

Racial Discrimination and Human Trafficking in India: Challenges Ahead

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Abstract

Discrimination is any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. Discrimination violates the fundamental human right to freedom from discrimination. Freedom from discrimination is indispensable for workers to choose their employment freely, to develop their potential to the full and to reap economic rewards on the basis of merit. The different forms of discrimination impact severely on vulnerable individuals of society. At its worst, the discrimination against certain groups, such as women, ethnic or racial minorities and migrants, face in the labour market makes them vulnerable to such abuses as forced or compulsory labour. Discrimination is also associated with child labour. The recent rise in labour trafficking, which disproportionately affects women and children, is related in part to gender-based discrimination in the labour market that causes unequal access for women to remunerative employment as well as to traditional beliefs that devalue girls. Racism, racial discrimination, Xenophobia and related intolerance are so often the causes of war in the minds of men. Racial Discrimination continues to manifest itself in many contemporary conflicts and injustices. Racial Discrimination has been one of the major causes leading to the increasing rate of illegal migration leading to the problem of Human Trafficking. Human Trafficking is a complex development issue. It is an economic problem as the vast majority of people seeking to escape poverty are lured into trafficking by the false promise of economic gains. Human trafficking has become a heinous transnational crime undertaken by highly organized syndicates. Human trafficking is inherently demeaning, harmful and violates fundamental human rights to life, liberty, dignity and freedom from discrimination. Human trafficking is incompatible with the worth and dignity of human beings. What is equally distressing is the fact that human smuggling and trafficking are some of the fastest growing areas of international criminal activity. Trafficking in human beings must not be seen primarily or exclusively from the perspective of national security; it must not be viewed merely from the point of view of national protective interests; it must not be seen only as a fight against organized crime and illegal migration. Human trafficking is first and foremost a violation of human rights. In many countries, important steps have been taken to combat racism, exclusion and intolerance, and to buttress democracy and pluralism.

The purpose of this paper is to examine the extent of the problems of human trafficking and Racial Discrimination and consider some of the most important elements of an effective anti-trafficking strategy at the domestic level. The paper attempts to highlight the challenges faced by India in this regards. Human trafficking, especially the trafficking of women and girls for forced prostitution, is a serious problem in India. Therefore, India's model of dealing with this extensive trade in women and girls for forced prostitution provides many important insights as to how a developing country like India can adequately respond to this challenge. Some recommendations have been suggested to achieve long-term success in overcoming these problems.

Key Word: Racial Discrimination, , Human Trafficking, Illegal Migration, Xenophobia

INTRODUCTION

Discrimination is any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

Discrimination violates the fundamental human right to freedom from discrimination. Freedom from discrimination is indispensable for workers to choose their employment freely, to develop their potential to the full and to reap economic rewards on the basis of merit. The different forms of discrimination impact severely on vulnerable individuals of society. At its worst, the discrimination against certain groups, such as women, ethnic or racial minorities and migrants, face in the labour market makes them vulnerable to such abuses as forced or compulsory labour. Discrimination is also associated with child labour. The recent rise in labour trafficking, which disproportionately affects women and children, is related in part to gender-based discrimination in the labour market that causes unequal access for women to remunerative employment as well as to traditional beliefs that devalue girls. Racism, racial discrimination, Xenophobia and related intolerance are so often the causes of war in the minds of men. Racial Discrimination continues to manifest itself in many contemporary conflicts and injustices. Racial Discrimination has been one of the major causes leading to the increasing rate of illegal migration leading to the problem of Human Trafficking.

Human Trafficking is a complex development issue. It is an economic problem as the vast majority of people seeking to escape poverty are lured into trafficking by the false promise of economic gains. Human trafficking has become a heinous transnational crime undertaken by highly organized syndicates. Human trafficking is inherently demeaning, harmful and violates fundamental human rights to life, liberty, dignity and freedom from discrimination. Human trafficking is incompatible with the worth and dignity of human beings. What is equally distressing is the fact that human smuggling and trafficking are some of the fastest growing areas of international criminal activity. Trafficking in human beings must not be seen primarily or exclusively from the perspective of national security; it must not be viewed merely from the point of view of national protective interests; it must not be seen only as a fight against organized crime and illegal migration. Human trafficking is first and foremost a violation of human rights. In many countries, important steps have been taken to combat racism, exclusion and intolerance, and to buttress democracy and pluralism.

The purpose of this paper is to examine the extent of the problems of human trafficking and Racial Discrimination and consider some of the most important elements of an effective anti-trafficking strategy at the domestic level. The paper attempts to highlight the challenges faced by India in this regards. Human trafficking, especially the trafficking of women and girls for forced prostitution, is a serious problem in India. Therefore, India's model of dealing with this extensive trade in women and girls for forced prostitution provides many important insights as to how a developing country like India can adequately respond to this challenge. Some recommendations have been suggested to achieve long-term success in overcoming these problems.

Racial Discrimination: New forms of Social Racism

Powerful transformations are currently underway in the world's technology, economy, politics, society and culture. These transformations, associated with the third industrial revolution in history—the revolution of new technologies— and often summed up by the word 'globalisation', seem to favour the spread of new forms of racism and discrimination. The latter now seek to establish their legitimacy by means of arguments that affirm the inequality of cultures. Social inequality and uncertainty have increased in the age of globalisation, as have explosive communitarian reactions and the flaring up of passions regarding ethnic, national, 'racial' and religious identities. In every region of the world, these passions increasingly give way to violence, all too often in fanatic guises that end in massacres among neighbouring populations, 'ethnic cleansing' and genocide. Thus, even as we celebrate the dismantling of institutional apartheid in South Africa, in most regions of the world we are forced to recognise that various forms of **social and urban apartheid** are on the rise. Very often these forms are based on a structural discrimination which is 'racial' in character; they can be either explicit or implicit, but they no longer need to rely on conscious reference to racist thematics. In this universe of walled-up housing developments and impenetrable neighbourhoods, the very concept of public space—which is inseparable from the concept of democracy is on the wane, and sometimes even disappearing. A growing sense of separatisms in urban space is reinforced by the emergence of diverse forms of **educational apartheid**. While a select minority gains access to the 'paradise of knowledge', which is most often reached by payment, the 'damned' are assigned to the hell of new education ghettos and the masses in between try to make do with a variety of fairly ineffective limbos. These forms of social, urban and educational apartheid have spread rapidly, and though they make no explicit reference to racism or racial discrimination, they comprise a system of **invisible racism** and veiled discrimination which is as formidable as the more outward varieties. In some cases, this system can even function without a thought or representation ever crossing the mind of those involved, which might consciously have to do with racism or discrimination.

For these reasons, the questions of racism, racial discrimination, xenophobia and intolerance need to be thought out anew. If it were only a matter of being 'enlightened', the progress achieved in mass education and the 'deconstruction' of pseudo-racial ideologies would long ago have led to the eradication of these scourges. Unfortunately this has not happened. Indeed, racism and racial discrimination have often been carried to their farthest extremes in countries with the highest levels of education. To understand the persistence of racist prejudice, we must therefore undertake new kinds of exploration into these dark reaches, this time making better use of the tools supplied by disciplines such as psychology and psychoanalysis.

Education against new forms of racism and discrimination

The role of education in the fight against new forms of racism and discrimination should not be isolated from the overall social, political, cultural and economic context in which its action takes place. Its role has often been overestimated, and it is unfair to expect schools and other educational institutions to cure the ills which society itself has been unable to face. Nevertheless, education could be a precious tool in the struggle against new forms of racism, discrimination and exclusion (**educational apartheid**) which have emerged in recent years as a consequence of increased poverty, political instability, economic distress and the emergence of pluralistic societies. Efforts should be made to provide access to education for all and to transform the whole educational process (programmes, textbooks, pedagogical methods and teaching practices, school environment) in order to meet these new challenges. In this context, new education and information technologies as well as the potential role of educational networks in raising awareness about these issues should be fully promoted.

Urban policies and human rights

Manifestations of **urban apartheid** have become increasingly extreme, thereby challenging the fight against poverty and threatening democracy. It is time to reconsider urban policies so that, along with the security of citizens, public space can also be renewed politically, culturally and ecologically. If we wish to change our lives in the twenty-first century and carry on an effective fight against racism, racial discrimination, xenophobia and intolerance, it will be necessary to change our cities as well.

Mobilisation

The developments anticipated here are extremely grave, but in no way inevitable. Governments need to display their civic sense by adopting policies which can prevent the most serious kinds of dangers, and by implementing the measures needed to protect human rights, social justice and the possibility of sustainable human development. Leading figures in civil society must also mobilise their efforts to ensure that the rights of every human being are fully recognised, and that their societies do not become essentially uncivil.

Facets of Migration

Issues concerning illegal migration of people from one country to another and smuggling and trafficking of persons within the states and across the borders are at the centre of contemporary migration discourse at international, regional and national level. These are also among the major concerns of the receiving, transit and sending countries, evolving international migration and human rights regimes, concerned civil society organizations (CSOs) and teaching and research institutes focusing on such matters. Small wonder therefore that serious efforts have been made in the recent years to study their causes and consequences and examine the relevance and effectiveness of the strategies adopted in different countries and regions to control and prevent illegal migration in all its forms. With the growing realization that the approach to build legal walls in and around the receiving states and mining the borders is a dehumanizing approach and it has not produced the desired result, efforts have been intensified to explore fresher perspectives and innovative approaches. In addition, the realization is growing that demand for the labour force will continue to grow in the coming years and decades. This is, after all, the demand of this age of globalization. Furthermore, the number of countries interested in sending their labour force abroad for work is on the rise. As a result, the international job market is much more competitive today than it ever was. It is therefore very likely that the labour force reputed to be professional, hard working and dedicated and belonging to countries known for being relatively peaceful, secular, democratic and forward-looking will be preferred by the labour importing countries and demand for work force from countries known for being violent, corrupt, retrogressive and poorly governed will gradually decline. Especially the work force from the countries widely censured for not doing enough to combat and prevent illegal migration, smuggling and trafficking of their own citizens and the citizens of other countries will not be welcomed by the international job market. In all probability, the countries not doing enough to resolve the issue of 'undocumented migrant warehousing' in their midst would also be affected.

According to Greek mythology, more than three thousand years ago, a man named Daedalus wished to flee from the kingdom of King Minos on the island of Crete and fly into freedom. He was a brilliant architect and sculptor and a renowned inventor from Athens. On the request of the King, he built the famous labyrinth, a castle of maze to house the Minotaur, a half man and half bull. Daedalus was later imprisoned in the labyrinth. Wishing to escape, he began studying the birds flying and was soon able to make flying wings fashioned with feathers and held together by wax. He made these flying wings for himself and his son Icarus, who was also with him in the prison. Teaching Icarus how to fly, he advised him not to fly too high and not to go near the sun, as the wax could then melt. Wearing the flying wings, the father and the son made to the skies one day. However, while Daedalus managed his flight to freedom, Icarus couldn't as he flew too near the sun and the sun melted the waxed wings. Icarus fell into the sea and died (Durant, 1995:7). Flight from captivity to freedom, escape from unbearable existential hazards and journeying in quest of the promised lands are the undertakings prompted by natural urge and desire. Such undertakings are characteristic of all historical eras and their commencement dates back to the time when began the human migration from one place to another, from one country to another and from one region to another. Over the vast span of time, this migration has become an accepted way of life and a sort of inevitability: humans have to move as they have to move and nothing, not even the fear of death on the way and on the borders, can stop them from moving from one place to another.

