

The Interface of Trafficking and Statelessness in South Asia¹

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Introduction

Shobha/ Sahana/ Namrata are all young girls who were brought to the brothels of Kolkata from Nepal and Bangladesh. They came when they were nine or ten years old. They left these brothels when they were still in their teens. Not because they were rescued but because they had contracted the dreaded HIV and without any treatment were progressively losing weight. They are the co-lateral damage of human flesh trade where the products are kept in state of semi-bondage. In fact it is baffling to note that twice as many people are enslaved today than during the days of African slave trade. It is estimated that around twenty-seven million people today are living in conditions similar to that of slavery and human trafficking has become a global industry worth \$ 12 billion a year.² How can that be and what exactly is human trafficking? Human trafficking can be described as the forced movement of people for purposes of labour, such as prostitution and other kinds of work, including domestic work. If one looks at the history of the term “trafficking” it can be traced back to “white slave trade”. Before the great wars it meant the coercion or transportation of Caucasian women to the colonies to service white male officers. From 1904 there were efforts to stop “white slave trade” leading to the *Convention for the Suppression of the Traffic in Person and the Exploitation of Others* in 1949. It is the Palermo Protocol to the United Nations Convention against Transnational Organized Crime that made trafficking in persons an international criminal offence in the year 2000. The Protocol was drafted to meet all aspects of trafficking, whether for sexual or labour exploitation. The Protocol's objectives are to prevent trafficking, punish traffickers and protect victims. The Protocol urges states to criminalise trafficking. It also specifies the activities, means and purposes that constitute the offence. The important features of the Protocol are:

- 1) The *activities* involve: recruitment, transportation, transfer, harbouring or receipt of persons.
- 2) The *means* include: 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 other giving or receiving of payments or benefits to achieve the consent of a person having control over another person.

- 3) The activity must be for the purpose of exploitation, which must include – inter alia exploitation for prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, or servitude.³

The Protocol makes it clear that consent of the victim is irrelevant if means such as these are used. No doubt that such a Protocol is definitely a step forward even though it does not give a watertight definition of trafficking or define terms such as “exploitation, coercion and vulnerability.” Yet notwithstanding the Protocol today the estimated profit from prostitution and forced labour of trafficked persons amounts to approximately \$8 to \$10 billion annually.⁴ The global trade in human trafficking has boomed and the victims are largely women and children from the developing world. This cheap availability of flesh is exacerbated by another phenomena that can be termed as statelessness. For in the words of Senator Brownback of Kansas, “this ready reservoir of stateless presents an opportunity rife for exploitation by human traffickers.”⁵

“Everyone has the right to a nationality. No one shall be arbitrarily deprived of *his* nationality, nor denied the right to change *his* nationality,” declares Article 15 of the Universal Declaration of Human Rights (UDHR).⁶ The same year, the Economic and Social Council of the United Nations requested the Secretary General to undertake a study and to make recommendations on the situation of stateless persons. The problem appeared in the Refugee Convention of 1951 when it was felt that a separate treatment on statelessness was essential. *The 1954 Convention Relating to the Status of Stateless Persons* was formulated. Yet today thousands are still deprived of their nationality in many different parts of the world and South Asia is no exception. “In one recent global survey, 59.4 per cent of states responding reported that they have encountered problems of statelessness. However only 54.1 per cent of states surveyed indicated they have a procedure in place to identify cases of statelessness while only 44.6 per cent have general information available on the potential number of stateless persons in their country.”⁷ This happens because as per international law it is the state that decides who are its citizens and who are not, as long as the state does not apply measures that conflict with

international principles relating to acquisition and loss of citizenship as per principles enunciated in the 1930 Hague Convention, the 1997 European Convention, and the case law of both Permanent Court of International Justice and International Court of Justice.⁸ In this process of inclusion and exclusion many are denied citizenship by any state and so they become stateless. The case of Rohingyas of Myanmar, Chakmas in parts of Northeast India, Biharis in Bangladesh and Lhotsampas from Bhutan immediately comes to ones mind if one looks only at South Asia. People deprived of a nationality are called stateless.⁹ There are many reasons for statelessness. The Rohingyas are deprived of their nationality by the Burmese junta because they are considered as a recalcitrant community. Also they are known to practice a different religion. The Chakmas were encouraged by the Indian government to come and settle in India when they were displaced from the Chittagong Hill Tracts due to the building of the Kaptai Dam in 1962 but the Indian government neither gave them citizenship nor refugee status and so they became stateless. Many Muslims from Bihar left India during partition as they wanted to become Pakistani citizens but they could only travel to East Pakistan. When East Pakistan became Bangladesh they were denied Bangladeshi citizenship and not conferred a new Pakistani citizenship by the government of Pakistan and so they lost their nationality. As for the Lhotsampas, the Bhutanese monarchy marked them as Nepali aliens and deprived them of their nationality. About a 100,000 of them are today living in UNHCR run refugee camps in Jhapa. Statelessness itself is a huge problem in South Asia. The problem of statelessness multiplies manifold when these hapless people fall victim to human traffickers. This essay will reflect, with examples taken from South Asia, on how statelessness both causes and is an effect of human trafficking. It will also reflect on the fact that the perceived gendered nature of trafficking in South Asia makes it a low priority for South Asian states and so states do little to contain this problem. By their inability to create a regional mechanism against trafficking the South Asian states are contributing to the violation of both women's rights and human rights and increasing both the number and the plight of stateless people.

Trafficking: A result of Statelessness

That statelessness results in human trafficking is borne out by the situation of displaced ethnic minorities from Myanmar such as the Chins and the Rohingyas. Since independence, Burma has been torn apart by civil wars between the central government and the various opposing ethnic groups. Such ethnic rivalries were in part a legacy of the divide and rule policy of the occupying British government and in part the policy of discrimination practised by the ruling elite. Political instability in Burma, later renamed as Myanmar, led to the military coup of 1962. Since then a ruthless military junta rules the country. This junta has suppressed any dissent from either the ethnic groups or pro-democracy movements leading to massive desertion and displacements. There are many ethnic minorities that have suffered discrimination under successive Burmese governments, and massive persecution by the present Burmese regime. Ethnic minorities such as Chins and Rohingyas are often denied citizenship by the junta by simple means of refusing to give these people identity cards.

