

Condemned to Exploitation

TRAFFICKING OF GIRLS AND WOMEN IN NEPAL

Building a Community Surveillance
System for Prevention

~ Yubaraj Sangroula

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Forword

Forced prostitution impugns the dignity of humankind. Yubaraj Sangroula's book indicates how widespread and tragic the problem is in Nepal and India.

Forced prostitution and other forms of sexual slavery are world-wide. Their specifics vary from region to region and time to time. In the West, drug addiction is sometimes used as a means for keeping prostitutes working. The International Criminal Tribunal for the Former Yugoslavia has recently held that the use of sexual slavery as a tool of war is a crime against humanity as well as a war crime. The mechanisms of forced prostitution in India and Nepal are discussed in detail in this book.

Non-Governmental Organization (NGOs) based in Nepal, and dedicated to fighting forced prostitution are an important part of the solution to this problem. The Center for Legal Research and Resource Development (CeLRRd), led by Mr. Sangroula, is a group of hard-working , dedicated individuals committed to improving the lives of women, children, and men.

The task of NGOs like CeLRRd is public education. This means educating potential victims and their families of the existence and danger of trafficking, so that they will not be lured or trapped into prostitution.

It also means educating the general public about the problem, for two reasons. One is so political, law enforcement and social resources can be mobilized against the traffickers. The other is to address the social and cultural values that, Mr. Sangroula shows, contribute to the problem.

These social values concern the place of women and girls in Nepalese society. They must be addressed from within the society. Foreigners can only offer support.

Another factor that contributes to the problem of forced prostitution is lack of universal literacy. As with so many other social issues in Nepal, basic elementary and secondary education for all children, and especially girl children, is vital to combating the scourge of trafficking in girls and women. A literate girl or woman is less likely to be enticed or trapped by traffickers. Traffickers are less likely to seek victims where the population is educated, because such women will have greater resources for leaving and reporting on any brothel to which they might be sold.

Mr. Sangroula draws much of his evidence concerning forced prostitution, its geographic spread, and the tricks that traffickers use from the popular Nepalese-language press. Sadly, the girls and women who are most vulnerable to these practices cannot read newspapers.

Basic education for all children is a larger task than any single NGO can undertake. It requires full commitment from national governments, local governments, civil society, and families.

Mr. Sangroula's book makes important information concerning the scourge of forced prostitution available to the public. It should also serve as a call to action to combat kidnapping and trickery, trafficking in girls and women, and forced sexual slavery in all its forms.

Mary Beth Lagenaur

Kenneth S. Gallant

24 February, 2001

[Professor Kenneth S. Gallant was a Fulbright Scholar at Tribhuvan University Faculty of Law in 1991. Mary Beth Lagenaur, his wife, has worked with NGOs in the Kathmandu and the United States. They returned to Nepal in 1996 and 1999, and over the years have followed the progress of CeLRRd and the good work it has been doing.

NGO Movement: Tearing the Veil of Illusion

The Political referendum in 1980 induced craving in the Nepalis society for a more open system that is accountable to the general public. It would be safe to say Nepal entered into the era of Non Government Organization (NGO) movement only after the referendum. Although there were some NGOs working in Nepal prior to that but they were very few in numbers. Nepal is a country which has seen and sustained over the years its own type of NGO in the form of Guthi but prior to referendum Nepalis bureaucracy was very much under the control of a mindset in ruling party which thought freedom of opening up such institutions would be detrimental to the ruling class. Not only the registration of a NGO but almost everything was tightly controlled and strictly monitored in Nepal then.

However, the floodgate of NGOs was blown open with the famous people's movement of 1990 when the country saw the re-establishment of multi-party democracy. It is, however, very unfortunate that the multi-party democracy has done more harm to the country, it continues to inflict harm to the democratic institutions leading the populace to believe that the previous system was better, which is not true. One can argue, how could any other system be better than democracy? But, it is also true that Nepal has turned into a very bad example of democracy. It has witnessed the deterioration of law and order situation and, above all, people have started to think that lack of discipline and vulgarity is synonymous to democracy. What could be expected of a population that witnesses' lack of discipline, humility and corruption in the persons who are idols for them. The corruption bug has corrupted the minds of our political elites and the political idols who instead of turning into a beacon to lead the civil society have fallen from their pedestals making room for chaos and anarchy.

It is sad to note the situation is not different for NGOs and those leading them. It is very difficult to say how many NGOs are currently registered in Nepal and how much budget is being spent in the name of NGO movement. But it is definitely true that time-tested institutions such as Guthi with its genesis in our socio-cultural environment have been throttled to death as an antiquated institution to make room for institutions that are more personal and irresponsible to the societal needs.