With the passage of time, and fashioning of exclusive identities, rising fear of the *unknown* and the *other*, shrinking will to co-flourish and co-develop, and increasing threat of the hordes at the gates to gatecrash and get in at any cost and at all costs, migration, especially illegal migration, is becoming all the more problematic. The dilemma of the receiving developed world is that it needs extra human resources and needs badly, but it is fearful that the newcomers would critically upset the economic, political, cultural and security order crafted so painstakingly over a long period of time. They fear most the arrival of the illegal, trafficked or smuggled into their homes and homelands. On the other side are the sending states. Being unable or unwilling to create conditions for their nationals to stay on and prosper in their own countries with dignity, equal rights and peace, they become a party- directly or indirectly-in prompting their citizens to venture across the borders and beyond-legally or illegally. Hence the challenge of the contemporary times is as to how to benefit from the bounties and blessings of *regulated* migration in this age of globalization and how to diminish the temptation for illegal migration and control illegal migration, human smuggling and trafficking. This is a challenge for all: the sending, transit and receiving societies, as subsequently all of them suffer along with the victims. Migration is a multidimensional phenomenon, which can have many positive effects because it expands the opportunities for productive work and leads to a wider perspective on many social issues, among migrants and among the population of host countries. But it can also have negative aspects, dominantly in the nature of work and work conditions and possibilities for abuse of migrant workers by employers and others. Migration has a complex and multi-layered relationship with human development: while conditions of human development in the home country determine both the need for and the nature of economic migration, the process itself generates many and often differing human development effects upon the home country and the host country.

ROOT CAUSES OF MIGRATION

'Human history is the history of migration and the most sophisticated civilizations arose where human traffic was heaviest. The Ancient Near East, the Indian sub-continent, China, the Americas, Europe – all had constant influxes of migrants bringing new ideas and change.' If one analyzes the current phenomenon of migration, the causes are not significantly different than those that have encouraged migration throughout human history. War, hunger, and the desire to better one's situation has always been a driving factor of migration.

According to the International Organization for Migration (IOM), 2.5% of the world's population are international migrants. Theories abound regarding why people migrate across national borders. One of these theories, belonging to the **neoclassical school**, speculates that migration is an individual decision, taken in the interest of maximizing the migrant's earning potential. This theory assumes that due to unemployment, underemployment, low wages, poor working conditions and the absence of economic opportunities, migrants concerned with their personal betterment choose in a rational and calculated way the destination country which will reap the most benefit. A second economic theory of migration is the **New Economics of Migration**. In the interest of diversifying risk, families choose to gain different training for each worker in the family unit. Further, these workers may be sent abroad to test the opportunities in the country of destination, before advising the rest of the family to join him/her. This bypasses one of the criticisms of the neo-liberal model, which questions why the poorest of the poor in countries of origin do not tend to migrate.

For economically disadvantaged families, according to the New Economics of Migration theory, the risk of migration is too high, without labor diversification and basic financial security. Alternatively to the Individualist based approaches outlined above, **Structuralist theory** also attempts to explain the root causes of migration. Structuralist approaches focus upon the idea that people make their decisions to migrate based on political, social and economic forces that are out of their control. Therefore, the choice to migrate is not necessarily a logical, carefully weighed out, economically tested decision, but rather occurs as a result of circumstances over which the migrant has little power. 'In the sending country the structural forces pushing emigrants out could be population pressure, or land shortage, or gender discrimination. In the receiving country the structural forces attracting the immigrant could be a shrinking population, or a shortage of people to work on the land, or the demand for domestic servants.

According to the structuralist **Dual Labor Market Theory**, there are two tiers of jobs produced by a capitalist system. The tier generally attractive to nationals of the destination country is one with jobs that are secure, permanent, well paid and require formed skills. The tier that is increasingly unattractive to nationals is one with jobs that are temporary, unclean, perilous and poorly paid. These positions have, in past generations, been filled by female or teenage labor. However, as countries have become more industrialized, educational patterns and population dynamics have changed. As each generation receives a better education than the last and has fewer children on average, receiving countries often find women and teenagers refusing or unable to fill these positions. This could be remedied in part by raising salaries for these jobs; however, employers in destination countries are generally resistant to the idea of decreasing their profits. Therefore, to the benefit of employers and to the temporary benefit of migrants, these 3-D jobs (dirty, difficult and dangerous) are increasingly filled by foreign labor.

A final structuralist approach, the **World Systems Theory**, claims that 'modern' economic development destabilizes populations. Annually, partially due to economic development policies supported by the current power of neoliberal economists at the World Bank and the International Monetary Fund, 30 million people migrate from the countryside to cities in their own countries. By 2025, 60% of the world's population will be living in cities, estimates the United Nations. As employment and infrastructure in the world's cities are unable to absorb this mass migration, most of these workers find jobs in the informal sector, resulting in a global figure of 900 million underemployed. The disappointment of the lack of opportunities in the city, as well as the uprooting effect of the original rural-urban migration acts to break the psychological security barrier to migration abroad. While potential migrants develop networks of family members or acquaintances from home areas who have successfully relocated abroad, the possibility of an international move becomes increasingly attractive and less risky.

According to structuralists, a further element contributing to an increase in migration is what has been called the '**shock of the new**'. The globalization of the media and telecommunications industries has acted to introduce populations worldwide to a romanticized version of the global north, and serves to make these destinations less alien, and therefore more secure for an impending move. The United Nations Development Program's Human Development Report of 2000, while discussing the increasing gap between the poor global south and the rich global north, has argued that the mounting inequalities should be classed as human rights violations. As life expectancy is dropping in the global south and rising in the global north, and the wealth of the richest 200 people in the world is ten times that of the combined wealth of the 582,000,000 poorest, a transfer of funds from the rich global north to the poor global south is desperately needed. However, as documented in the HDR, there has been a massive shift away from a global-north to global-south allocation of development resources. While these global inequities exist, it is unlikely that we will see any great reduction of migration as citizens from less developed countries seek out economic opportunities. Young women are subject to the same push-pull factors for migration as the rest of the population in poor countries. However, as will soon be argued, women can be particularly vulnerable while migrating. In some circumstances, this vulnerability can lead to trafficking for sexual exploitation. 'The end result of tighter border controls and stricter immigration policy is that those who feel compelled to move – driven by economic need – are even more vulnerable to exploitation by third parties who are only too willing to grease the wheels of illegal migration. So far, governments have been reluctant to look at the growing economic disparities between rich and poor that fuel the trafficking business. Instead the emphasis has been on attacking organized crime and prosecuting traffickers while those who've been trafficked find themselves re-victimized by the judicial system. They may be pressured into testifying against their exploiters and then shipped home – with no provision for their safety, no adequate support and no access to redress.

FORCED MIGRANTS AND VOLUNTARY MIGRATION

One must note that migration is not always a fully voluntary phenomenon, as seen with refugees and internally displaced persons. IOM estimates that there are more people in need of humanitarian assistance and protection than a decade ago, although the actual numbers of persons granted refugee status has decreased from 17 million in 1990 to 14 million in 2000. However, internally displaced persons have increased, outnumbering refugees by more than two to one. As the number of asylum seekers worldwide is multiplying, the number of people who are granted refugee status is falling. Of those granted refugee status, seven out of ten are hosted by low-income countries.

HUMAN TRAFFICKING

Support for the international fight against “human trafficking” evolved quickly and comprehensively. The campaign launched by the UN General Assembly in December 1998 led to adoption just two years later of the Trafficking Protocol to the UN Convention against Organized Crime.² U.S. President George W. Bush was among those particularly committed to the cause, calling for collective effort to eradicate the “special evil” of human trafficking, said by him to have become a “humanitarian crisis.” One hundred and twenty-two countries have now ratified the Trafficking Protocol, agreeing in particular to criminalize trafficking and to cooperate in investigating and prosecuting allegations of trafficking. The antitrafficking cause is not simply of interest to states; it has been firmly embraced by prominent feminists, leading international human rights organizations, and all key international agencies. In sum, the new commitment to combat human trafficking raises real human rights concerns. The antitrafficking campaign privileges a small subset of persons subject to contemporary forms of slavery, with consequent marginalization of the majority of the world’s slaves. The initiative’s focus on transborder movement is particularly problematic, having provided cover for a companion commitment to criminalize smuggling—an approach that may in practice exacerbate the risk of human rights abuse by creating the conditions within which simple smuggling is transformed into trafficking. Moreover, the requirement in both the Trafficking and Smuggling Protocols that States Parties intensify border control measures has provided a justification for generalized deterrent measures, rendering illusory the formal guarantee to refugees of immunity from immigration penalties consequent to their search for protection. Taken together—and especially given the backdrop of more general concerns regarding the minimal human rights utility of a treaty that contains no more than a rhetorical commitment to fight the root causes of human trafficking and that is content to recommend, rather than to require, remedies for victims—there is reason to question the wisdom of support for the antitrafficking cause.

Over the last two centuries, pseudo-biological theories of ‘racial’ inequality have often been enlisted in an attempt to bolster ideologies of racism, racial discrimination, xenophobia and intolerance. In recent decades, however, the inanity of these theories has been demonstrated. Science, and modern genetics in particular, has constantly affirmed the unity of the human species, and denied that the notion of ‘race’ has any foundation. Human trafficking is a lucrative international business. Although exact profit figures on this illicit trade are impossible to obtain due to its clandestine nature, estimates for profits generated by female trafficking for forced prostitution alone range from seven to twelve billion dollars each year. By holding trafficked victims under situations of slavery-like conditions, specifically forced labor or services, domestic servitude, or other types of debt bondage, traffickers benefit from what seems to be a continuous pool of cheap labor.

Traffickers can withhold food, wages, adequate shelter, and health care to their victims, while they can easily acquire new victims. At the same time, human trafficking, at its very core, is a series of human rights violations. Traffickers frequently exercise complete control over their victims through physical abuse, or seizing their travel and identification documents, withholding their wages, restricting or banning their freedom of movement, prohibiting their communication with family and friends, selling and trading them to another owner, or threatening family members. Most often, a combination of these components is used to achieve their compliance. As a result, victims can suffer both physically and psychologically. The approach adopted towards trafficking determines the strategies used to address the problem. Current approach for combating human trafficking falls into four categories:

- (a) prevention and deterrence,
- (b) law enforcement and prosecution of traffickers,
- (c) protection of trafficked persons,
- (d) rehabilitation and assistance in social reintegration.

Eliminating the problems of human trafficking presents difficult legal and social challenges of our time. It requires both the resolve of the individual, the community, political will of the State, multi-sectoral approaches and well coordinated international efforts to combat the scourge of human trafficking effectively.

Harmful Effects of Trafficking in Persons

The harmful effects of trafficking in women and children include:

1. Health: Women and Girls risk unwanted pregnancies, maternal mortality, sexually transmitted diseases and HIV/AIDS.
2. Drugs and other addictions resulting in physical and mental deterioration.
3. Threat to emotional well-being: Constant fear of arrests, isolation, deprivation of family life and social support systems; humiliation and abuse result in serious emotional stress and psychological consequences.
4. Threat to physical safety by unscrupulous agents, police, custom officials, employers and others.
5. Apprehension by law enforcement agents, detention, prosecution and forced deportation.
6. Difficulties in social integration; for those returning to their communities.
7. Economic slavery.