Following the brutal crack down of 1988 by the State Law and Order Restoration Council (SLORC), against democratic movements in Burma refugees came to Mizoram in large numbers. Refugee camps were set up in Champai and Saiha districts of Mizoram to accommodate these Chin refugees by the Mizoram Government. However, these camps were closed down in 1994/95 when the Indo-Myanmar border trade talks began. One of the main reasons for closing down the camps was the request of the Burmese government, which believed that the Chin National Front (CNF), who are fighting for the independence of Chin State, was operating from these camps. Since then the Chin refugees have been scattered all over Mizoram and forced to find work for their survival. Government of India followed largely a hands-off policy regarding the Chin refugees. It has so far allowed the Mizoram government a free hand to deal with the situation. In September 1994 and in June 1995, when the ongoing anti-foreigner movement in Mizoram targeted the Chins, and statements were made by local politicians that all foreigners including the Chins would be pushed back, a large number of Chin refugees came to Delhi and requested UNHCR for protection and help. But even the UNHCR could do very little for these Chins and the Mizoram government pushed large numbers

of them back, contrary to the principles of non-refoulement. Even today in any given month there are a number of news in newspapers from Northeast India about the expelling of these migrants from one or the other of the Northeastern states. One such news item quoted the Home Minister of Mizoram stating that:

We guess there could be at least 30,000 Myanmar nationals illegally staying in Mizoram. Anybody found staying illegally would be deported or their applications for asylum might be taken up. The decision to intensify a drive to detect illegal settlers from neighbouring Myanmar follows an anti-foreigners uprising by local groups in the hill state of Mizoram.¹⁰

As in any displaced population more than fifty percent of the Chins who came to India were women.¹¹ Many of these women took up jobs in local schools. Yet when the pushback came even they were not spared. Chin women come to India both for reasons of political persecution and to earn money. As one Chin woman told *Refugee International*, "It is true that I have come to Mizoram to earn money. The Burmese army forcibly conscripted my son. I have not seen him for more than two years. My husband is sick and he cannot work. I try to earn enough to feed him and my three small children, and for my husband's medical care, but each month, for many days, I am compelled to do labor for the SPDC. What alternative do I have but to come here, earn money and take it back with me to Burma? If I don't come to Mizoram, my family in Burma will not survive"¹² In the case of another Chin woman whose father was a Christian pastor the weapon of push back was used without any legal action. She said she was arrested in Burma in 1993 after she spoke against the Government within earshot of an army officer. She said the officer beat and raped her. She fled to India but last year was returned to Burma. The abuse that she faced was not ground enough to give her refugee status in India. She was never tried under the Foreigners Act and was merely pushed back. On going back she continued her political activity when she heard that the military was after her she fled to Guam. When she arrived, she tested positive for tuberculosis in a skin test. Because she was pregnant, officials were afraid to take an X-ray. Instead, they kept her in isolation. But when the church group toured the prison and found the woman, they were alarmed by the effect of months of isolation on this woman. The Reverend Jerry Elmore, pastor of the University

Baptist Church, offered to sponsor the woman himself so she could be released from custody to his care.¹³ The situation of this woman is not exceptional. Such cases are happening in increasing frequency. Young women who are particularly vulnerable to sexual harassment are being abused by the police and then pushed back.¹⁴ The women are not given the status of refugees as sexual abuse is never ground for such a status. Denied citizenship by the Myanmar government and refugee status by the Government of India (GOI) these women become stateless. Small wonder then that they fall prey to traffickers as is portrayed by the fate of many Chin and Rohingya women.

The situation of the Rohingya women is even worse than the Chins. These women are Muslims and are considered “resident foreigners,” even in their homeland. Their subordinate status within their own community discourage them from procuring education or working outside their homes. The State authorities and the army habitually sexually abuse them. Sayeeda, an 18-year-old Rohingya girl, who has had some education, was of the opinion that the state machinery used rape as a way to push women out of Myanmar.¹⁵ A report of the *Human Rights Watch* discusses this brutal phenomenon:

Rape of women after their husbands or fathers had been taken for forced labor was common. Sometimes the rapes occurred in the homes of the victims with children and relatives left to watch; other times the women were taken to a nearby military camp where they were sorted out by beauty. In some cases, the women were killed; in others they were allowed to return home. The following testimonies, taken in March 1992, reveal how sexual and physical violence by the Burmese military against Rohingya women was a direct cause of the exodus to Bangladesh of women, their families and even entire communities.

Eslam Khatun (E.K), thirty-one, mother of six children, was the wife of the village headman of Imuddinpara, Rama Musleroi, Buthidaung. About February 1, 1992, she was at home with her children, brother-in-law and sister-in-law named Layla Begum (L.B), aged sixteen; her husband had been taken by the Burmese military for forced labor and had not returned home. It had been cold, and the family was sitting next to the fire, about to get ready for bed. It was about 9:00 p.m. when they heard the sound of soldiers' boots and voices speaking Burmese outside. When the soldiers forced open the door, the fire lit up E.K.'s face, and they saw her. First, they pulled her up by her arms, and her brother tried to stop them. They began beating him, while undressing and violently molesting E.K.,

though not raping her there. When they dragged her and her brother from the house, the brother was bound and E.K. was naked.

Eslam Halim's (E.H.) husband, Abdul, returned from forced labor duty to learn of his sister's and brother's abductions. He had been regularly forced to work for the military but, since he was a village headman, he was also obliged to provide male laborers to the soldiers. Hoping he had a more privileged position than most villagers, he decided to go to the local army camp to ask about E.K. Eight days later, E.H. found E.K's body in the jungle near their house. She appeared to have bled to death from her vagina. "The soldiers had been satisfied with her," E.H. said.

