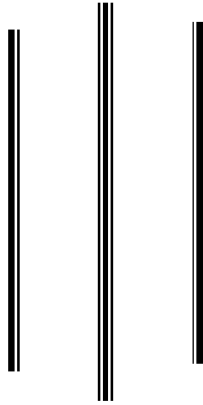


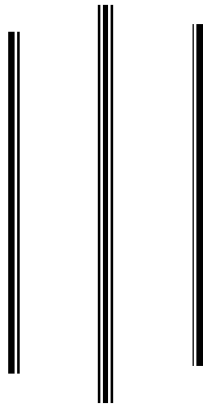
Kathmandu School of Law

*A Comparative Study of the SAARC Convention on Prevention and  
Combating of Trafficking in Women and Children for Prostitution With  
Legislations of Bangladesh, Nepal, India, Pakistan and Sri Lanka*

A Research Paper Presented by Narendra Man Shrestha



In Partial Fulfillment of the requirements for obtaining the LL.M. Degree in  
Human Rights and Gender Justice



Supervisor: Dr. Shankar Kumar Shrestha

**June 29, 2003**

## **TO WHOM IT MAY CONCERN**

This is to certify that Mr. Narendra Man Shrestha, a student of LL.M Ist year of the Kathmandu School of Law, has prepared a research paper titled "**A Comparative Study of the SAARC Convention on Prevention and Combating of Trafficking in Women and Children for Prostitution With Legislations of Bangladesh, Nepal, India, Pakistan and Sri Lanka**" under my supervision and guidance. In my observance, his research paper is found pertinent and research oriented. I believe that this paper will fulfill the requirements as needed by that School and will be helpful for the person and body wishes to acquire knowledge as regards to thereof.

(Dr. Shankar Kumar Shresta)

Supervisor

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## CONTENTS

<b>INTRODUCTION</b>	<b>PAGES</b>
	<b>(1-3)</b>
Introduction	
<b>CHAPTER - 1</b>	<b>(4-12)</b>
<b>Meaning of Trafficking and Legal Provisions as Regards to Trafficking of Women and Children in the Laws and Regulations of Bangladesh, Nepal, India, Pakistan and Sri Lanka</b>	
1.1 Meaning of traffic	
1.2 Meaning of trafficking	
1.3 Legal provisions of Nepal as regards to trafficking	
1.4 Legal provisions of India as regards to trafficking	
1.5 Legal provisions of Bangladesh as regards to trafficking	
1.6 Legal provisions of Pakistan as regards to trafficking	
1.7 Legal provisions of Sri Lanka as regards to trafficking	
<b>CHAPTER - 2</b>	<b>(13-19)</b>
<b>SAARC Convention on Preventing and Combating the Trafficking of Women and Children for Prostitution</b>	
<b>CHAPTER - 3</b>	<b>(20-21)</b>
<b>Loopholes, Lacunas, Compendium, and Consequences of SAARC Convention Preventing and Combating the Trafficking of Women and Children for Prostitution</b>	

3.1 Loopholes and lacunas of the SAARC Convention

3.2 Compendium and consequences of the SAARC Convention

**CHAPTER - 4**

**(22-23)**

**Conclusion and Recommendation**

4.1 Conclusion

4.2 Recommendation

**Introduction:**

Trafficking is a problem that affects virtually every country of the world. Generally, the flow of trafficking is from less developed countries to industrialize or towards neighboring countries with marginally higher standards of living. The main reason thereof is poverty, illiteracy, cultural practice of the society, which turns women and children into patented, and saleable commodities. Among the third world countries, the countries of the SAARC region are geographically and economically backward. Low yielding agricultural lands, lack of literacy, small or no land holdings, no alternate source of employment resulting economic hardships and no improvement in living standard mark the rural scenarios of this region. These circumstances provide an ideal environment for the genesis of prostitution, perversion and crime. Besides poverty, survival compulsion and shady dealings made by shaming parsimonious aunts, uncles, neighbors and other family members opt a person to choose prostitution as the profession. This leads to a life of glamour

and luxury. Thus, poverty alone is not the cause of prostitution any more.<sup>1</sup> The institutionalization of prostitution as integral part of the tourism industry today is indeed a matter of concern for all nations. Professional call girls operate at various levels depending upon the paying potentials of the customers. In the context of Bangladesh, India, Nepal, Pakistan and Sri Lanka, such sex workers mostly come from very poor families. The extent of their penury is such that they have nothing other than their body to sell to earn two meals for the family. All countries believe that trafficking of people, especially women and children for prostitution and forced labor is one of the fastest growing national and international criminal activities.