Women have to pay the money, which the traffickers demand for their travel and documentation. Trafficking in persons has major economic, physical, psychological emotional and health consequences to the victims. The health characteristics of a trafficked victim include:-

- Malnutrition, dehydration or poor personal hygiene;
- brutal conditions that result in physical breakdowns, emotional abuse and pelvic inflammatory diseases;
- sexually transmitted infections;
- verbal or psychological abuse designed to intimidate, degrade and frighten the individual;
- Signs of rape or sexual abuse;
- Bruises, broken bones, or other signs of untreated medical problems;
- Post traumatic stress psychological disorders;
- Critical illness including diabetes, cancer or heart disease;
- HIV/AIDS is a significant problem that is closely related to trafficking, as many trafficked women and girls suffer rape and forced unprotected sex and thus are vulnerable to HIV.

Unfortunately, criminal investigation and prosecution of the offenders do not accommodate these consequences.

Alien Smuggling and Human Trafficking

Within the past few years, episodes of immigrants undertaking extremely perilous journeys in order to illegally enter developed countries have generated intense public discussions on the merits of open versus closed borders. Public opinions, however, range from sympathy for these illegal immigrants – who often put their lives at risk as they are transported in frozen food trucks, overcrowded boats, or by other precarious means – to outright frustration at perceived failures of a fortified border approach to control illegal immigration. Such polarization of the issue only narrows the range of the public debate on migration. For instance, a casual examination of a domestic immigration policy often fails to distinguish between regular migration, such as skilled worker recruitment and family reunification, and other types of illegal migratory patterns. Consequently, this results in an oversimplification of the immigration issue as one of overwhelming supply of migrants without an equal emphasis on the demand dynamics driving migration.

Secondly, illegal migration is a broad category that includes visitors who overstay their visas, as well as alien smuggling and its related phenomenon known as human trafficking. Fundamentally, what separates these different types of illegal migration is the element of criminality and coercion. Whereas overstaying one's visa is often viewed as a victimless crime since the individual jeopardizes only his chance for re-entry, both alien smuggling and human trafficking are often characterized by elements of criminal collusion and different levels of coercion on the migrant. Alien or people smuggling occurs when those smuggled are migrants who have willingly paid for the chance to work abroad. Therefore, alien smuggling comes with a voluntary element and some knowledge on the part of the migrant on her impending illegal entry, at least at the onset of the journey. The primary goal of an alien smuggler is to provide a limited migratory service out of a sending country, as described: Most of the organizational activity takes place on the sending side, and the contract is terminated once the migrant has arrived at the destination... Such migrant exporting schemes are often characterized by highly irregular, often short-lived criminality, much of it opportunistic... Once the migrant is integrated by crossing the border, the activity is complete.

Illegal migration, human smuggling and trafficking: definitional aspects

To begin with, **illegal migration** may be described as a sort of blanket term, including different kinds of illegal and criminal activities associated with migration. A common practice is to get into a country clandestinely, without any notice or inspection. Another practice is to enter a country with the help of false or fraudulent documents. A yet another practice is to enter a country with proper and legal documents, but willfully overstaying the period of legal stay. Often the practice is to enter a country with proper documents, but then violate the terms and conditions of the visa by doing job in the host country. A person, for instance, may decide to enter into another country clandestinely, use fraudulent documents for entrance, overstay or take up a job not allowed by the terms and conditions of the visa. These are acts of illegal migration based on consent or willingness to take the risk.” **Human smuggling**”, Jorgen Carling points out, “is often the result of an agreement between two parties: a prospective immigrant who lacks the opportunity to immigrate legally, and a human smuggler offering his services in the form of forged documents and/or transport against payment and the immigrant gets to enter the country as intended”. (Carling, 2006:9). Contrary to human smuggling, **Trafficking in persons** involves by definition an element of force, coercion, deception and exploitation. Signed in 2000, the UN Palermo Protocol or the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, provides the most widely used definition of trafficking. It is as under: “Trafficking in persons ' shall mean 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 shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs. It is possible that the trafficked persons may travel with legal documents, legally enter the destination states and may then be coerced, intimidated and commanded to do things against their will. Many women, for instance, enter a country as wives and then they are subjected to forced labor including prostitution. Likewise, “**deception and exploitation**”, Bridget Anderson and Julia O’Connell Davidson point out, “are also features of legal labor migration schemes, both during the process of migration and at the point of destination”. They further point out that there is reportedly an increase in the incidence of unpaid wages, confiscated passports, confinement, lack of job training and even violence against migrant workers, even when they may be staying legally in a number of countries and working under various work permit schemes. Anderson and Davidson also maintain that the workers may often be vulnerable to such abuses precisely because they had migrated legally under work permits schemes that tying them to a certain employer. They also say that the Palermo Protocol is not fully successful in resolving as to who should be counted as a ‘trafficked’ person and who shouldn’t as this question is clouded by the fuzzy and unworkable distinction between trafficking, smuggling and migration.

DIFFERENCE BETWEEN TRAFFICKING AND SMUGGLING

Trafficking differs greatly from smuggling, as international bodies and non-governmental organizations are taking pains to point out. Whereas migration through smuggling rings is primarily voluntary and initiated by the potential migrant, trafficking is generally involuntary in nature; victims of trafficking are coerced, sold or at the most rare and extreme, kidnapped into their work. Coercion can take place through deceit, sexual abuse, torture, starvation, imprisonment, and threats of violence against family members, among some tactics used by traffickers. Although many of the women trafficked are aware that they will be migrating, they are deceived about the nature of the work they will be forced to perform, as well as their future working conditions. ‘Traffickers [in Moldova] turn up in a rural community during a drought or before a harvest, when food is scarce, and persuade poor couples to sell their daughters for a small amount of money...Other girls are kidnapped from their homes and orphanages, while many destitute women are lured to foreign lands by assurances of work, income, and visas, only to find themselves forced into prostitution and slave labor. An additional difference between smuggled and trafficked migrants lies in entry to the country of destination. Women who are trafficked to be prostituted enter the countries of transit and destination both through legal and illegal avenues. Through the issuance of tourist and student visas, as well as forged documents, many of the women who will later be exploited pass borders through regular means, while accompanied by their exploiters. This differs greatly from the increasingly common picture of smuggling seen in Europe, with hundreds of immigrants being smuggled past borders by boat or truck. One of the most striking differences between smuggling and trafficking is that, in the vast majority of cases, smuggled adult migrants are male, while trafficked adult migrants are female.

Further, the nature of the action is fundamentally different. Whereas smuggling is an action with the intention to assist in the border crossing (albeit in a sometimes oppressive or life-threatening way, for exorbitant fees) the intention of trafficking is oppression of the victim and the ensuing financial gain following migration. Therefore, the focus of smuggling is entry into the destination country, while the focus of trafficking is the exploitation of the migrant upon arrival. Whereas smugglers have in recent years been demonized by governments as wholly exploitative, for many migrants and asylum-seekers, smugglers are seen as providers of an often expensive service. It is only recently that governments have focused upon the negative aspects of organized crime involvement with migration.

The root causes of migration are similar for both smuggled and trafficked migrants. When immigration is discouraged by governments through visa, financial or passport regulations, determined migrants can turn to illegal means, or are vulnerable to exploiters promising safe passage and opportunities abroad. For women wishing to better their economic situation, the push and pull factors of migration can lead them to accept the assistance of people who intend to exploit them. There is a great deal of overlap in the distinction between smuggled migrants and trafficked migrants. In some cases, trafficked migrants may be smuggled into the country of destination. Additionally, smuggled migrants may be victims of abuse and exploitation similar to that which threatens trafficking victims. However, the general patterns that emerge suggest that different approaches are needed to tackle the problems facing smuggled migrants and trafficked migrants. As governments act to reinforce their commitments to impenetrable borders, policy is being developed to counteract illegal migration. However, due to the exploitation and deceit involved in the presence of trafficking survivors, as well as the substantial difference in their security needs, it is essential that decision makers develop policy that also acknowledges the human rights responsibilities of the host state.

Trafficking in human beings must not be seen primarily or exclusively from the perspective of national security; it must not be viewed merely from the point of view of national protective interests; it must not be seen only as a fight against organized crime and illegal migration. Human trafficking is first and foremost a violation of human rights. The major differences between Trafficking and Smuggling are summarized in **Table-1** below:

Table-1: Differences between Human Trafficking and Smuggling

<u>Trafficking</u>	<u>Smuggling</u>
a) Must contain an element of force, fraud or coercion (actual, perceived or implied), unless under 18 years of age involved in commercial sex acts.	a) The person being smuggled is generally cooperating.
b) Forced labour and/or exploitation	b) There is no actual or implied coercion.
c) Persons trafficked are victims	c) Persons smuggled are violating the law. They are not victims.
d) Enslaved, subjected to limited movement or isolation, or had documents confiscated.	d) Persons are free to leave, change jobs, etc.
e) Need not involve the actual movement of the victim.	e) Facilitates the illegal entry of person(s) from one country to another.
f) No requirement to cross an international border	f) Smuggling always crosses an international border.
g) Person must be involved in labour/ services or commercial sex acts, i.e., must be "working"	g) Person must only be in country or attempting entry illegally.

Source: Human Smuggling and Trafficking Center. January 2005. *Fact Sheet: Distinctions between Human Smuggling and Human Trafficking*. P.4. http://www.gov/crt/crim/smuggling_trafficking_facts.pdf

FEMINIZATION OF POVERTY

‘While trafficking is a human rights issue, it is also a socio-political and economic issue, and cannot be separated from issues of nationality, gender and class inequalities.’ Worldwide, poverty is increasingly and disproportionately affecting women. Of the 1.3 billion absolute poor in the world today, 70% are women and their minor dependents.

This poverty is due, in part, to women's lack of access to formal education and job opportunities in their countries of origin. Further, women fail to fully benefit from market 'reforms' of today's world economic regime due to the lack of economic power in their communities and families. At the same time, women are the principal segment of the population affected by the massive cuts in social spending by governments following structural adjustment or similar reforms. Due to gender inequities and relative powerlessness, 'people who have little to lose may be willing to take great risks'. Women are also increasingly migrating to cities within their own countries. While this most often occurred in the past as women accompanied their partners, women are progressively migrating for economic reasons and finding that formal sector jobs are even more closed to them than to their male counterparts due to their lack of schooling or other discrimination. Therefore, patterns show that the informal sector is largely receiving female internal migrants, and women are taking jobs with a lack of job security or benefits. Female-headed households are also on the increase in the majority world of developing countries, and these households tend to be poorer and support more dependents than male-headed households. This is resulting in what is being called the 'feminization of poverty'.

'Because members of female-headed households are generally restricted to low-productivity informal-sector employment and experience higher dependency burdens, they are more likely to be poor and malnourished and less likely to obtain formal education, health care, or clean water and sanitation.' The internal uprooting, lack of a support network, and increased financial responsibility adds to the vulnerability of women to be recruited by a trafficker, in the hopes of improving her family or personal economic situation. Not only is there a feminization of poverty, but a feminization of migration, as well. Female patterns of migration contribute to the overall patterns outlined previously; women, too are affected by unemployment and poverty, and depend on migrant networks for information regarding how best to migrate to the global north. When one adds into the equation the disproportionately higher levels of poverty among women worldwide, the family responsibility for both their children and elderly relatives, the lack of formal job opportunities in countries of origin and the lower levels of education available to women, it is not surprising that migrant streams which have typically been male are gradually becoming filled by women. The majority of women who migrate internationally do not succumb to traffickers. Discrimination against women continues to affect these migrants during their time outside their country; female migrants generally work in less favorable conditions for less pay than their male counterparts. However, they are able to aid their families financially, and their standings within their own communities tend to increase upon return to their countries of origin. Due to the relative success of female migrants, who depend upon migrant networks for contacts in their countries of destination, as well as housing, transportation and occasionally financial assistance, it is not surprising that other women would put themselves at risk for trafficking by attempting to follow a similar path. Further, due to the stigma attached to prostitution in most countries of origin, repatriated trafficked women discuss the exact nature of their experiences abroad with difficulty, so the risks are not fully understood by other women considering a similar relocation. Trafficking in human beings takes on many forms, such as forced labor, slavery or similar practices, indentured servitude, forced marriage or the sale of organs; and victimizes men, women, boys and girls. However, international attention has focused on the trafficking of women for sexual purposes. In fact, international law addressing trafficking, outlined in the Suppression of Traffic Convention, solely addresses trafficking for the purposes of commercial sexual activity. This has been criticized by anti-trafficking advocates, as the problem of human trafficking additionally involves other oppressed groups. It is however important to address the phenomenon of women prostituted against their will for others' profit and pleasure, if nothing else than for the sheer number of exploited women, and to brace against the impending increase of their number and the corresponding international responsibility to fight against the barbarity of this human rights violation.