About twenty-one days later, the bodies of Abdul Halim and his brother were found dumped in the same area. E.H. herself buried her husband. She said his genitals had been cut off, his eyes gouged out, both hands cut off and he was cut down the torso into two pieces. A few days later, E.H. and her six children walked for two days with 250 other villagers to reach the Naaf River. Soldiers opened fire on the boats in her group, but she was uninjured. About two-thirds of her village fled to Dechuapalang 1 Camp in Bangladesh.¹⁶

These women are first taken to Bangladesh. But after the UNHCR repatriation programme started in Bangladesh new arrivals were no longer admitted to UNHCR camps. They were often pushed across the borders to India and then to Pakistan. The Rohingya population in Pakistan is mostly concentrated in the suburbs of Karachi, including Korangi, Orangi and Landhi. Rohingya settlements are named after their place of origin, such as "Arakanabad", "Burmi colony", "Arakan Colony" etc. All these settlements receive regular visits from law-enforcement agencies extorting money from their undocumented inhabitants. The Government of Pakistan has largely ignored the issue of trafficking of Rohingya women. Besides the risk of being sold Rohingya women become victims of slavery through debt bondage. "Because of their undocumented status, Rohingya women constantly face arrest and imprisonment."¹⁷

The Chin and the Rohingya women epitomise the plight of stateless women in South Asia. Unwanted in their homeland the women are victims of gender-based crimes such as rape, which are hardly ever proved, and their perpetrators are almost never punished. In a foreign country without any supporting documents these women are disenfranchised and depoliticised. They are unable to protest against sexual crimes for want of a legal status. The abuse that had pushed them across international border in the first place often

seem to follow them in their new settlements. If they successfully repatriate to their birthplace they are still in a state of not belonging. In patriarchal systems women are constantly reduced to the status of non-subjects. Crimes that are perpetrated particularly against women are often trivialised. In such a situation no matter what the abuse women try to cross borders for the sake of survival and become easy prey for traffickers.

The Rohingya women are *de jure* stateless but there are many displaced women who are not *de jure* stateless but become *de facto* stateless in their situation of displacement. This is borne by the circumstances of women living in the refugee and IDP camps. Many refugee women and young men living in refugee and IDP camps become depoliticised and are unable to exercise their political rights. In such a situation they are unable to access resources for their living and fall victims to human traffickers. The situation of Sri Lankan refugees in India is a case in point. By 1989 there were about 160,000 refugees from Sri Lanka to India, again largely women with their dependents. Initially the State Government provided these refugees with shelter and rations, but still many of them preferred to live outside the camps. Although the Sri Lankan refugees were given a political status by the GOI but still their plight was unmitigated. They were registered and issued with refugee certificates. In terms of education and health both registered and unregistered refugees enjoy the same rights as the nationals. Nevertheless in absence of specific legislation their legal status remains ambiguous.¹⁸ The precarious nature of their status became clearer in the aftermath of Rajiv Gandhi's assassination. NGOs access to the camps, refugee's freedom of movement and access to education and informal occupations were all severely curtailed.

On January 6, 1992 the Indian and the Sri Lankan governments signed a bilateral agreement to begin refugee repatriation on 20 January. Soon the programme was suspended when UNHCR raised doubts about the safety of the refugees once they return.¹⁹ In July 1992 the GOI signed an agreement with the UNHCR and allowed the agency a token presence in Madras. By April 1993 refugee camps were reduced from 237 to 132 in Tamil Nadu and 1 in Orissa.²⁰ Representatives of UNHCR were allowed to

be in the transit area and could speak to returning refugees. Before conflict was resumed in 1995 some 55,000 refugees were repatriated from India to Sri Lanka.

After Rajiv Gandhi's assassination the politicians began to shun the refugees.²¹ As most of these were women they were initially considered harmless but with the number of female suicide bombers swelling there was a marked change in GOI's attitude to women refugees.²² What the government of India failed to acknowledge was that the number of female bombers swelled after the IPKF operations.²³ The government turned a blind eye when touts came to recruit young women from the refugee camps in Tamil Nadu to work as "maids" in countries of Middle East. Most of these women were then smuggled out of India and sent to the Gulf countries. Often they were badly abused. One such case that caught the public eye was that of a young girl called Sivitha. She was smuggled to the Gulf with thirty other women. Her employer "took sadistic pleasure in thrashing her." Twice she fell into a coma. Unable to bear this she sought refuge in the Sri Lankan embassy. She was sent back to Sri Lanka, into the war torn area of Vavuniya. She tried to get back to India to her parents but failed. Ultimately she committed suicide.²⁴

Even when the situation is not so extreme it is still traumatic for young women. In Indian camps refugee families are given a dole of Rs.150 a month, which is often stopped arbitrarily. Women are discouraged from taking up employment outside the camps. During multiple displacements women who have never coped with such situations before are often at a loss for necessary papers. When separated from male members of their family they are vulnerable to sexual abuse. The camps are not conducive for the personal safety of women, as they enjoy no privacy. But what is more worrying is that without any institutional support women become particularly vulnerable to human traffickers. These people aided by network of criminals force women into prostitution. Millions of rupees change hands in this trade and more lives get wrecked every day.²⁵

In a situation of statelessness, sexual abuse and human trafficking go hand in hand. This is portrayed by the case of Nepali speaking Bhutanese refugees. These southern Bhutanese refugees were deprived of their citizenship by the Citizenship Act of 1985 and