Women and children are subject to discrimination in social, economical, legal and political sphere. Hence, they are subject to more criminal victimization, within and outside their houses. It includes harassment, torture, abuses, and sometimes murder in most deceitful manner. Dowry atrocities, child prostitution, and women trafficking for sexual exploitation have been a disgrace for the society. Sexual crimes against women and children have acquired prominent shape and size in the crime chart of the countries as mentioned above. Large numbers of children are used for commercial sexual purposes every year, often ending up with their health being completely destroyed. Child sexual abuses lie unheard and unspoken in our society. They are so hidden and kept secret under layer guilt, shame and societal pressure that goes undetected and unpunished. However, their victims live with the torment all their lives. Prostitute children are raped, beaten, sodomized, emotionally abused, tortured, and even killed by pimps, brothel owners, and customers. Child prostitutes are often treated as criminals by law authorities rather than victims of sexual exploitation.

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<sup>1</sup> . Prabha Thacker, Changing Family Patterns in Nepal: A Gender Perspective, P. 1.

Human trafficking is growing daily plugging the globe. In one hand the sickening sex industry is flourishing because of its clandestine and lucrative nature and on the other hand it has to be dealt with wider and stern laws with its effective enforcement. Meanwhile the government so concerned have to combat with these problems, protect the rights of victims and rehabilitate them into the community. For the fulfillment of the said purpose there requires wide vision, close understanding, cooperation, coordination and honest commitment of nations. It also requires assistance of individuals and agencies so concerned. In this research paper, a Comparative Study of Laws and Regulations Relating to Combating of Trafficking of Women and Children of Bangladesh, Nepal, India, Pakistan and Sri Lanka with the SAARC Convention on the Prevention and Combating of Trafficking in Women and Children for Prostitution has been made. For the said purpose, this paper has been divided into four chapters. The first chapter of this research paper deals with meaning of trafficking and legal provisions as regards to trafficking of women and children in the laws and regulations of Bangladesh, Nepal, India, Pakistan and Sri Lanka. The second chapter deals with the SAARC Convention on the Prevention and Combating of Trafficking in Women and Children for Prostitution. The third chapter deals with the loopholes, lacunas, compendium and consequence of the SAARC Convention on the Prevention and Combating of Trafficking in Women and Children for Prostitution. Finally, the fourth chapter deals with the conclusion and recommendations.

## Chapter -1

### **Meaning of Trafficking and Legal Provisions as Regards to Trafficking of Women and Children in the Laws and Regulations of Bangladesh, Nepal, India, Pakistan and Sri Lanka**

#### **1.1 Meaning of Traffic:**

For the first time the word "traffic" was used in 1900 and at that time this word was used to refer so called "white slave trade" ofn women. This time it was thought that the movement of women for an immoral purpose such as prostitution.<sup>2</sup> Therefore, the term "trafficking" was related with white slavery in the past.

#### **1.2 Meaning of Trafficking:**

Sub-article (3) of Article 1 of the SAARC Convention has defined the term "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 consent of the person subjected to trafficking.

Clause (a) of Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking of Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 2000 has defined the term "trafficking in person" as the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abductions, of fraud, of deception, of the abuse of

power or of 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.

If we compare the term "trafficking" with these two international instruments, the term " trafficking" has been defined in a stereotypical, narrowed and confined manner in the SAARC Convention, 2002 and the said term has been defined very clearly that the term human trafficking being used to address wide varieties of human rights violation, which are associated with recruitment, movement, transfer and sale of people into a range of exploitative work and it also clearly identifies elements, which are associated with.