DEFINING AND MEASURING XENOPHOBIA

Despite its widespread usage, xenophobia remains an ambiguous term. It is derived from the Greek words 'xenos' and 'phobos' which correspondingly mean strange or foreign and phobia. In the Concise Oxford Dictionary, xenophobia is defined as a morbid dislike of foreigners. Scholars have conceptualized xenophobia in a number of ways. Berezin defines xenophobia as the fear of difference embodied in persons or groups. For Nyamnjoh, xenophobia is the intense dislike, hatred or fear of others. It has been characterized as an attitudinal orientation of hostility against nonnatives in a given population. And, it has been seen as hostility towards strangers and all that is foreign. Another definition views xenophobia as attitudes, prejudices, and behaviour that reject, exclude and often vilify persons based on the perception that they are outsiders or foreigners to the community, society or national identity.

In some explanations, this prejudice extends towards non-citizens and other marginal groups. It can also be directed toward other ethnic minorities, including third or fourth generation descendants of immigrants. Another point of confusion is that xenophobia has been closely tied to racism and persists in newer characterizations of racism. Described as new racism, 'differential racism,' or cultural racism, 'cultural rather than racial differences become the basis of exclusion in newer forms. For others, xenophobia, unlike racism and nationalism, is a spontaneous, natural' biological reaction to strangers. Defined in such terms, xenophobia becomes a ubiquitous phenomenon which is difficult to challenge or confront. A variety of other terms to describe xenophobia have been developed including nativism, ethnocentrism, xeno-racism, Xenophobia is associated with the following:

Xenophobia consists of highly negative perceptions and practices that discriminate against non-citizen groups on the basis of their foreign origin or nationality. It affects all categories of migrants, immigrants, refugees, and asylum-seekers. Different migrant groups may, however, experience xenophobia to varying degrees depending on their cultural, racial and ethnic make-up, class composition, and migrant status. Xenophobia is perpetuated through a dynamic public rhetoric that actively stigmatizes and vilifies some or all migrant groups by playing up the threat posed by their presence and making them scapegoats for social problems. Xenophobia is not simply an attitudinal orientation. Hostile and skewed perceptions of migrant groups generally go hand in hand with discriminatory practices and poor treatment of such groups. Acts of violence, aggression and brutality towards migrant groups represent extreme and escalated forms of xenophobia. Xenophobia is not a natural' response by native populations to the presence of foreigners. Like racism and nationalism, it is a social and political phenomenon that contributes to the marginalization and/or exclusion of migrant groups in social and national settings. Xenophobia is crucially linked to nation-building and nationalism, in particular, its aggressive forms. Other processes of segregation like racism and exclusionary nationalism can often shape xenophobia in distinctive ways, which contributes in part to its resilience. The mixed outcomes of immigration for host populations make xenophobia an exceptionally difficult and sensitive topic.

GLOBAL SCENARIO

Migratory trends

To begin with, human beings have always been on the move and their migration due to a variety of factors including wars, conflicts, violence, environmental hazards, hunger, disease, indignity and quest for a better future have been both voluntary and forced and regulated and unregulated. In the recent times, the period between 1870 and the First World War witnessed migration on a massive scale and more than 50 million Europeans left Europe for USA, Canada, Latin America, Australia and New Zealand. In addition, some 50 million immigrants from Asia moved to West Indies, Africa and elsewhere. Things have changed a lot during the last forty years or so. Furthermore, the number of international migrants has considerably increased. According to a UN estimate, the number more than doubled during the past 40 years. Presently, there are 191 million international migrants worldwide (defined as people living outside their country of birth for at least 12 months), nearly two and a half times the figure in 1965. Terming the growth in the number of people migrating over the last thirty years as 'striking', Catherine Withol de Wenden lists the figure thus: 77 million in 1965, 111 million in 1990; 140 million in 1997, 150 million in 2000, and 190 million at present (Withol de Wenden, 2007:55). This figure includes the Bangladeshis and Pakistanis living and working in foreign countries, including Saudi Arabia, Libya, United Arab Emirates (UAE), Great Britain, USA, Canada, Malaysia and Japan. Again, and as pointed out by Withol de Wenden, migration-until recently-was confined to a small number of host countries and regions of origin, often connected by a colonial past, but now the "migratory trajectories are globalizing: the number of countries of destination and origin is constantly increasing, gradually blurring the importance of former colonial links and changing the bilateral nature of migratory flows". Another important characteristic is the increasing feminization of migration. Almost half of all migrants are women (49.6%), with only slightly more working in the developed than in the developing countries. More women are now migrants than men in every region of the world, except in Africa and Asia. Again, more women are now migrating on their own as the primary bread earners for their families. Among the migrant women are skilled workers working especially in the health and education sectors, but majority of them work in low- skilled sectors like domestic service, manufacturing and entertainment. While the Pakistani society is still not very favorably disposed towards sending the female workers abroad to work, Bangladesh has, in fact, been encouraging its female population to go and work abroad. However, Pakistan is believed to be an attractive place for the sale of Bangladeshi women and children and women and young children belonging to other countries. The country is also attractive for their legal and illegal transfer to the Gulf and beyond for slave labor and commercial sexual exploitation.

However, while feminization of Bangladeshis' regulated migration is quite visible, the increasing feminization of Bangladeshis' illegal migration is not so much visible. A yet another feature of contemporary migration is the significant rise in South-South migration. Dilip Ratha and William Shaw estimate that 74 million, i.e. nearly half of the current international migrants from developing countries reside in other developing countries and 80 per cent of South-South migration takes place between countries with contiguous borders. A prominent scholar on migration, Stephen Castels, contests this estimate. According to him, sixty per cent of the migrants now live in the developed world and three in ten persons are migrants there, compared with one in 70 in the developing countries. Pointing out that the number of migrants increased by 14 per cent during the 1990s, he observed: "The total net growth took place in developed countries: Europe, North America, Australia, New Zealand and Japan registered an increase in migrant stock of 23 million, while the migrant population of less-developed regions fell by 2 million". As such, "the trend is towards an acceleration of South-North migration". Likewise Withol de Wanden says that "migration is unevenly distributed around the world" and "90 per cent of the world's migrants live in just fifty-five countries, mostly in the industrialized nations". One may, however, add here that most of the developed countries are thinly populated. As such, the impact factor of the arriving migrants on them is much more in comparison to impact factor on the developing countries having large local population. Again, the dissolution of the Soviet Union and Yugoslavia and opening of the world around the former Soviet satellites in Eastern Europe had caused significant population movements in Europe in the 1990s. This migratory pattern is much more stabilized now. An argument put forward in support of legal and illegal migration to the West from the developing world to the West is based on historical experience. The argument, in brief, is: We have a right to go and settle down in the West, because the West had colonized us for two hundred years or more.

In contrast, the developing regions are now experiencing the increasing pressure of the populations on the move. "The number of people legally crossing borders throughout the Southern African region has", according to Sally Peberdy and Jonathan Crush, "exploded in the last decade". They point out that the annual number of border crossing in South Africa by visitors increased from around 1 million to over 6.5 million between 1990 and 2002 and Africans constituted the overwhelming majority of these visitors. To be more specific, border crossing into South Africa by African visitors increased from 550,000 in 1990 to over 4.5 million in 2002. Likewise, large-scale population movement has taken place in different Asian regions in the recent years. In the Gulf Cooperation Council(GCC) subsystem, for example, the foreign population increased from 8.6 million in 1990 to 12.8 million in 2005. It registered an increase of 48.5 per cent. Among the Gulf states, the proportion of foreigners to total population of Saudi Arabia is 25.9 per cent, that for Kuwait 62.1 per cent and 71.4 per cent for the UAE. The Bangladeshis and Pakistanis constitute a significant proportion of the migrants living and working in this region and this also includes those Bangladeshis and Pakistanis who illegally migrated to the Gulf or who were smuggled or trafficked into the region. The Indo-Chinese system is another Asian region hosting a large number of foreigners. This region includes important host countries like Singapore, Malaysia and Thailand. There is a high proportion of migrants in the labour force of these countries: Singapore (28 per cent) and Malaysia (16 per cent). Putting it differently, Singapore had 1.8 million foreigners and at least 600,000 migrants in 2006, and as of July 2006, some 1,823,431 foreign workers from 22 countries were employed in Malaysia. Many of the foreign workers in these countries are from Bangladesh and Pakistan. South Asia is another Asian region where there is a large concentration of migrant workers, refugees, IDPs, illegal migrants and smuggled and trafficked people. Among the countries of the region, India and Pakistan together host a large number of such people. Of course, illegal migration includes human smuggling and trafficking, but one should note that while all trafficking and human smuggling are essentially illegal, all illegal migration is not human smuggling, nor is it trafficking. Mean Costs due to Global Migration for various routes are shown in **Table-2** below:

Table-2: Global Costs of Human Trafficking and Smuggling

<u>Routes</u>	<u>Mean costs (US \$)</u>
Asia-Americas	26, 04
Europe-Asia	16, 462
Asia-Australasia	14, 011
Asia-Asia	12, 240
Asia-Europe	9, 374
Europe-Australasia	7, 400
Africa-Europe	6, 533
Europe-Americas	6, 389
Americas-Europe	4, 528
Americas-Americas	2, 984
Europe-Europe	2, 708
Africa-Americas	2, 200
Africa-Australasia	1, 951
Africa-Africa	203

Source: Petros, Melanie Petros. 2005. 'The costs of human smuggling and trafficking', Global Migration Perspectives No. 31, Global Commission on International Migration(GCIM), PP.4-5. www.gcim.org/attachments/GMP%20No%2031.pdf

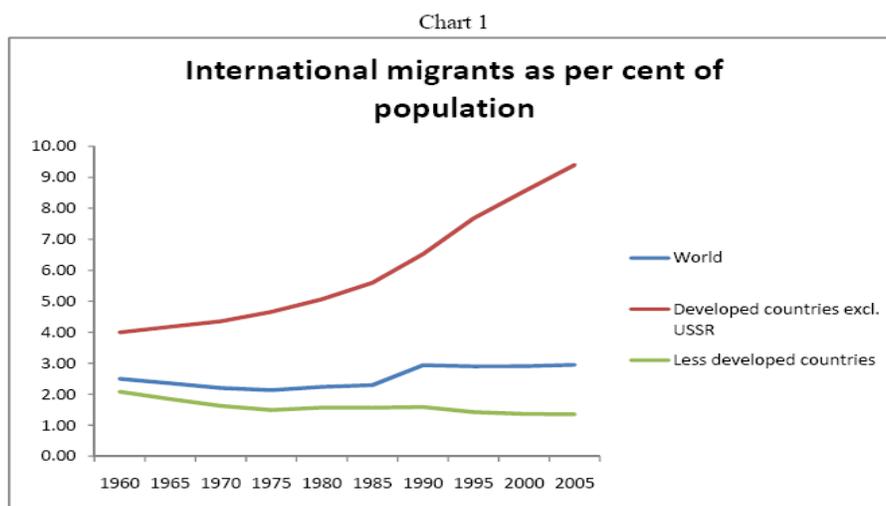
Recent patterns of women's migration

The regional patterns over time show substantial variation even in terms of the proportion of female migrants. The evidence on some of the more significant destination regions is described in **Table-3** and the respective trends are indicated by the charts below:

Table-3: International Migrants by Regions

	Share of all international migrants (per cent)		Share of all women migrants (per cent)	
	1990	2005	1990	2005
Northern America	17.81	23.34	18.54	23.74
Western Europe	10.28	11.58	9.95	11.70
Southern Europe	2.60	5.62	2.84	5.83
Northern Europe	3.43	4.27	3.61	4.58
Eastern Europe	1.36	0.96	1.55	1.09
Western Asia	9.63	11.93	7.60	9.24
Other Asia	17.41	13.30	16.16	12.80
Oceania	3.07	2.64	3.07	2.73
Former USSR	19.36	13.93	22.24	16.20
Latin America & Caribbean	4.50	3.48	4.57	3.53
Africa	10.55	8.95	9.88	8.56

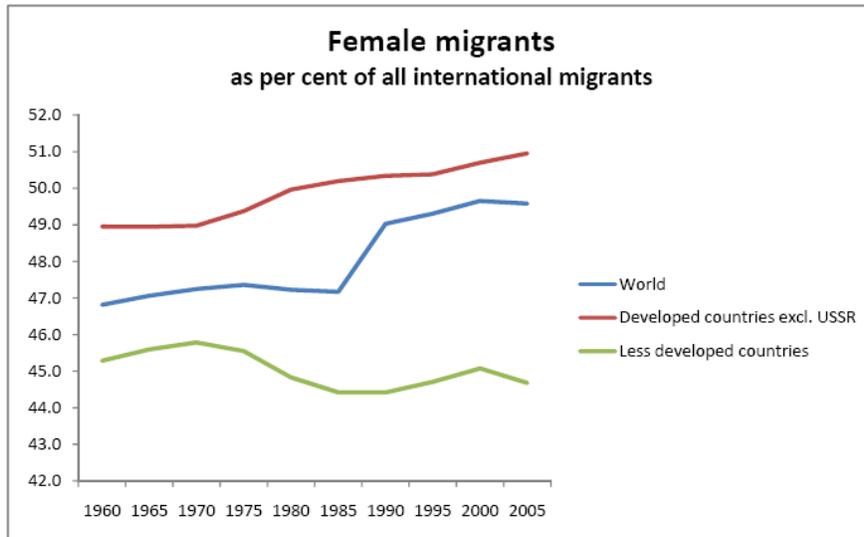
Chart -1 shows that recorded international migration remained relatively constant as a share of the total population of the world. However, this average figure hides substantial differences between developed and developing countries: for the developed world (excluding the former USSR) has increased quite significantly as a proportion of the total population, and indeed more than doubled between 1960 and 2005, from 4 per cent to nearly 10 per cent. However, for less developed countries, the proportion of migrants in population, which was already quite low at around 2 per cent, had fallen to only 1.35 per cent by 2005. *It should be noted that the data in this and subsequent tables and charts are based on official data on recorded permanent immigrants (including those with refugee status) and therefore are likely to underestimate actual migration, which also includes many irregular migrants and shortterm migrants.*



Source for this and subsequent charts and tables: UN-DESA Migrant Stock database

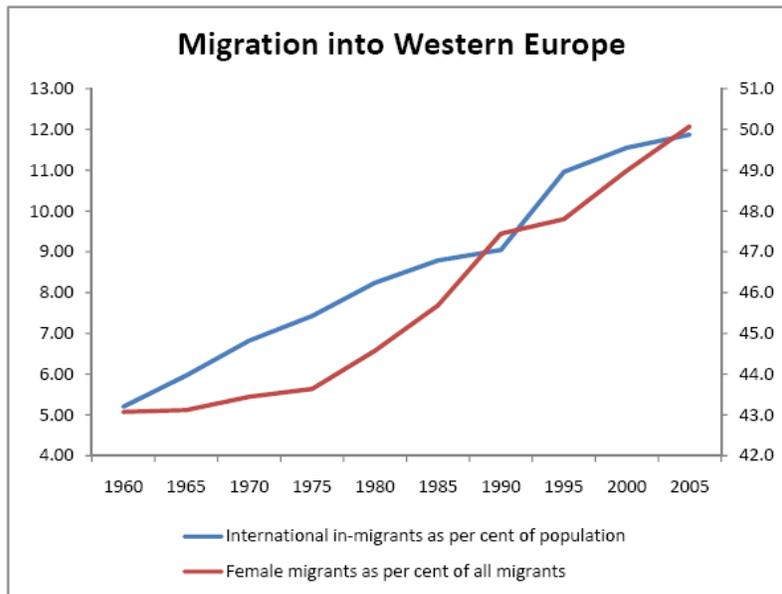
Chart 2 provides some indication of the quantitative significance of women immigrants in the total stock of immigrants in 1970 and 2000. Within this overall pattern, there are significant differences by region, and a few regions and countries account for the bulk of both total and female migrants. **Table-3** shows that Northern America, Western Europe and Asia accounted for 55 per cent of the stock of all migrants in 1990 and this proportion grew to more than 60 per cent in 2005. The share of these regions in the stock of female migrants has been slightly less, at 52 per cent and 57.5 per cent in these two years.

Chart 2



As **Chart 3** shows, both the proportion of migrants to total population (left hand scale) and the share of women migrants (right hand scale) in western Europe have increased steadily since the early 1970s. Nearly one out of every eight residents in this region is a migrant, and around half of them are now women.

Chart 3



A similar trajectory is evident for northern Europe, as shown in **Chart 4**, where more than 53 per cent of recorded permanent migrants are women and where the trends have been of continuous increase. However, in southern Europe, indicated in **Chart 5**, in-migration appears to have been a more recent phenomenon, rising sharply in share of population since the early 1990s and nearly doubling between 1995 and 2005. (This is exemplified by the case of Italy, which moved from being a net emigration country to a net immigration country only in the late 1980s, and subsequently has experienced a dramatic rise in immigration.) Unlike other parts of Europe, however, the share of women migrants appears to have fallen as the total migrants have increased. Eastern Europe has moved from being a region of net in-migration to one of net out-migration.

Chart 4

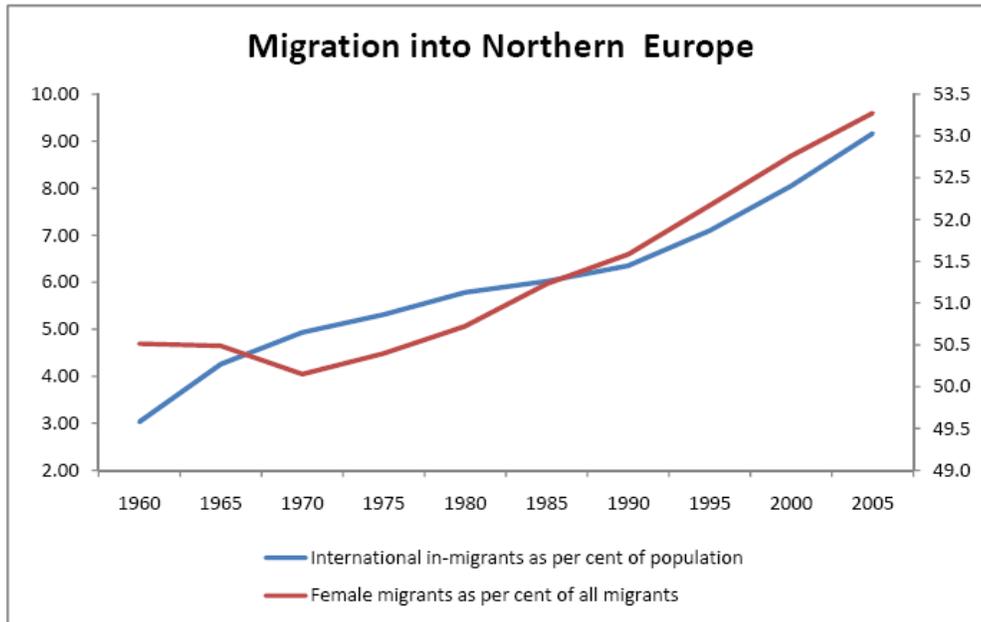
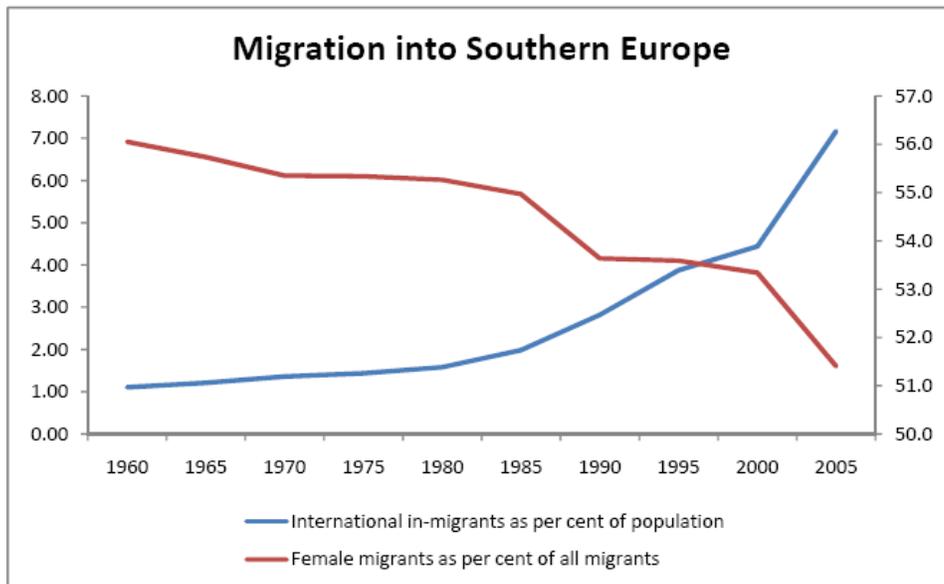
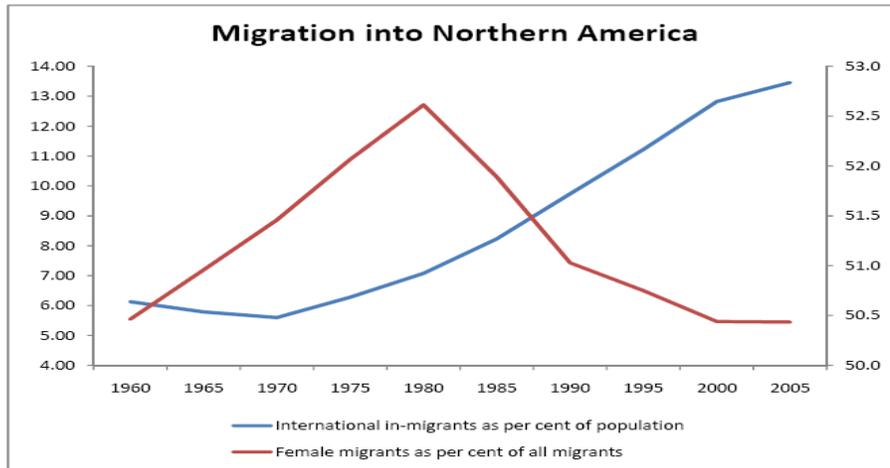


Chart 5



Northern America – essentially the USA and Canada – (**Chart-6**) shows a pattern similar to that of southern Europe, with a significant increase in migrants as a proportion of population especially between 1990 and 2000, with a subsequent tapering off by 2005 as immigration rules have been tightened. Note that these data obviously exclude the presumably large numbers of illegal migrants into these countries, who are likely to be dominantly male. The proportion of females among the legal migrants has fallen since 1980s, but still remains more than half.