then driven away from their homes from 1990 onwards. This happened in the wake of Drukpanization of the Bhutanese people. The government devised various strategies to bring about a demographic balance that was favourable for a Drukpa/Ngalung nation by reducing the number of Lhotsampas to around twenty-five percent of the population and to prevent the demand for democracy from southern Bhutan. The Marriage Act was even more discriminatory for Lhotsampa women and children. The Act declared all foreign wives of the Bhutanese citizens as non-citizens, even though most of them were granted citizenship under previous citizenship laws. In contravention of all international norms the Royal Government denied several thousand children (born out of marriages between Lhotsampa husbands and Nepali speaking wives from Nepal or India) of their right to nationality. They were evicted along with their parents. This Act was only enforced against the Lhotsampas. The Lhotsampas who married non-Bhutanese wives could not get jobs in either the Armed Forces or the Foreign Services. They did not have the right to vote in the National Assembly elections, they were often denied promotions in civil services and were denied most fellowships and grants. They were also denied business and agricultural grants and loans given by the government and could not avail of government supplied fertilisers, seeds and farm machineries on subsidies. After 1988 government officials carrying out the census declared all non-Bhutanese wives of Lhotsampas as illegal immigrants. These women were threatened with deportation and so many such women committed suicide. These South Bhutanese people were asked to prove of their presence in Bhutan on 31 December 1958. If people failed to provide the evidence sought they were declared as illegal migrants and then evicted. By the 1990s more than 125,000 Nepali-speaking Lhotsampas of Southern Bhutan, nearly a sixth of the kingdom's total population of approximately 782,548 were forced to leave or forcibly evicted from the country by the Bhutanese government. This made Bhutan as one of the highest per capita refugee generators in the world. As on March 2001, 98,886 Bhutanese refugees are living in seven refugee camps in eastern Nepal managed by the UNHCR. About 25,000 are living in India and some are scattered in the hills and valleys of Nepal.

Many southern Bhutanese are living in UNHCR run refugee camps. Recent reports suggest that many of these women in the camps are facing problems. A number of them

fled systematic discrimination including rape, imprisonment and forced labour. In the camps although the women were individually registered but still they faced discrimination as they did not get separate ration cards. This made it difficult for women to access their fair share of aid. The male dominated leadership in the camp often ignored the sexual violence and domestic violence that a number of women faced. Also the camp management often undertook the work of providing assistance to women. This also meant that aid was given on an ad hoc basis to women who did not have any male support. Several cases of sexual exploitation involving refugee aid workers surfaced in Nepal in October 2002. These came to light after investigations of sexual exploitation and abuse by aid workers in refugee camps in West Africa.²⁶ Apparently the UNHCR received reports about sexual exploitation of refugee children and requested its Inspector General's Office (IGO) to review the allegations and examine the conduct of UNHCR offices in Nepal. The results of the investigation team's findings became public in November 2002, documenting eighteen cases of sexual exploitation, including rape and sexual harassment, of refugee women and children. The perpetrators were two Nepalese government officials whose salaries were paid by UNHCR and fifteen refugee men (mostly school teachers) working for NGO implementing partners. Refugee girls comprised the vast majority of victims in these cases.²⁷ To compound the problem in 2003 the UN High Commissioner for Refugees declared that they would begin phasing out aid from camps. This meant an even more precarious situation for women. Faced with no hope for repatriation, abused by their own male members and aid workers these women became easy prey for human traffickers. Many of them ended in brothels in Mumbai and elsewhere.

Statelessness makes women even more vulnerable to displacement. In patriarchal societies such as those found in South Asia women are usually looked upon as unequal partners in the process of state formation. It is the men who represent the ideal citizen. In such a situation women are more vulnerable to the vagaries of the state and denials of citizenship as is apparent from the case of the Southern Bhutanese women. Once citizenship is denied then it becomes much easier to evict and displace women. In such situations women become so vulnerable that they fall prey to different kinds of abuses.

Trafficking is the worst form of abuse that is meted out to these women. From the examples above it becomes clear that statelessness contribute to women's vulnerability leading to an increase in human trafficking. However, there is another side to this argument and that is trafficking leads to statelessness. There is a plethora of examples where once trafficked women end up being stateless. Let us look into this phenomenon now with examples taken from South Asia.

Trafficking: A Cause of Statelessness

Etienne Balibar has argued that the fissures in the "modern political community" emerge from the "practical and ideological sexism as a structure of interior exclusion of women generalized to the whole society," which leads to the "universalization of sexual difference."²⁸ Thus, modern states that are built on gender difference develop a precarious relation with its women. Women became both subjects of the state as well as its *other*. In pluralistic societies such as those found in South Asia "the modern projects of national independence, state building, and economic development have had distinctive gender implications and outcomes."²⁹ The nation building projects in South Asia has led to the creation of a homogenised identity of citizenship. State machineries seek to create a "unified" and "national" citizenry that accepts the central role of the existing elite. This is done through privileging majoritarian, male and monolithic cultural values that deny the space to difference. Such a denial has often led to the segregation of minorities, on the basis of caste, religion and gender from the collective we. I argue that one way of marginalising women from body politic is done by targeting them and displacing them. Patricia Tuitt has commented that, "space in its physical and mental form is organized between race, class and gender among other factors."³⁰ Women's relation to space is therefore different from that of men. Since displacement is intrinsically related to space women respond differently from men in situations of displacement. Taken together with women's traditional distance from state power it means that at least initially women are often at a loss to cope with displacement. Women are often unaware of the value of identity papers in times of displacement and therefore their vulnerabilities increase in times of displacement resulting in further victimization. Also women's distance from

state power distances them from ownership of resources. Situations of endemic poverty lead to pauperization of women and an increase in trafficking of women. The situation of Bangladesh is a case in point.

Recent newspaper reports from the borders of India and Bangladesh are rife with news of the growing trafficking of women and children from Bangladesh into this region. To find out why this whole region is vulnerable to traffickers one needs to realize that this is a region of endemic poverty, social imbalance and political violence particularly against vulnerable groups of whom women form a large part. This region is undergoing certain social and political turmoil where more and more women are getting marginalized. In Bangladesh for example effects of globalisation, growth of fundamentalism, modernization policies such as building of dams etc. have all contributed to violence against ethnic and religious minorities, and against women. Of course minority women are in a double bind. They are attacked both as minorities and as women. The fundamentalists who have increased their control in the political arena strive to maintain a predominantly male-dominant status quo. This strategy puts both minorities and women in general in the receiving end. Religion has come to be used by fundamentalist groups as one of the primary means by which male-dominant values and existing gender-oppressive ideology are imposed and perpetuated. According to Meghna Guhathakurta, "it was advantageous therefore for the fundamentalists to target women who step outside the bounds of social norms since they represented a potential threat to the male-dominant status quo".³¹ To compound all of these developments there is endemic poverty and land alienation of poorer groups of people in *chars* (enclaves). Such developments have led to widespread control and destabilization of women in the region leading to their displacement. A fall-out of this is an increase of trafficking of women and children across the border. To these another cause can be added that directly affects the scenario of trafficking of women from Bangladesh. The immediate past and the present government has embarked on a policy of brothel eviction. One of the biggest brothels in Bangladesh is in Tanbazar in Narayanganj. This brothel started during the colonial period. Later, many internally displaced women gathered in the area and were dependent on this brothel for their livelihood. In July 1999 sex-workers from this brothel was