### **1.3 Legal Provision of Nepal as Regards to Trafficking:**

Sub-article (1) of Article 20 of the Constitution of the Kingdom of Nepal has the provision as regards to prohibition of trafficking, which states that traffic in human beings, slavery, serfdom or forced labor in any form is prohibited. Any contravention of this provision shall be punishable by law.

There have been found two more laws as regards to trafficking in Person in Nepal. One of them is the Muluki Act, 2020 (1963) (the Country Code) and another is Trafficking in Person (Control) Act, 2043 (1986). The following provisions have been made as regards to thereof in the said Acts.

#### **1.3.1 Muluki Act, 2020 (1963) (the Country Code):**

No. 1. of the said Act states that " No individual shall take any person by temptation out of the territory of Nepal with the intention of trafficking.

If the individual is arrested before selling the person being taken to

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<sup>2</sup> . GAATW, Human Right and Trafficking in Persons: A handbook, 2001, P. 26.

foreign land, he or she will be imprisoned for ten years, but if the victim is already sold, the culprit shall be imprisoned for twenty years. If buyer of the victim is apprehended within the territory of Nepal, he or she shall also receive a penalty equal to that of the seller. Accomplices in such criminal acts shall receive half the penalty meted out to the main culprit.

No. 2 states that " No one shall lure to minor not attained the age of sixteen years or insane with any age for separating him from legal guardian without his consent.

No. 3 states that " No one shall be allowed to make anyone slave and serfdom.

### **1.3.2 Trafficking in Person (Control) Act, 2043 (1986):**

1. Section 3 states that no one shall carry out the act of trafficking in person.
2. Section 4 states that the following acts be deemed to be trafficking in person:
  - (a) To commit act of trafficking in person for the purpose,
  - (a) To bring anyone abroad with a view to trafficking,
  - (b) To engage any woman in prostitution by luring or tempting or deceiving or by showing fear or terror or putting pressure or by any other manner,
  - (c) To fabricate in order to commit any act as set forth in the clauses above or to assist in order to commit such act or to abet any one in order to engage him in such act or to attempt in order to commit such act.
3. Section 8 of the said Act has the following provisions as regards to the punishment for trafficking in person.
  - (a) Person, who commits the act of trafficking in person, shall be punished with imprisonment of a period from ten years to twenty years.

- (b) Person, who brings human being abroad with a view to committing trafficking, shall be punished with imprisonment of a period from five years to ten years.
- (c) Person, who engages women in prostitutions by luring or tempting or deceiving or by showing fear or terror or putting pressure or by any other manner, shall be punished with imprisonment of a period from ten years to fifteen years.
- (d) Person, who fabricates in order to commit the acts of trafficking in person or to assist in committing such acts or abet any one in order to engage him in such acts or to attempt in order to commit such act, shall be punished with imprisonment of a period up to five years.
- (e) In trafficking person, the principal amount of a person, who purchased human being shall be worthless and a person, who sold human being shall be imposed a fine as per the amount of the said principal in addition to the punishment as referred to in Sub-section (1).

#### **1.4 Legal Provisions of India as Regards to Trafficking:**

The Immoral Traffic (Prevention) Act, 1956 (as amended) of India has the following provisions for trafficking:

Section 3 of the said Act has the provision of punishment for keeping a brothel or allowing premises to be used as brother and the said provision states that any person who keeps or manages, or acts or assists in the keeping or management of a brothel shall be punishable.

Section 4 of the same Act has the provision of punishment for the living on the earnings of prostitution, which states that any person over the age of eighteen

years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable.

Section 5 of the said Act states that any person who procures or attempts to procure a person, whether with or without his/her consent, for the purpose of prostitution. or induces a person to go from any place, with the intent that he may for the purpose of prostitution become the inmate of or frequent, a brothel; or takes or attempts to take a person, or cause a person to be taken, from one place to another with a view to his carrying on or being brought up to carry on prostitution; or cause or induces a person to carry on prostitution.