Chart 6



Australia and New Zealand (**Chart 7**) still account for relatively small shares of the total number of permanent migrants, as **Table-3** showed, but in terms of their own population they became significant destination countries especially from the early 1980s. At the peak in 1990, permanent migrants accounted for more than one-fifth of the resident population. The share of women in such migration has increased steadily and quite substantially, such that they are now nearly 52 per cent of all migrants. The share of migrants in total population has subsequently fallen to less than 20 per cent. But even so, in 2005, one out of every five resident women in Australia and one out of six in New Zealand were likely to be women. Migration into West Asia (**Chart 8**) shows somewhat different characteristics. Here too, rates of migration are high compared to total population, but since migration into these countries is typically strictly regulated and closely monitored, there is likely to be less illegal or irregular migration, and the data are more likely to capture non-permanent migration, in the form of contractual migration for work for periods of a few years. The proportion of females in such migration is relatively low compared to the other regions of high immigration, and furthermore seems to have declined over time. This reflects a relative rather than an absolute decline: the number of female migrants in this region has nearly doubled between 1985 and 2005.

Chart 7

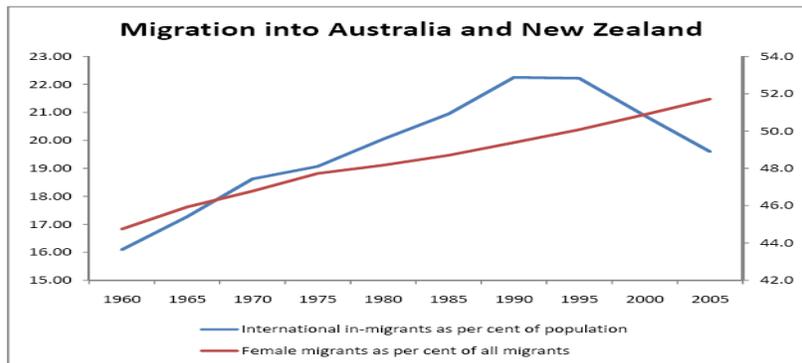
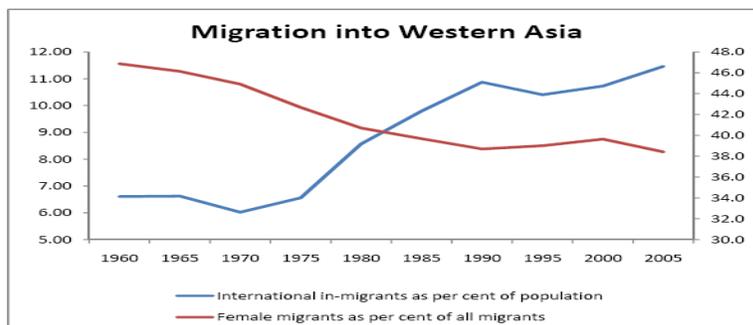


Chart 8



Features of women's migration

While female migration is now more recognised, there are still some common stereotypes about its nature: that it is mostly women and girls accompanying their male heads of household, or dominantly by young, unmarried women, mostly for marriage or for some defined work enabled by contractors. Yet the migration of women for reasons other than marriage is both more widespread and more complex than is often suspected. Indeed, there is a remarkable diversity of migration patterns among women, and such diversity has increased along with recent economic and social changes in both sending and receiving locations. Women migrate for long and short periods, over short and long distances. They move for many reasons, of which marriage is only one and among which work is becoming increasingly significant. Young women dominate in migration, but older women migrate as well. They move with or without their families. Both single and married women migrate. Indeed, there is growing evidence of women who have borne children moving for work, leaving the care of their children with family members who remain at home. Migration patterns are highly gendered, in terms of the causes and consequences of movement. A large part of female migration, whether internal or across borders, is for purposes of marriage or because the husband is moving. But international migration for work shows clear demarcations and separate niches for male and female labour. Male migrants tend to be concentrated in the production and construction sectors, and to a much lesser extent in service activities. Female migrants, by contrast, are dominantly found to be working in specific service activities – in the domestic work and care sectors, as well as in entertainment work.

INDIAN SCENARIO

Human trafficking has been defined as the commercial trade of human beings, who are subjected to involuntary acts such as begging, prostitution or forced labour. The United States (US) has placed India on the Tier-2 Watch List for human trafficking for the 5th consecutive year as India has failed to take effective measure in combating it. According to its report, India is a source, destination, and transit country for men, women, and children trafficked for the purposes of forced labour and commercial sexual exploitation. The report also says that the numbers of persons affected could be anywhere between 20 to 65 million. According to some estimates, the estimated annual turnover of human trafficking in India is around 20 billion rupees. What is distressing is that out of the total number of persons affected by human trafficking; as many as 80 per cent are women and 50 per cent are children (all the persons below 18 years of age come in the category of children).

The causes are obvious. Despite 60 years of independence, the benefits of economic development have not trickled down to the marginalized sections of the society and millions of people still live below the poverty line. The poverty and hunger makes children and women belonging to the poor sections of the society highly vulnerable to human trafficking. In case of India, social and religious practices too have been a big cause of trafficking in India. Article 23 under Part 3 (Fundamental Rights) of the Indian constitution prohibits trafficking of human beings in the territory of India. There are also more than 20 provisions in the Indian Penal Code, 1860 which deal with various aspects of human trafficking. But despite all this, there is an inexplicable apathy in the approach of law enforcement agencies when it comes to dealing with human trafficking. The government of India has undertaken several measures in the past to combat this menace. The Ministry of Women and Child Development was made the nodal agency by the government to deal with human trafficking in India. A nodal cell against human trafficking has been constituted in the Ministry of Home Affairs. The National Human Rights Commission has formulated an integrated plan of action to prevent and combat human trafficking with special focus on women and children. However there is still a lack of clarity in government policies with regard to human trafficking. The existing laws have not been properly defined and there are several loopholes in them due to which the perpetrators of human trafficking escape from being punished.

To combat human trafficking, several short-term and long-term measures are needed to be taken up at all levels. There is an urgent need to create awareness among the public about human trafficking. Media can play a very effective role here. Poverty alleviation measures too will help in combating it in the long run. Since India is also a transit point for human trafficking, the government should take speedy measures to secure India's borders by completing its fencing and ensuring strict vigil. There is a need to develop an institutionalized system of co-ordination between the law enforcement agencies and non governmental organizations (NGOs) who sometimes prove to be more effective than government agencies in exposing human trafficking networks. There is a need to have greater co-ordination between different states in India as trafficking has a long trail from the source point to the destination with several transit points in between.

Investigation in the cases involving human trafficking should be carried out with the aim to destroy this long trail. Increased co-ordination between government departments like police, public welfare, health, women and child is required to ensure an effective response. Government and NGOs should work together to ensure post-rescue rehabilitation of the victims in terms of providing them healthcare, education and other employment opportunities.

The scourge of human trafficking in India

Measures to control human trafficking have met with little success for a variety of reasons. The law could address not all of these; society has to contribute its mite to address the problem. Fortunately things are looking up.

The cause of trafficking is two-dimensional. One is the demand factor and the other is the vulnerability of the person being victimized. More the demand, more the crime. The vulnerability of the trafficked victim is another dimension. Vulnerability, as often quoted, is not exactly attributable to poverty. It is a culmination of several factors, including awareness of rights, lack of access to rights, illiteracy, disparities of income, the scope for exploitation of the victim, poor law enforcement, lack of public awareness and the "culture of silence" to violation of rights of others. Article 23 of the Constitution of India prohibits trafficking in any form. We have special legislations like the Immoral Traffic Prevention Act (ITPA), 1956, the Bonded Labour System (Abolition) Act, 1976 and the Juvenile Justice (Care and Protection) Act, 2000. The law enforcement scenario, seen from the traditional viewpoint, presents a dismal picture. Research conducted by the National Human Rights Commission during 2002-2004 shows that the major issues in law enforcement are as follows:

- **Lack of priority**-The law enforcement agencies and justice delivery agencies, for various reasons, accord lowest or nil priority to HT issues.
- **Insensitivity**-The lack of sensitivity to human trafficking is a major challenge. It is more of an attitudinal issue.
- **Victimisation of the victim**-More often, the trafficked women have been arrested and penalized for 'soliciting'.
- **4 Improper Investigation**-trafficking involves a long trail, starting from the source point, covering several transit points before terminating at the destination. But the investigation is more or less confined to the place where the victim is rescued. Victims remain more often unheard and unrepresented.
- **Organised crime perspective is lacking in investigation**- HT involves several offenders like recruiters, transporters, traffickers, harbourers, exploiters and conspirators. But often, investigation is limited to those present at the scene of rescue. Human trafficking being an organized crime requires sharing of intelligence and an in-depth investigation into all linkages but this is rarely done.
- **Lack of co-ordination**-The response to human trafficking requires co-ordination among the various government departments, like police, public welfare, health, women and child. The gap in co-ordination is a major challenge to the response system.
- **Lack of coordination with NGO's**- The ITPA and labour laws do assign specific role to NGO's; however there is no institutionalized system of co-ordination between the law enforcement agencies and NGO's.
- **Lack of Appreciation**-Several instances of good work done by the police officers, researchers, NGO's, etc, in controlling human trafficking can be cited. However such actions are not acknowledged and disseminated; often good news is no news and bad news is good news.
- **Lack of Emphasis on Rehabilitation**- This is a major challenge which leads to not only victimization of victims but also re-trafficking of the rescued person. Despite the fact that several corporates set aside large funds for social responsibility, lack of synergy with the law enforcement agencies and NGO's has been an impediment in effective dovetailing of such sources for rehabilitating the victim.

However, the emerging scenario is certainly positive. There are several initiatives launched across the country to address human trafficking in a comprehensive and effective manner. Some of these initiatives may be initiated by individuals who are committed to the cause and due to their initiatives, such steps are getting institutionalised. In fact, during the last six years of this century, there has been a growing momentum against human trafficking. The reasons may be many. First of all, credit should go to NGOs who have brought the HT issue into the national agenda. Secondly, several law enforcement officers and human rights activists have provided leadership and proper orientation in achieving better results in anti-human trafficking (AHT).

Elements Essential to a National Anti-Trafficking Plan:

Five major elements essential to an effective national antitrafficking plan have been suggested as under:. It is by no means an exhaustive list of all of the components needed for an effective anti-trafficking strategy at the national level.

Nonetheless, it is comprised of most of the elements needed for an effective criminal justice framework to address human trafficking as a crime, while still basing this approach on the respect for human rights norms and standards.