evicted by the government and sent to vagabond centers where there are evidences that they were severely mistreated. No wonder many of them crossed the border. In West Bengal, the organized traffic in illegal Bangladeshi immigrants is a principal source of bonded labour says one report.³² In such situations it is not surprising that women fall prey to traffickers and cross borders for survival.

Women from Bangladesh are not the only group of women who are trafficked in this region. There is an increase in cases of trafficking from Northeast India as well. Evidence gleaned from Northeast Indian media reports clearly portrays such a phenomena. In a newspaper report from Northeast India it was found out that:

Of late, there have been reports in the media that trafficking in women is taking place from Assam and other states of the North-east, and a well established conduit is functioning to dispatch the hapless women to the metros of the country. The target is obviously the poor girls who are easily enticed with the lure of money and a promise of a respectable job either as a "maid" or a "sales girl" in a house or establishment. Apparently, there are local connivers who function as a cover for the operators.³³

In another recent newspaper report it was stated, "Human trafficking is not a new problem in our country. What is of concern is that, of late, the north-east has become a supply zone for trafficking women and children of not only in the flesh trade but for forced labour, child labour, organ transplantation, camel jockey and others."³⁴ Even among matrilineal state trafficking of girls is on the increase if one goes by newspaper reports. In one such report it was stated that though the society of the indigenous people of Meghalaya "remains the only matrilineal society, grinding poverty and rising unemployment is steadily pulling women down from their earlier elevated position. The first casualties are young girls."³⁵ The protracted state versus community and community versus community conflicts has resulted in an escalation of violence against women. Increase in trafficking of women can be seen as a result of this escalated violence.

The other region that has been seriously affected by an increase of human trafficking in South Asia is Nepal. The popularly termed Maoist rebellion has exacerbated the situation

further. Nepal is considered the most significant source of girl-child commercial sex-workers in India. The girls that come from Nepal to Indian brothels are as young as 9 to 10 year olds. In this era of globalisation, tourism has become another occasion for child trafficking from Nepal. Although Nepal has signed various international conventions and passed the *Human Trafficking (Control) Act of 1986* these Acts are hardly ever implemented. Trafficking of Nepali women to India continue unabated. A very disturbing phenomena within this process is that young Nepali “virgins” are trafficked because people not only prefer their fairer complexion but also there is a ridiculous but common belief among some communities that having intercourse with a young girl can cure many sexually transmitted diseases as well as AIDS. Hence Nepali girls are in great demand in India. The magnitude of the problem can be understood from one report that states that, “at least 200,000 girls and women of Nepali origin are currently working as prostitutes in Indian brothels, and that about 5,000 arrive annually.”³⁶

Once these women are trafficked they lose most of their rights and become virtual stateless people. Even migrant women workers from Nepal end up being trafficked. In Nepal there are no specific laws or acts to protect the women migrant workers. One report suggests:

There are cases where the journey starts as a migrant worker but ends up in brothel primarily because there are no authorized or safe channels for women migrant workers where their employment and payment for their work are guaranteed. In most cases the migration occurs without any legal or authorized documents. Unskilled female workers, between the age group of 9 to 25 years are the vulnerable group for trafficking.³⁷

Moreover most of these women do not have documents that prove their legal identities and this becomes a primary reason for their vulnerability and statelessness. Without papers nowhere are they able to access either their rights or justice. These women do not have any unions to protect their interests and neither do they have linkages with their embassies. Also most of these women come from very poor families so even their family networks unable to protect them. Often their families are responsible for selling them. So in times of need these women are unable to turn to the state, community or family.

In South Asia, Nepal and Bangladesh are the big suppliers of women and children into the flesh market with Northeast and East India steadily increasing their supplies as well. India is the major receiving country. The size of India's flesh trade can be understood from a report of the *Save Our Sisters Movement*. The report states that there are 10 million prostitutes in India of whom a 100,000 are in the city of Mumbai alone. The red light districts in Mumbai generate annual revenue of \$ 400 million and children as young as 9 years are put up in auction where they can fetch up to Rs. 60,000. People from as far as Gulf countries come for these biddings. The same report suggests that more than 40 % of the 484 girls rescued from Mumbai in 1996 were from Nepal. The same report states further that:

A sizeable proportion of prostitutes found in Kamathipura or Sonagachi, the infamous red-light area of Mumbai and Kolkata respectively are of Nepalese origin. What is more disturbing to note, however, is that of the 5000-7000 Nepalese girls trafficked into India yearly, the average age over the past decade has fallen from 14-16 years to 10-14 years....

Trafficking in women and girls is easy along the 1,740 mile long open border between India and Nepal. The Trafficking of girls is considered less risky than that of drugs or narcotics...The girls are bought for a measly sum of Rs 1,000 and can fetch upto Rs 30,000 in later transaction.