Section 6 of the same Act states that the any person who detains any other person, whether with or without his consent in any brothel, or in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person, where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offense under sub-section (1), shall be punishable.

Similarly, Section 7, 8 and 9 have the provisions as regards to prostitution in or in the vicinity of public place, seducing or soliciting for purpose of prostitution and seduction of a person in custody respectively.

### **1.5 Legal Provision of Bangladesh as Regards to Trafficking:**

The Women and Children Repression Prevention Act, 2000 of Bangladesh has the following provisions as regards to trafficking.

- The said Act has the provision that whoever brings from abroad or sends or traffics abroad, or buys or sells, or lets to hire or otherwise disposes of any woman with the intention of using that woman in prostitution or using for illicit intercourse or for any unlawful or immoral purpose or for such a purpose keeps a woman in his possession, care or custody.

- If any woman is sold, hired or disposed off in any way to a prostitute or to any person who keeps or manages a brothel.
- Whoever keeps or manages brothel, buys or hires or gets in their possession by any other way or keeps in their custody any woman.
- Whoever brings from abroad sends or traffics abroad or buys or sells or otherwise keeps a child in his/her possession, care or custody with the intention of using the child for any unlawful or immoral purpose.
- Steals a newborn baby from hospital, child or maternity hospital, nursing home, clinic etc, or from the custody of concerned guardians shall be punishable in accordance with sub section as well as there is the provision of punishment for kidnapping and abduction of women and children.

#### **1.6. Legal Provision of Pakistan as Regards to Trafficking:**

Pakistan's Zina Hudoor Ordinance, 1979 has the following provision against trafficking and prostitution in Pakistan.

Section 13 of the said Act has the provision that whoever sells, lets to hire, or otherwise disposes of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose shall be punished with imprisonment for life and with whipping not exceeding thirty stripes, and shall also be liable to fine.

Section 14 of the said Act states the whoever buys, hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be

punished with imprisonment for life and with whipping not exceeding thirty stripes, and shall also be liable to fine.

Section 16 of the same Act states that whoever takes or entices away any woman with intent that she may have illicit intercourse with any person or conceals or detain with that intent any woman, shall be punished with the imprisonment of either description for a term which may extend to seven years and with whipping not exceeding thirty stripes, and shall be liable to fine.

Section 340 of the said Act has the provision that whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said, "wrongfully to confine that person.

Section 366 A of the said Act states that whoever by means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with the 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.

Similarly, Section 366 B of the said Act states that whoever imports into Pakistan from any country outside Pakistan any girl under the age twenty-one years 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 be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

Section 367 of the said Act has the provision that whoever kidnaps or abducts any person in order that such person may be subjected or may be so disposed of as to be put in danger of being subjected to grievous hurt or slavery or knowing

it to likely that such person will be so subjected or disposed of shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Section 370 of the said Act states that whoever import, exports, removes, buys, sells, or disposes of any person as slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall be liable to fine; whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves shall be punished with imprisonment for life, or with imprisonment of either description for a term not exceeding ten years shall also be liable to fine and whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed is said. "Wrongfully to restrain that person."

#### **1.7. Legal Provision of the Sri Lanka as Regards to Trafficking:**

The Sri Lankan Penal Code (as amended) Act, 1995 (Act No. 22) has the following provisions as regards to trafficking.

- Clause C (1) of Section 360 of the said Act has the provision that whoever engages in the act of buying or selling or bartering of any person for money or for any other consideration.
- The said Clause also has the provision for the purpose of promoting, facilitating or inducing the buying or selling or bartering or the placement in adoption, of any person for money or for any other consideration, arranges for or assists, a child to travel to a foreign country without the consent of his parent or lawful guardian, or obtains an affidavit of consent from a pregnant woman for money or for any other consideration for the adoption of the unborn child or such women; or recruits women or couples to bear children: or being a person concerned with the

registration of births, knowingly permits the falsification of any birth record or register engages in procuring children from hospitals, shelters for women clinics, nurseries, day care centers, for money or other consideration or procures a child for adoption from any such institution or center, by intimidation of the mother or any other person; or impersonates, the mother or assists in such impersonation commits the offence of trafficking and shall on conviction be punished with imprisonment of either description for a term not less than two years and not exceeding twenty years and may also be punished with fine and where such offence is committed in respect of a child, be punished with imprisonment of either description for a term not less than five years and not exceeding twenty years and may also be punished with fine.