Element One: Getting the Definition Right

Setting a Comprehensive Definition for Human Trafficking

Due to all of the conceptual ambiguities surrounding the issue of human trafficking, the most crucial component of an effective anti-trafficking strategy must be in its definition of what constitutes this crime. Although the crime of human trafficking has been defined very comprehensively by the Protocol, many national laws do not take such an expansive view. For example, Article 23(1) of the Indian Constitution of 1950 placed a prohibition on human trafficking and forced labor but only stated: "Traffic in human beings and begging and other forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law." Because human trafficking in India is mainly for prostitution, most of the provisions in the Indian Penal Code of 1860 related to human trafficking are mainly those that focus on forced prostitution. Section 366 of the Penal Code on kidnapping or abducting women can be applied to traffickers, even without its specific reference to the illicit trafficking in women and girls for forced prostitution: Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

Following the ratification of the 1949 Convention, the Indian Government passed the Suppression of Immoral Traffic in Women and Girls Act of 1956 (SITA).¹⁶⁵ This Act was amended in 1986 and is now known as the Immoral Traffic in Persons (Prevention) Act, or commonly referred to as the PITA Act. SITA, however, was confined only to the trafficking in women and girls for forced prostitution, and it excluded males from its protective regime. The PITA Act did not have a definition of human trafficking, even though it called on the central government to establish special trafficking police to investigate any offenses relating to the sexual exploitation of persons committed in more than one State. Similar to SITA, the PITA Act focused on the issue of prostitution, although it did extend the protective regime to include trafficking in boys, and made penalties more stringent for convicted traffickers. In early 2002, the seven member states of the South Asian Association for Regional Cooperation (SAARC), including India, signed the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.¹⁶⁷ Even though the SAARC Convention represents an important step in terms of contributing to more cross-border SITA went beyond the scope of the 1949 International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others by penalizing the prostituted woman in certain cases. Hence although India's stand was not prohibitionist when it comes to commercial prostitution, SITA did not benefit trafficked victim groups of forced prostitution.

Section 2(f) of SITA defined prostitution as "the act of a female who offers her body for promiscuous sexual intercourse for hire, whether in money or in kind, and whether offered immediately or otherwise, and the expression prostitute shall be construed accordingly." The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. Signed by representative of Bangladesh, India, Nepal, Bhutan, Maldives, Pakistan, and Sri Lanka on 5 January 2002 [hereinafter the SAARC Convention]. First of all, the SAARC Convention limits the protective regime to only women and children by defining trafficking as "the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking." Furthermore, the SAARC Convention only defines 'persons subjected to trafficking' as "women and children victimised or forced into prostitution by the traffickers by deceptions, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means." This definition of trafficked victims also excludes the component of "the abuse of power or of a position of vulnerability" as one of the dynamics driving trafficking, which is in marked contrast to the Protocol. Thus, these concerns have led many human rights lawyers to view the SAARC Convention as a protective regime that is actually weaker than the new international standard on human trafficking.

As such, some have even argued for the PITA Act to continue to remain in force in India, albeit with amendments, until a more progressive regional or domestic framework that parallels the Protocol at the international level can be established. The abuse of power is one component of the definition of human trafficking from the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

Element Two: Penalize the Traffickers, Not the Trafficked

Prosecution of Traffickers Must Be Based Upon Adequate Criminal Provisions

In essence, any successful prosecution of traffickers must be based upon adequate criminal provisions that seek to punish traffickers and do not provide any legal lacunae under which a conviction would be made more unlikely. In this regard, the Indian Penal Code provides a good example of the types of legal lacunae that the defense for the alleged traffickers could use to evade criminal prosecution. India's Penal Code has strict provisions intended to punish the traffickers of girls into the sex trade. Section 366A of the Penal Code punishes domestic traffickers, who transport girls from one part of India to another, while Section 366B makes it an offense for anyone to import into India girls below the age of twenty-one years for the purpose of prostitution: Whoever, by any means whatsoever, induces any minor girl under the age of eighteen (18) years to go from one place [within India] or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

Both Sections 366A and 366B, however, are not strict prohibitions against trafficking because they require the intention or knowledge that such girls will be forced or seduced to have illicit intercourse with a person. It is possible that if a girl, even if she is not yet 18, is forced to prostitution and is coerced, encouraged, or assisted by someone to continue to stay in the trade due to the lack of other options, then the original trafficker has not committed an offense under this section. This is because this law could be interpreted to mean that the trafficker, who 'only' procured and transported the girl, acted without the explicit intent and knowledge that she will be forced or seduced to illicit intercourse. In reality, the absolute link of intent between traffickers and the brothels owners can be extremely difficult to establish, as the money is frequently transferred clandestinely and without witnesses. At the same time, the network of organized criminal groups may be sophisticated enough to have different contact persons as the victim is transported from her original community to the place of commercial sexual exploitation. For these cases, the prosecution of traffickers may be hampered by the difficulty and certainty in which the allegation of intent can be proven.

Element Three: Professionalize the Police

Face the Issue of Police Corruption

No other single issue besides corruption within the police causes as much disaccord between authorities and non-governmental organizations and generates as much controversy. There are even allegations that some police officers directly patronize brothels where trafficked women work, despite their knowledge of the coercive conditions under which this trade is conducted. There also have been serious allegations that some officers are on the direct payroll of brothels and are receiving *haftas*, or bribes, from brothel owners. One author describes it as an official tolerance that allows human trafficking to continue with impunity, as "many brothels set aside a significant proportion of their income to pay off the police." One survey conducted in Delhi on behalf of the Indian National Commission for Women found that police authorities took around 20% of the fee that customers paid to brothel owners for each session. There also have been allegations that the Indian police seldom investigate cases of clandestine cross-border trafficking in women and girls. The basic structure of this exploitative system continues to flourish, and trafficked women and children remain vulnerable to corruption within law enforcement. Consequently, female trafficking in India persists as a large organized operation, involving regional criminal groups with links to law enforcement agencies. As described by the UN Special Rapporteur on Violence Against Women: Police corruption in the trafficking process was an issue that was constantly raised by women's groups and women victims of trafficking.

Element Four: Make the Judiciary More Responsive

Priority Must Be to Reduce the Backlog of Human Trafficking Cases

A positive aspect, however, is that the judiciary in India is not plagued by allegations of corruption. It generally enjoys a widely-held reputation of being independent and acting as a strong advocate for human rights, especially as it pertains to economic and social rights and women's rights. The problem, as this senior police officer admits, is that there are not enough judges to deal with all the cases that appear before the court.

Consequently, cases linger before the court for anywhere between five to twelve years, thus rendering it impossible for police to provide witness protection to the trafficked victims and other witnesses for such a lengthy period of time. Due to the inability of the court to expedite these cases, most cases relating to human trafficking result in acquittals, as it becomes more difficult with each passing year for the prosecution to secure testimonies from victims and witnesses against alleged traffickers. Moreover, this problem is exacerbated by the difficulties in identifying the whereabouts of these traffickers after cases are prepared against them and submitted to the court. Traffickers can change their names and addresses and continue to recruit more victims in other cities and regions. The police then cannot trace and bring them back to stand trial for alleged trafficking offenses committed sometimes more than a decade ago. These testimonies point to the urgent need in which human trafficking cases must be expedited through the judicial process. If this is not done, then the perceived unresponsiveness of the judiciary to prosecute human trafficking cases will remain and will discourage serious efforts by law enforcement officials to investigate alleged incidents of human trafficking.

Element Five: Establishing a Human Rights Normative Framework

Ratify International Human Rights Treaties

The most serious problem confronting human trafficking in terms of national law enforcement is that often it does not operate within a human rights framework. The trafficked victims are often revictimized when they are arrested, detained, and prosecuted as those who have violated the laws of the country. If the victims are from abroad, then they are even more likely to be charged with an immigration offense. What this points to is that countries frequently do not have a strong human rights normative framework in place to combat human trafficking. Even if anti-trafficking laws are in place, as in the case of India, they may not adhere to international norms, or they are poorly enforced on the ground. In this context, even for countries that have signed and ratified important international human rights treaties related to human trafficking, they may have entered reservations to these treaties in a way that impedes their effective implementation at the Domestic level. One such example is the case of India and the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), which India ratified in 1993. CEDAW provides a strong normative framework of non-discrimination for India’s efforts against the trafficking of women and girls for forced prostitution. Article 6 of CEDAW required State Parties to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.” However, when India ratified CEDAW, it entered into a reservation on the articles relating to discrimination within cultural and customary practices, and to equality in marriage and family relations.

On these two important provisions dealing with gender discrimination in the private sphere of a woman’s family life, India entered into a reservation stating that “it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent.” Therefore, many human rights organizations have questioned the impact of CEDAW on the situation of gender inequality in India if its domestic legislations incompatible with CEDAW cannot be challenged under the protective framework of an international human rights treaty. Many have argued that, with its reservations on articles 5 and 16 of CEDAW, the Indian Government has adopted a strategy of passive inaction on discrimination in women’s private lives. At the same time, India’s reservations also undermine the goals of CEDAW for Contracting Parties to eliminate all “prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” AHT is an area, which beckons all those who are concerned with human rights. There is much to do and something to be done by everybody. It is everybody’s business. The question is whether one is a part of the problem or part of the solution. There is no third option. Therefore, all who are committed to human rights must join hands in this global initiative to fight human trafficking.

XENOPHOBIA IN INDIA

Rising xenophobic antagonism in India has been directed almost exclusively at irregular migrants from neighbouring Bangladesh, who are increasingly viewed as a threat to national well-being and security. In April 2008, a report by the Parliamentary Standing Committee on Home Affairs declared that “a large presence of illegal Bangladeshi immigrants poses a grave threat to the internal security [of India] and it should be viewed strongly. Citing media reports on Bangladeshi insurgent groups’ involvement in recent terrorist acts in India, the 25-member committee recommended that the movement of Bangladeshi migrants into the country should be strictly monitored.”

The conclusion of the committee was not unexpected, especially since it was headed by Bangladeshi migrants pose threat to internal security: report', Bharatiya Janata Party (BJP) and its cohort of far right Hindu nationalist parties have, since the early 1990s, vigorously advocated the large-scale expulsion of irregular, largely Muslim, migrants from Bangladesh. Even so, the observations of the Parliamentary Standing Committee reflect the general mood in India which has become increasingly belligerent and intolerant of the migrants' presence. Given their informal and irregular character, there is virtually no accurate or reliable data on these migrations. Using Indian Census data on place of birth' and place of last residence,' a recent study estimates that in 2001 there were some 3.1 to 3.7 million Bangladeshis in India. On the other hand, estimates by government agencies, journalists and the Hindu right have proffered ever-growing and often staggering numbers. In 2004, Union Minister of State for Home Shriprakash Jaiswal informed Rajya Sabha (Upper House of the Indian Parliament) that there were more than 12 million Bangladeshis' residing illegally' in the country. The Indian Border Security Force (BSF) reportedly estimates that between 1972 and 2005, some 1.2 million Bangladeshis who entered India on tourist visas failed to leave the country.

Even a recent World Bank study contends that in terms of flows, the Indo-Bangladesh corridor is one of the most active globally, coming a close second to flows across the US-Mexican border. The highest estimates have, however, not surprisingly been presented by Hindu nationalist groups such as the BJP. In 2003, the BJP and its cohorts claimed that there were some 20 million irregular Bangladeshis living in India. Although the continuing migration of Bangladeshis into India has become a highly contentious issue in contemporary times, xenophobic programs occurred in previous decades in north-eastern provinces. Because of their proximity to Bangladesh, these provinces are believed to have received the largest flows of migrants. In the past as well, substantial numbers of refugees moved into these states from the erstwhile East Bengal (now Bangladesh) during the partition of the Indian sub-continent (into India and East and West Pakistan in 1947) and subsequent formation of an independent nation-state of Bangladesh (in 1971). The long histories of anti-immigrant tendencies in these areas have not been systematically researched or documented. Nevertheless, a long-standing pattern of hostility towards Bengali speakers has some resonance in the current antipathy towards irregular Bangladeshi migrants. There has been a marked tendency to conflate earlier groups of Bengali migrants/refugees with newer irregular migrants from Bangladesh. Bangal Kheda movement (drive away Bengalis) in Assam from the late 1940s onwards, provoked by the demographic and cultural changes linked to the entry of Bengali-speaking populations from the east.