Satellite towns of the Indian states of Bihar and Uttar Pradesh such as Begusarai, Dhaulpur and Gorakhpur are allegedly 'market centres' for transporting girls from Nepal and Bangladesh. What is more disturbing to note are the players in the organized chain of cross border trafficking which often includes the cross border policemen – the very people who are assigned to protect and combat the problem.³⁸

But India is not the only receiving country and Nepal and Bangladesh not the only suppliers. In this region all countries supply and receive trafficked people. Pakistan is often the destination point for those trafficked from Bangladesh, Burma and Central Asia. It is also the recruiting ground for women from within the country. Pakistan is also a

source and transit country for young boys who are trafficked to the United Arab Emirates, Kuwait and Qatar to act as camel jockeys. Women trafficked from East Asian countries to the Middle East also transit through Pakistan. The first incidence of trafficking in Pakistan was brought to light in the 1980s when it was found out that a number of Bangladeshi women were languishing in Karachi jails. On investigation it came to light that these women were brought in by illegal means with promises of better jobs. A report states that about 200,000 women were trafficked from Bangladesh to Pakistan. Other than commercial sex these trafficked women also work as domestic labourers.³⁹

Trafficking is not a problem of just one country but of the entire region of South Asia if not the world. Most researchers agree that more women and children are trafficked than men. The Tsunami of 26 December 2004 also enormously increased the number of trafficked people from South Asia. These people are trafficked not just for commercial sex trade but also for the purposes of labour. That trafficking is as much of a problem for the developing world as it is for the developed is portrayed by the events in Morecambe Bay in 2005. It has also portrayed that people become extremely vulnerable in the course of being trafficked. They are reduced to this state because they are what the French call *sans papier* or without papers. Victims of trafficking almost never carry their own identity papers. If they have such documentations they have to hand it over to the agents. There are well-documented cases of Bangladeshi labourers travelling to Southeast Asia where they are forced to live and die as illegal migrants so that they cannot get out from the clutches of agents who live on the money that these hapless people have earned. According to one report:

Forced labour can be analysed by considering the forms of coercion used to retain a worker. These can be physical and sexual violence, threats of violence, debt bondage, threats and intimidation based on immigration status, blackmailing, and confiscation of identity documents or withholding of payments. The use of these forms of coercion is made more effective if the migrant is dependent on an agent or employer, either because of incurred debts or the restrictions of work permits. This dependency may be actively fostered to increase control over the worker.⁴⁰

For women the situation is even worse. At least in the case of South Asia most women are not used to carrying identity papers. Even in their own homes it would be difficult for them to prove their national identities. As for women who are trafficked it becomes even more of a problem. They are in a permanent state of not belonging. Hardly ever do they have any papers. The moment they cross borders they become stateless and liable for prosecution if they are caught. They are threatened, persecuted, abused and kept in a constant state of insecurity. They are unable to protest because they are stateless. In all countries of South Asia stateless people are dealt with much severity notwithstanding the fact that they have been trafficked. In fact in countries such as India stateless people are marked as "illegal migrants" and are equated with terrorists. This is borne out by a comment made by the leader of the opposition party Lal Krishna Advani. He said that, "Infiltration of foreigners from Bangladesh and terrorism are two of the biggest threats faced by the country today." In the same report "Advani expressed the view that the infiltration of foreigners has posed a threat to the entire country, particularly the North-Eastern states, Bihar and West Bengal. No country in the world is taking the problem of illegal migration so casually."⁴¹ In such a mood the women face the worst form of abuse. In the best-case scenario they are driven back to their country of origin. As one observer shows, they are sent back to their home, "at a day's notice, to the same situation they had left behind, but now often in debt to the trafficker as well. And since few creditors take their losses without any action, many may choose or be forced to leave again, this time in a more clandestine, more vulnerable and probably more expensive way."⁴² In the worst-case scenario very often no cases are lodged against them but they are kept overnight in BSF barracks (when in India) where they can be sexually abused and then they are pushed back. That this is a region of extreme insecurity for women crossing the border without any documentation has been dramatically portrayed by the case of one Jayanti Bala Das of Bangladesh.⁴³ Das was sexually abused by the BSF and then forced to go back in a leaky boat in the middle of the night and the boat capsized. Luckily she survived and her plight brought to light the plight of stateless women. Therefore, statelessness is an inevitable result of trafficking that thousands of women are facing today. The seriousness of the problem can be understood from the fact that in 2006, the

state of West Bengal is supposed to hold the state elections. In that election forty sex-workers from the Kalighat have been denied the right to vote even though they have been living in the same area for over ten years. Notwithstanding international protocol these women are shunned as stateless women. The magnitude of the situation can be understood by the threat of all the sex workers from the same area to boycott the elections as they are aware that the fate of women who are denied from voting might become more precarious if the state decides to push them beyond the borders.⁴⁴

Conclusion

I began this essay by stating that one of the most important rights that a human being is supposed to enjoy is the right to nationality. Yet there are stateless people all over the world who are denied this right. The 1930 Hague Convention, the 1948 UDHR, the 1954 Convention Relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women and the 1989 Convention on the Rights of Child among others are efforts to reduce the scourge of statelessness. The EU has drafted the 1997 European Convention on Nationality. Yet Asia has no such mechanisms even though most Asian states are signatories to many of these conventions. 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 pauperisation 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 for 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 once they are victims of trafficking they become *de facto* stateless people. Yet there is hardly a sense of urgency to change the situation.

Though liberal South Asian laws and constitutions guarantee people's right to be protected from exploitation and thereby prohibits trafficking too but no amount of liberal and humanitarian legislation has been able to stop this form of servitude or semi-

servitude of large groups of women. Most South Asian states such as India, Nepal, Bangladesh, Pakistan and Sri Lanka has legal provisions that condemn trafficking yet their implementation is often unsatisfactory. In 2002 the government of Pakistan passed a law that criminalizes all aspects of trafficking, from recruitment and transporting to receiving a person. Yet in Pakistan when forced prostitution cases are prosecuted under Islamic law or Hudood ordinances then victims are reluctant to testify because the woman's testimony is tantamount to an admission of adultery if prosecutors conclude that her testimony does not meet the burden of proof. As for India even though there are legal mechanisms such as the *Immoral Trafficking Prevention Act*, which is supplemented by the Penal Code that prohibits trafficking and prescribes severe penalties for violations still the fact of the matter is that efforts to stop trafficking is considered a low priority issue for the state. As one report suggests "the country's prostitution and trafficking laws were selectively enforced by police; clients and organizers of the sex trade tended not to be penalized, while prostitutes found soliciting or practicing their trade in or near (200 yards) public places were arrested. Due to the selective implementation, the "rescue" of sex workers from brothels often led to their revictimization."⁴⁵ After the Tsunami most women's groups particularly felt that women's safety and their needs was low priority for communities and the State even when these women and children were falling prey to traffickers. In a different context I had written that South Asian states, "at best patronise women and at worse infantilise, disenfranchise and de-politicise them."⁴⁶ This is perhaps the reason why trafficking, which is often considered a women's issue, is hardly ever given the notice and concern that it deserves. Even when this issue is discussed it is done in the context of illegal migration. In Asia there are hardly any regional mechanism to address this issue other than the Bangkok Declaration of 1999. Yet the severity of the problem has multiplied because trafficking is often accompanied by such banes as AIDS. According to one observer, "Women and children who are trafficked are at high risk for infection with HIV, which is a death sentence for the victims."⁴⁷ Newspaper reports also highlight this factor.