## **Chapter -2**

### **SAARC Convention on Preventing and Combating the Trafficking of Women and Children for Prostitution:**

Article 3 has laid down the provision of the steps to be taken by the States of the SAARC countries in order to combat with the trafficking of women and children for prostitution and made following provisions as regards to thereof.

1. To take effective measures to ensure that trafficking in any forms is an offence under their respective criminal law and shall make such an offence punishable by appropriate penalties which take into account its grave nature.
2. To punish any person who keeps, maintains or manages or knowingly finances or takes part in the financing of a place used for the purpose of trafficking and knowingly lets or rents a building or other place or any part thereof for the purpose of trafficking.
3. To attempt or abetment to commit any crime mentioned in paragraph 1 and 2 above or their financing shall also be punishable.

Similarly, articles 4 which states that the States Parties to the Convention, can take into account factual circumstances which make the commission of such offences particularly grave viz.

- the involvement in the offence of an organized criminal group to which the offender belongs,
- involvement of the offender in other international organized criminal activities,
- use of violence or arms by the offender,
- the fact that the offender holds a public office and that the offence is committed in misuse of that office,
- the victimization or trafficking of children,
- the fact that the offences is committed in custodial institution or in an educational institution or social facility or in their immediate vicinity or into other places to

which children and students visit for educational, sports, social and cultural activities

- and previous conviction, particularly for similar offences, whether in a Member State or any other country.

Article 5 of the SAARC Convention also made provision that while trying offences under this Convention, judicial authorities in Member States shall ensure that the confidentiality of the child and women victims is maintained and they are provided appropriate counseling and legal assistance.

Article 6 (1) states that each state party shall grant each other the widest measures of mutual legal assistance in respect of investigations, inquiries, trails or other proceedings in the requesting state in respect of the offences under the convention and such assistance shall include:

- taking of evidence and obtaining of statements of persons,
- provision of information, documents, and other records including criminal and judicial records,
- location of persons and objects including their identification,
- search and seizures,
- delivery of property including lending of exhibits,
- making detained persons and other available to give evidence or assist investigations,
- service of documents including documents seeking attendance of persons, and
- other assistance consistent with the objectives of the Convention.

Article 6 (2) states that such request shall be executed promptly in accordance with their national laws and in the manner requested by the requesting State. In case where the State is not able to comply in whole or in part with such request or decides to postpone execution the state so concerned shall promptly inform the requesting state and shall give reason for the same.

Also Article 7 has made the following provisions for extradition or prosecution regarding the offences referred to in the Convention which states

- (1) The offences referred to in the convention shall be, treated as extraditable offences in any extradition treaty which has been or may be concluded, between the parties to this convention.
- (2) If a State party which makes extradition conditional on the existence of a treaty, receives a request for extradition from another state party with which it has no extradition treaty, the requested state shall, if so permitted by its laws, consider this convention as the basis for the extradition in respect of the offenses set forth in Article 3.
- (3) Extradition shall be granted in accordance with laws of the state to which the request is made.
- (4) the state parties in whose territory the alleged offender is present shall, if it does not extradite him or her, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution in accordance with the laws of that state.
- (5) In states where extradition of their national is not permitted under their law, nationals who have committed offences under the present convention shall be prosecuted and punished by their courts.

Article 8 of the said convention has provision of measures to prevent and interdict trafficking in women and children, which states:

- (1) State parties shall provide sufficient means, training and assistance to their respective authorities to enable them to effectively conduct

inquires, investigations and prosecution of offences under this convention.

