuring efficient policies for them. Perhaps it is now time to think about a new form of citizenship, one that would assure that men and women have the same citizenship without any discrimination. Including women in citizenship does not mean to add women in the existing norms, but to restructure these norms in order that women become active participants of the process, and that they are included in the process of restructuring citizenship. It should mean the creation of a world where women feel comfortable, a world made for men and women with their similarities and differences. Therefore, we should rethink the definition of citizenship and the meaning of the institutional organizations related to citizenship. The goal would not be to compete against men, but to modify the patriarchal structures of societies in order for women and men to be equal citizens.

As mentioned by Nootens (2001), the door is open for recognition of wider citizen responsibilities, for the idea of a multi-level citizenship. Perhaps this could facilitate the access

of rights for more women. Different levels of solidarity could take place in global, regional, national and local levels to assure participation of members and responsibilities for all the citizenship levels. In that way, it could move towards a more efficient strategy against exploitation such as human trafficking. This is what I will try to explore in my thesis.

Notes

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² Panchayat is a village council in India

³http://www.telegraphindia.com/1080606/jsp/siliguri/story_9370829.jsp.

http://www.telegraphindia.com/1070913/asp/siliguri/story_8309606.asp

<http://www.darjeelingtimes.com/news/News/Sex-trade-flourishes-in-Darjeeling.html>

http://www.telegraphindia.com/1081118/jsp/siliguri/story_10124588.jsp.

⁴ The vigilance committee is a group put in place by an NGO to do awareness and to do prevention of trafficking in rural areas.

⁵<http://www.abc.net.au/news/stories/2008/09/04/2355566.htm>,

<http://timesofindia.indiatimes.com/yearendershow/3460540.cms>,

http://www.thaindian.com/newsportal/uncategorized/14-trafficked-children-rescued-in-flood-hit-bihar_10094469.html.

http://www.telegraphindia.com/1080926/jsp/jharkhand/story_9889605.jsp.

⁶ In their study, Terre Des Hommes (2005) explains that the word tsukri is a Bengali one which refers to a traditional term for a child in slavery or debt bondage, and the common word in Kolkata used for trafficked persons in prostitution. It is mentioned that in the understanding of most respondents, the term “child” and “tsukri” are almost synonymous.

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