That trafficking has a serious correlation with AIDS at least in the context of South Asia is proved by the fact that the routes that traffickers take are also the places where there is

almost an explosion of HIV positive cases in the recent years. Newspaper reports from the borders of India and Bangladesh, including the states of the Northeast are rife with news of the growing trafficking of women and children in this region. Also almost every day there is news from the regions discussing the alarming spread of HIV positive and AIDS cases. I have already highlighted some of the news items on trafficking in this region in the previous section. Here I want to portray how AIDS has become a major problem for people living in Northeast India that falls within the trafficking zones. Some news items from the region state that the HIV virus was spreading because of the, "nonchalant sharing of the syringes by drug addicts and the sexual profligacy of a section of the people."⁴⁸ Others state that "the rampant influx of people to the state as one of the main factor responsible for the spread of Human Immune Deficiency Virus (HIV)."⁴⁹ Still other news items state that, "The latest transmission trend is all the more alarming as HIV / AIDS is no longer confined to injecting drug users. It has spread to general population and increasingly the virus is taking the sexual route and women and children are being infected steadily."⁵⁰ Most of these news items show concern over the rampant migration of people in the region and trafficking is the worst form of forced migration. Added to this trafficking for commercial sex is one of the potent causes for increase in HIV infection in the region. In a recent coverage on Arunachal Pradesh it was stated that: "Flesh trade is fast spreading its net in Arunachal Pradesh. So are (sic) HIV positive cases. The impact of this double trend has made people of the state to sit up and evolve a multi-pronged strategy to curb the menace."⁵¹ Women and children who are trafficked can hardly ever insist on their physical security. And in the brothels as one observer comments the only law that operates "is the law that grants men the right to buy sex. International declarations and national legal codes that attempt to outlaw prostitution or contain its excesses are little more than well-meaning but empty gestures."⁵² The paperless state or lack of identity papers of these women and children make them very vulnerable and reduce them to a state of semi bondage. Because of their statelessness they can hardly ever protest against such rampant exploitation of not just their bodies but also of their dignity.

As is apparent from the preceding commentary stateless women become even more insecure because they can be displaced any time that the state or the majority community so desires. When displaced they are destabilized from their moorings and such destabilization is made an occasion for their sexual exploitation and women are ready prey for traffickers. Both trafficked men and women are marked as aliens in all the countries of South Asia but it is the women whose alien-ness translates into sexual vulnerability. By marking such women as sexually available their sexual exploitation is facilitated. Therefore statelessness and trafficking are related, if not two sides of the same phenomena. No amount of legislation on any one of these can ameliorate the conundrum. Also one has to understand the specific gender dimension of the problem. To address the problem of statelessness one has to address the problem of trafficking and the gender dimensions of that problem. The rapid spread of AIDS makes it imperative for South Asian states to sit up and take note of this issue otherwise South Asia will soon be faced with the greatest eradicator of our generation.

END NOTES

¹ An earlier version of this paper was done for the AALCO-UNHCR collection that is currently in press.

² Gilbert King, *Woman, Child For Sale: The New Slave Trade in the 21st Century* (New York, Chamberlain Brothers, 2004) p. 19.

³ Bridget Anderson and Ben Rogaly, "Trafficking and Forced Labour in the UK" in *Refugee Watch* Nos. 24-26 (October 2005) p. 25.

⁴ Gilbert King, *Woman, Child For Sale: The New Slave Trade in the 21st Century* (New York, Chamberlain Brothers, 2004) p. 21.

⁵ Senator Brownback, Press Release, 24 September 2003 in *ibid*.

⁶ The author to portray the gendered nature of such declarations as the Universal Declaration of Human Rights added the italics.

⁷ *Final Report concerning the Questionnaire on Statelessness Pursuant to the Agenda for Protection*, Department of International Protection, UNHCR, March 2004, in Carol Batchelor, "Statelessness and the Problem of Resolving Nationality Status," in *International Journal of Refugee Law*, Vol. 10 (1998) p. 16.

⁸ Carol Batchelor, "Statelessness and the Problem of Resolving Nationality Status," in *International Journal of Refugee Law*, Vol. 10 (1998) p. 157.

⁹ For an in depth analysis of statelessness see Carol Batchelor, "Statelessness and the Problem of Resolving Nationality Status," in *International Journal of Refugee Law*, Vol. 10 (1998) pp. 156-183.

¹⁰ *Shillong Times*, 8 August 2003.

¹¹ Paul Banerjee, "Chin Refugees in Mizoram," *Refugee Watch*, No. 13 (March 2001).

¹² As reported in *Refugees International Bulletin*, 2004.

¹³ "Hundreds of destitute Burmese asylum-seekers marooned on Guam" *South China Morning Post*, 6 February 2001. Source: Europe Intelligence Wire.

¹⁴ H.V. Stanley, "Chin Refugees in India," *Refugee Watch*, No. 13 (March 2001).

¹⁵ Interview with the author on 20 September, 1998, in Dhaka.