- (2) The state parties shall sensitize their law enforcement agencies and the judiciary in respect of the offences under this convention and other related factors that encourage trafficking in women and children.
- (3) The state parties shall establish a Regional Task Force consisting of officials of the Member States to facilitate implementation of the provisions of this convention and to undertake periodic reviews.
- (4) The state parties to the convention may also, by mutual agreement, set up bilateral mechanisms to effectively implement the provisions of the convention, including appropriate mechanisms for cooperation to interdict trafficking in women and children for prostitution.
- (5) The state parties shall exchange, on a regular basis, information in respect of agencies, institutions and individuals who are involved in trafficking in the region and also identify methods and routes used by the traffickers through land, water, or air. The information so furnished shall include information of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction.
- (6) The state parties may consider taking necessary measures for the supervision of employment agencies in order to prevent trafficking in women and children under the guise of recruitment,
- (7) The state parties endeavor to focus preventive and development efforts on areas which are known to be source areas for trafficking.
- (8) The state parties promote awareness, *inter alia*, through the use of the media, of the problem of trafficking in women and children and its

underling causes including the projection of negative images of women.

Lastly Article 9 provides for care treatment, rehabilitation and repatriation of victims and states:

- (1) The state parties shall work out modalities for repatriation of the victims to the country of origin.
- (2) Pending the completion of arrangements for the repatriation of victims of cross-border trafficking, shall make suitable provisions for their care and maintenance, provision of legal advice and health care facilities shall also be made available to such victims.
- (3) Establish protective homes or shelters for rehabilitation of victims of trafficking, suitable provisions shall be made for granting legal advice, counseling, job training and health care facilities for the victims.
- (4) The state parties may also authorize the recognized non-governmental organizations to establish such protective homes or shelters for providing suitable care and maintenance for the victims of trafficking.
- (5) The state parties encourage recognized non-governmental organizations in efforts aimed at prevention, intervention and rehabilitation, including through the establishment of such protective homes or shelters for providing suitable care and maintenance for victims of trafficking.

While making comparative study of the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution with the laws and regulations relating to combating of trafficking in women and children in Bangladesh, Nepal, India, Pakistan and Sri Lanka, it has been found that the countries as mentioned above have had separate domestic legislations against the trafficking in women and children, The said countries have taken punitive

measures to combat with the trafficking in women and children and have made provisions as regards to control and combat with the cross border trafficking and prostitution. But no sufficient provisions have been found in the laws of respective countries as regards to extradition of offenders and rehabilitation of the victims in the communities and the societies.

Similarly, the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution specially deals with combating the crime of prostitution. This Convention can be taken as a further regional commitment towards United Nations Convention against Transnational Organized Crime, 2000. SAARC Convention introduces and facilitates the widest measures to be taken against the trafficking and prostitution. This Convention can be found more comprehensive than the domestic legislations enacted by the SAARC countries as mentioned above.

Firstly, this Convention realizes that the trafficking is a crime to be generally committed by an organized criminal group and the nature of such crime is transnational. That is why, it strongly recommends its member States to take widest measure on extradition and at the same time extend mutual legal assistance or to consider this Convention as a strong instrument for extradition and for mutual legal assistance as regards to the crimes covered by this Convention.

Secondly, this Convention realizes and recommends that the member States should take effective measure for the rehabilitation of victims of trafficking. They should be granted protective homes or shelters, legal advice, health care, preferable job, training and so on required for their proper rehabilitation.

Thirdly, this Convention recommends that the courts of the member State should be aware about the gravity of the crime of trafficking.

Finally, this Convention recommends that women and children of the prone areas should be made aware by launching various awareness programme against trafficking and prostitution.

## Chapter -3

### Loopholes, Lacunas, Compendium, and Consequence of SAARC

#### Convention:.

#### 3.1. Loopholes and lacunas of the SAARC Convention:

Keeping in view the matters as referred to Article 1 to 9 of the SAARC Convention the following loopholes and lacunas have been found.