In the 1960s, many Bengali Hindus fled Assam and moved to other provinces like West Bengal and Tripura. Anti-Bengali violence was witnessed as well in neighbouring Meghalaya during the decades of the 1980s and 1990s. Between 1979-84, the All Assam Students Union (AASU) spearheaded an anti-foreigners' movement in Assam opposing the entry of irregular Bangladeshis. It also demanded the expulsion of all people of Bengali descent who had entered its territories after 1951. At the height of the movement, close to 2,000 Bengali-speaking Muslim immigrants were brutally massacred in Nellie. The violence reportedly first broke out over the alleged abduction and rape of Assamese tribal Tiwa women by Bengali Muslim migrants. It also unleashed the simmering resentment against the settlement onto tribal lands of Bengali *miyas* from Mymensingh district of East Bengal. To this day, the strongest expressions of xenophobia against migrant Bangladeshis are being witnessed in north-eastern provinces. Scholars like Hazarika have argued that in these insurgent-prone, socially and politically unstable areas, the continuous entry of substantial numbers of Bangladeshi migrants rapidly aggravates these divisive, aggressive tendencies. Moreover, escalating anxieties about threatened cultural or linguistic identities provide a powerful motivating force.

Concluding observations of the Committee on the Elimination of Racial Discrimination: INDIA: 17/09/96.

The Committee regrets that the report and the delegation claim that the situation of the scheduled castes and scheduled tribes does not fall within the scope of the Convention. The Committee states that the term "descent" mentioned in article 1 of the Convention does not solely refer to race. The Committee affirms that the situation of the scheduled castes and scheduled tribes falls within the scope of the Convention. It emphasizes its great concern that within the discussion of the report, there was no inclination on the side of the State party to reconsider its position. It is noted that although constitutional provisions and legal texts exist to abolish untouchability and to protect the members of the scheduled castes and tribes, and although social and educational policies have been adopted to improve the situation of members of scheduled castes and tribes and to protect them from abuses, widespread discrimination against them and the relative impunity of those who abuse them point to the limited effect of these measures.

The Committee is particularly concerned at reports that people belonging to the scheduled castes and tribes are often prevented from using public wells or from entering cafés or restaurants and that their children are sometimes separated from other children in schools, in violation of article 5 (f) of the Convention. The Committee recommends that the State party continue and strengthen its efforts to improve the effectiveness of measures aimed at guaranteeing to all groups of the population, and especially to the members of the scheduled castes and scheduled tribes, the full enjoyment of their civil, cultural, economic, political and social rights, as mentioned in article 5 of the Convention. The Committee recommends that special measures be taken by the authorities to prevent acts of discrimination towards persons belonging to the scheduled castes and scheduled tribes, and, in cases where such acts have been committed, to conduct thorough investigations, to punish those found responsible and to provide just and adequate reparation to the victims. In this regard, the Committee particularly stresses the importance of the equal enjoyment by members of these groups of the rights to access to health care, education, work and public places and services, including wells, cafés or restaurants. The Committee recommends a continuing campaign to educate the Indian population on human rights, in line with the Constitution of India and with universal human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination. This should be aimed at eliminating the institutionalized thinking of the high-caste and low-caste mentality.

Contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance

The question of the untouchables in India In 1996 the Special Rapporteur's attention was drawn to the situation of the Dalits or untouchables in India. Given the complexity of the question, the Special Rapporteur consulted the Indian Government, undertook documentary research and studied the position of the Committee on the Elimination of Racial Discrimination on the question. The basic question was whether the age-old caste system in India, which had produced several million untouchables, could be regarded as racial discrimination. In its appearances before the Committee on the Elimination of Racial Discrimination and its communications to the Special Rapporteur, the Indian Government has consistently held that the caste system is not a hierarchical system based on race.

Concluding observations of the Human Rights Committee: INDIA. 04/08/97.

The persistence of traditional practices and customs, leading to discrimination against members of the underprivileged classes and castes and other minorities constitute impediments to the implementation of the Covenant. The Committee also welcomes the establishment of the National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Women in 1992, and the National Commission for Minorities in 1993. These commissions have initiated some improvements, in particular in the levels of education and in the representation of the various groups concerned within elected bodies and other authorities. The Committee has noted that positions in elected bodies are reserved for members of scheduled castes and tribes. The Committee notes with concern that, despite measures taken by the Government, members of scheduled castes and scheduled tribes, as well as the so-called backward classes and ethnic and national minorities continue to endure severe social discrimination and to suffer disproportionately from many violations of their rights under the Covenant, inter alia inter-caste violence, bonded labour and discrimination of all kinds. It regrets that the de facto perpetuation of the **caste** system entrenches social differences and contributes to these violations. While the Committee notes the efforts made by the State party to eradicate discrimination: it recommends that further measures be adopted, including education programmes at national and state levels, to combat all forms of discrimination against these vulnerable groups.

Concluding Observations of the Committee on the Elimination of Discrimination Against Women: INDIA. 01/02/2000.

The Committee considers that such social practices as the **caste** system present major obstacles to the implementation of the Convention. Discrimination against women who belong to particular castes or ethnic or religious groups is also manifest in extreme forms of physical and sexual violence and harassment. The Committee urges the Government to implement existing legislation prohibiting such practices as caste-based discrimination. The Committee is concerned with the continuing discrimination, including violence, suffered by women of the Dalit community, despite the passage of the Scheduled Castes and Scheduled Tribes (prevention of atrocities) Act of 1989. The Committee urges the Government to enforce laws preventing discrimination against Dalit women and prohibiting the devadasi system. It urges the Government to introduce affirmative action programmes in such areas as education, employment and health so as to provide life chances to Dalit women and girls and create an environment conducive to their progress.

Concluding Observations of the Committee on the Rights of the Child: INDIA: 23/02/2000.

Given such a diverse and multicultural society, the Committee further notes that the existence of traditional customs (i.e. the **caste** system), and societal attitudes (e.g. towards tribal groups) is an obstacle to efforts to combat discrimination, and compounds, inter alia, poverty, illiteracy, child labour, child sexual exploitation, and children living and/or working on the streets. The Committee notes that insufficient efforts have been made to implement legislation and decisions of the courts and the commissions (i.e. the National Human Rights Commission, the National Commission for Women, and the Scheduled Castes and Scheduled Tribes Commission); and to facilitate the work of such institutions with respect to children's rights. In the light of article 2 of the Convention, the Committee is concerned at the existence of caste-based discrimination and discrimination against tribal groups, despite these practices being prohibited under the law. In accordance with article 17 of the Constitution and article 2 of the Convention, the Committee recommends that the State party take steps to ensure states abolish the discriminatory practice of "untouchability", prevent caste- and tribe-motivated abuse, and prosecute State and private actors who are responsible for such practices or abuses. Moreover, in compliance with article 46 of the Constitution, the State party is encouraged to implement, inter alia, affirmative measures to advance and protect these groups. The Committee recommends the full implementation of the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the 1995 Scheduled Castes and Scheduled Tribes Rules (Prevention of Atrocities) and the 1993 Employment of Manual Scavengers Act. The Committee encourages the State party to continue its efforts to carry out comprehensive public education campaigns to prevent and combat caste-based discrimination. The Committee also stresses the importance of the equal enjoyment by members of these groups of the rights in the Convention, including access to health care, education, work, and public places and services, such as wells. There is serious concern regarding the striking disparities in terms of access to education, attendance at primary and secondary levels and drop-out rates between: different states, rural and urban areas, boys and girls, the affluent and poor, and children belonging to scheduled castes and tribes.

RECOMMENDATIONS

Nationally, concerned governments must act to uphold their own constitutional principles and international treaty obligations and work toward the full enjoyment of rights by all citizens, regardless of caste or descent. Concerned governments should:

- Establish a program and timetable to enforce the abolition of "untouchability," segregation, or similar practices.
- Enact and fully enforce laws aimed at ending abuses associated with caste, such as child labor, bonded labor, land reform, manual collection of human waste, and forced prostitution or similar practices.
- Monitor and publicize the extent to which existing laws to end caste discrimination have been implemented.
- Allocate adequate funds for programs for the socio-economic and educational support of communities that have faced discrimination on the basis of caste or descent.
- Ensure greater participation by the affected communities in civil administration, especially the administration of justice, including in key institutions such as the police and judiciary.
- Ensure that all necessary constitutional, legislative, and administrative measures, including appropriate forms of affirmative action, are in place to prohibit and redress discrimination on the basis of caste, and that such measures-including those already instituted in Japan and India-are continued until discrimination is eliminated.
- Launch nationwide public awareness campaigns regarding legal prohibitions on discrimination on the basis of caste or descent. This campaign should explain in simple terms what actions are legally prohibited and what recourse is available to victims of discrimination and abuse.
- Provide political and financial support for programs of the United Nations and regional bodies to assist countries seeking to eradicate caste discrimination.
- The Constitution of India does not define 'discrimination against women' in the elaborate terms of Article 1 of CEDAW. No legislation reflects such a definition either. Further, the right to equality contained in fundamental guarantees does not cover discrimination by private parties. This constitutes a serious lacuna in the Indian legal system.

- Further, guarantees in the Constitution themselves have not been given effect to. One glaring example is the women's reservation bill that provides for 33% reservation for women in Parliament to increase their political access and participation. Such a law has still not been enacted, despite constitutional backing.
- The right against discrimination as the cornerstone to human rights and fundamental freedoms as embodied in Article 3 of CEDAW, with respect to persons with disabilities [of which, according to the official estimate, women constitute 9 million in India], must be brought within the purview of Articles 14 and 15 of the Indian Constitution.
- The Mid Term Appraisal of the 10th Five Year Plan by the Planning Commission suggests that the Ministry of Social Justice and Empowerment should hold itself accountable for the persistence of manual scavenging and present an action taken report before the 2005-06 Union Budget is approved. This is an issue that must be topmost on the priority of the government, since it contributes to the persistence of the problem.
- The issue of starvation must be acknowledged officially and addressed through a convergence between different departments as well as initiatives in participative/deliberative democracy at the local level with respect to production and distribution of foodgrains as well as land distribution.
- Disability Rights must be brought within the constitutional framework, and all laws, especially relating to employment, which discriminate against or bar persons with disabilities must be repealed forthwith.
- Sexual orientation must be brought within the constitutional framework and Section 377, which criminalizes homosexuality must be repealed immediately, as a first step towards ending discrimination against queer people, in response to the demands of the queer rights movement in India and in tune with international trends in this area of human rights.

CONCLUSIONS

Addressing human trafficking truly requires a comprehensive and multi-faceted strategy, which includes efforts aimed at the rehabilitation and social reintegration of trafficked victims. Otherwise, the strategy will not be successful in the long run. In essence, at the very core of any anti-trafficking strategy must be an unwavering commitment from individual countries and other multilateral actors to address human trafficking at every stage of this cycle, from prevention to recruitment, transportation to bonded labor, and from rescue to reintegration. Without this commitment, anti-trafficking efforts will be fundamentally unable to intervene on behalf of the trafficked victims whose human rights violations form the backbone of this exploitative trade.

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