- ¹⁶ "Rape by the Burmese Military," *The Human Rights Watch Global Report on Women's Human Rights* http://www.hrw.org/about/projects/womrep/General-70.htm#P1287_299897, accessed on 11 April 2006.
- ¹⁷ Somn Ghosal, "Stateless and Oppressed from Burma: Rohingya Women," *Refugee Watch*, Nos. 10 & 11 (July, 2000) p. 15.
- ¹⁸ Nimala Chandrasanan, "A Precarious Refuge: A Study of the Reception of Tamil Asylum Seekers in Europe, North America and India," *Harvard Human Rights Yearbook*, Vol. 2 (1989) pp. 55-96.
- ¹⁹ B.S. Chimni, "The Legal Condition of Refugees in India," *Journal of Refugee Studies*, Vol. 7, No. 4 (1994) p. 385.
- ²⁰ Asha Hans, "Sri Lankan Tamil Refugees in India," *Refugee*, Vol. 13, No. 3 (1993) p. 30.
- ²¹ C. Anaraj, "Sri Lanka: The One-eyed Hope," *The New Leader* (1-15 June, 1995) p. 19.
- ²² About 23 female suicide bombers died by March 1998. Source: Yerimalai Report.
- ²³ Joke Schrijvers, "Constructing Womanhood, Tamilness and The Refugee," in Selvy Thiruchandran ed., *Woman, Narration and Nation: Collective Images and Multiple Identities* (New Delhi: 1999) p. 179.
- ²⁴ "The Maid Running Madness," *South Asia Refugee Information*, Vol. 3 (September, 1996) p. 1. Also see "A Journey Without End: Sri Lankan Tamil Refugees in India," *Refugee Watch*, No. 2 (April, 1998) pp. 9-11.
- ²⁵ "Refugee - The Human Cargo," *South Asia Refugee Information*, Vol. 5 (December, 1997) pp. 5-6.
- ²⁶ Nisha Varia, "Refugee Women Need Bias Free Assistance," *Women's e-News*, Run Date 10/01/03,
- ²⁷ "Gender Based Violence in Nepal's Refugee Camps," In *Human Rights Watch Report* (September 2003) http://www.hrw.org/reports/2003/nepal0903/8.htm#_Toc51386791
- ²⁸ Etienne Balibar, *Masses, Classes, Ideas: Studies on Politics and Philosophy Before and After Marx*, translated by James Swenson (New York: 1994) pp. 57-58.
- ²⁹ Valentine M. Moghadam, "Gender, National Identity and Citizenship," *Hagar: International Social Science Review*, Vol. 1, No. 1 (2000) p. 42.
- ³⁰ Patricia Tuitt, "Rethinking the refugee concept," in Frances Nicholson and Patrick Twomey eds, *Refugee Rights and Realities: Evolving International Concepts and Regimes* (Cambridge and New York, Cambridge University Press, 1999) p. 107.
- ³¹ Meghna Guhathakurta and Suraiya Begum "Bangladesh: Displaced and Dispossessed," in Paula Banerjee, Sabyasachi Basu Ray Chaudhury and Samir Das eds., *Internal Displacement in South Asia* (New Delhi, Sage Publications, 2005).
- ³² "Trafficking in Persons," India Human Rights Report, *NC Buy* <http://www.ncbuy.com/reference/country/humanrights.html>
- ³³ "Trafficking in Women," *Meghalaya Guardian*, 13 September 2004.
- ³⁴ "Anti-trafficking Consultation: An Eye-opener," *Imphal Free Press*, 1 October 2005.
- ³⁵ "Child Trafficking Worry Over Meghalaya," *Hindustan Times*, 2 April 2005.
- ³⁶ "Women's Voice," Published by National Network Against Girl Trafficking/ NNAGT (undated) p. 1.
- ³⁷ "Women's Rights: Its Challenges and Sensitivity," Published by National Network Against Girl Trafficking/ NNAGT (November 2002) p. 5.
- ³⁸ *Strengthening Cross Border Networks to Combat Trafficking of Women and Girls*, Proceedings of Workshop organized by NNAGT and supported by UNIFEM, Kathmandu, July 2001 pg. 42.
- ³⁹ Anil Murtaza, *Agonizing and Brazen HR Abuse*, Proceedings of Workshop organized by NNAGT and supported by UNIFEM, Kathmandu, July 2001 pg. 59.
- ⁴⁰ Bridget Anderson and Ben Rogaly, "Trafficking and Forced Labour in the UK" in *Refugee Watch* Nos. 14-16 (October 2005) p. 28.
- ⁴¹ "Admani Warns Against Influx," *Assam Tribune*, 12 December 2004.
- ⁴² Susanne Thorbeck and Bandana Pattanaik eds., *Transnational Prostitution: Changing Global Patterns* (London, New York, Zed Books, 2002) p. 5.
- ⁴³ The case is registered in the Basirhat police station on 13 January 2003, under section 376 (B)/280 of the Indian Penal Code.
- ⁴⁴ *Suzi Ananda*, 18 March 2006.
- ⁴⁵ "Trafficking in Persons," India Human Rights Report, *NC Buy* <http://www.ncbuy.com/reference/country/humanrights.html>
- ⁴⁶ Paula Banerjee, "Refugee Women and the Fundamental Inadequacies in Institutional Responses in South Asia," in Joshva Raja ed., *Refugees and their Right to Communicate: South Asian Perspectives*, (London, WAC, 2003) p. 139.

⁴⁷ Donna M. Hughes quoted in Gilbert King, *Woman, Child For Sale: The New Slave Trade in the 21st Century* (New York, Chamberlain Brothers, 2004) p. 172.

⁴⁸ "UN unit in Mizoram debut to fight AIDS," *The Telegraph*, 6 December 2004.

⁴⁹ "State has 80 AIDS victims," *The Meghalaya Guardian*, 2 December 2004.

⁵⁰ "AIDS infection rate among women rising alarmingly in Manipur," *The Assam Tribune*, 4 December 2005.

⁵¹ "Arunachal wakes up to Flesh Trade & HIV risks," *Hindustan Times*, 13 May 2005.

⁵² Louise Brown, *Sex Slaves: The Trafficking of Women in Asia* (London, Virago, 2000) p. 185.