1. The convention defines and perceives trafficking in a stereotypical, narrowed and confined manner.
2. The convention defines trafficking purely in a crime prevention approach with moralistic vision.
3. The convention excludes the notion of social, political and economic integration acknowledging the right to self-determination of survivors without coercion involved.
4. The convention makes no distinction between trafficking for prostitution and trafficking for other illicit purposes, such as domestic work, bonded labor, begging, camel jockeying, marriage etc.
5. It does not recognize that the trafficking is an outcome of exploitative global trading coupled with demand and supply as dictated by the market economy.
6. The Convention also makes no distinction between trafficking of women and children in its content, essence and spirit.
7. Human rights of resident status, health and other service, repatriation and reintegration, recovery and state cooperation as prescribed by various international instruments have not been recognized.

8. The accountability and the mandatory involvement of the demand side in the process of rescue, remand, relief, repatriation and reintegration has not been reflected to uphold the notion of natural justice.

### **3.2 Compendium and Consequence of the SAARC Convention:**

1. Cross-border movement adds further vulnerability in which women and children are the hardest hit,
2. Interception at the border and continued criminalization of trafficked persons is a violation of their fundamental human rights,
3. Compliance with the international arrangements and inter linkage of trafficking with internal displacement, floating population and refugee influx needs to be addressed in the spirit and implementation of the convention,
4. A conventional move towards combating trafficking, the instrument has restricted itself to defining trafficking only for the prostitution and has excluded all affected persons e.g. persons or dependants of survivors who are affected by the result of trafficking,
5. To the surprise of legal experts, the treaty does not elucidate the recipient country's accountability in the rescue, rehabilitation, repatriation and reintegration of affected persons,
6. The right to citizenship of children born to affected persons in the recipient country has not been specified,
7. It refrains from articulating economic and social rights of the affected persons and fails to recognize trafficking as an extraditable crime, and
8. Regrettably, the convention does not have geographical jurisdiction for persecution beyond the SAARC region.

## **Chapter -4**

### **Conclusion and Recommendations**

#### **4.1 Conclusion:**

Trafficking of women and children for the purpose of prostitution, bonded labor and for other purposes is not only the problem of SAARC Region rather it is a global problem. Therefore, such problem needs to be addressed and resolved both nationally and internationally. As drugs and arms, the trafficking has now emerged as a trade of international nature. Owing to the reason thereof, the act of enforcement is becoming more and more difficult and expensive day-by-day as the traffickers take advantages of inconsistent laws between country to country. Poor implementation and information sharing between law enforcement agencies make it further complicated.

In order to effectively combat with the trafficking against women and children, domestic legislations should comply with international instruments. Domestic legislations of SAARC countries as regards to thereof should be in unison among the countries.

Most importantly, SAARC Convention and domestic legislations of SAARC countries mentioned above have just focused the matter with the point view of punishing the offenders and has failed to address adequately the issues of rehabilitation and compensation for the victims of trafficking.

#### **4.2 Recommendations:**

1. Trafficking in persons is transnational crime with national implications. To deter international trafficking and bring its perpetrators to justice, the SAARC nations must recognize that trafficking is a serious offense.

2. The SAARC must work bilaterally and multilaterally to abolish the trafficking industry by taking concrete steps to promote cooperation among countries linked together by regional/international trafficking routes.
3. The treaty needs to broaden the scope and notion of trafficking by recognizing the fundamental rights of the survivors which may include freedom of movement, freedom from torture and bondage, right to migration, right to privacy, access to justice, distinct need of women and children, etc.
4. The choice of modality for reintegration should be explicitly made with due respect, dignity and with fully informed consent of the survivor.
5. Pending the processes of reintegration, the state parties of the convention shall make suitable provisions for security and maintenance of the survivor.
6. The provision of free legal services should be made available to the survivor. Suitable provisions shall also be made for counseling, job training and health care facilities.
7. Trafficked persons should be accorded with standard minimum human rights and humanitarian treatment consistent with the international standards, principles and practices.
8. The SAARC countries should enact appropriate domestic legislation in compliance with the spirit of the convention.

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