The NGO wave has come and stayed in Nepal. But unfortunately it hasn't been able to do as much good to the nation and the society as it has the strength to do because it has merely become a launching pad and a begging bowl of people whose conduct in the past as well as at present is very much a debatable issue. It is also unfortunate but true that with this wave the crooks and criminals all have become the ubiquitous philanthropist of the downtrodden people in our society. In the much stricter sense, NGOs largely remain the personal pets of those who lead them. Most of the NGOs could be compared with the milking cows of our society. Funds are given in the name of those calves that are given a chance to suck very little but not enough to quench their hunger. Meanwhile, the cows keep getting milked. In a similar manner, the poor, downtrodden and neglected people in our society could be compared with the hungry calves whose mothers are overfed just to get more milk for personal gains.

Truly speaking if we look around us we will find majority of the NGOs are registered with aims and objectives to help the poor but the poor become poorer and ultimately dies in scarcity when those supposedly working for their benefit get fat and fatter. Why are our NGOs so unaccountable to the society and why we haven't been able to create a system of check and balance to monitor their activities and keep an eye on how much funds are really amassed by them? If we look around we will find majority of the NGOs are established with the pious objective of bringing justice to the victims of the society be it a child, a girl, a woman or the environment. There is nothing wrong with their objective and their fund collection but it is the way these funds and these objectives are mutilated is objectionable.

The Government of Nepal established Ministry of Women and Society Welfare in 1995 to be more sensitive to the needs of fairer gender and tender children but it hasn't been able to perform much except becoming a partner in the crime of these NGOs. Indeed there could be a strong partnership between the Government, the NGO and the INGOs in any country when the government is unable

to do much good to the society or where the government ministries fail to respond to the societal needs. Nepal is, perhaps, one hell of an example of a country where almost everything has collapsed. Permanently?

Looking at the present scenario in the country one is compelled to think that we are doomed forever. If such would not have been the case then there would be some positive messages going to the civil society about these structures which portray an image of the saviors but in reality work only for personal gains and gains of their family members. It is already late. But as it normally said, "it is not too late" to launch a reformative operation to clean the mess created by these clever performers. They could be termed as moths and termites that dine on the internal fabric of our society built over centuries. The resultant mess will go on piling and destroying, one by one, all our admirable practices if we merely remain an onlooker.

It is not that we do not need NGOs, we do but we need NGOs that are responsible, sensitive and honest to their objective and remain focused to their ultimate target. We need NGO leaders who are not motivated for personal gains, We need NGO leaders who could remain above personal gains and kin and kith and perform for the betterment of the entire society and not just for his or her benefit alone. It is a challenging choice to become a real social worker but it is entirely another to work for personal gains to pretend to be philanthropists! Such persons could be termed wolves in sheep clothing.

There is not denying that a country like ours needs more strong NGOs but we also need a strong mechanism to make these NGOs more accountable and answerable to the society and the Government. The concerned ministries such as Ministry of Women and Social Welfare or Social Services National Coordination Council (SSNCC) need to be more sensitive to such issues. In case of their continued failure to come up with better monitoring mechanism other institution or a separate ministry may even need to be established to play the role of a gatekeeper in a positive sense. There is clearly a need to churn out a monitoring mechanism and an evaluation system which will make these NGOs responsible for every penny they spend and every flight they board in the name of the down trodden of this country.

Bad and unaccountable performances of some NGO leaders have ruined the image of whole gamut of NGO activists. It would, however, be naive and irresponsible act to generalize and put them altogether in the same category. It may even hurt or discourage those genuine ones who have dedicated themselves to bring in changes in the life of suffering masses by hard work and dedication. Due credit must be given to those who deserve it.

It is very difficult to say for sure how many NGOs are there in Nepal but it would be safe guess to say there are around 30,000 NGOs currently registered all over Nepal falling in different categories. Of these the number of those labeling themselves as the saviors of girl child and women would top the list. The Beijing Conference of 1994 did play leading role in bringing issues of the girl child and women in the center of the debate but for some it also showed how they could best rent their homes and use their nieces and nephews in the name of philanthropy. Or, to put it more bluntly, they learned how to reap green bucks when sun shone in the form of poverty, male chauvinism, innocence and illiteracy in our society.

The clever NGO activists and leaders have done blunders and continue to feast in the name of poor people and irrelevant issues making molehill of a mountain. Some NGOs in Nepal, especially the ones established in the name of girl trafficking and women's empowerment have played significant role in providing them temporary shelters. In return they too have been able to generate employment for their relatives who would be otherwise languishing in the poverty of a hinterland across the borders. They have secured access to enormous funds and employment to them and their relatives in the pretext of helping the destitute and desolate women and children who would otherwise be sucked into the burgeoning sex market of South, South East Asia and Gulf countries.

Trafficking of young girls and women has plagued this Himalayan Kingdom of Nepal for many decades. It is estimated by some scholars that over 140,000 to 200,000 young girls and women continue to be grinded in the sex market of Indian brothels in Calcutta, Siliguri, Kanpur,

Gorakhpur, Lucknow, New Delhi and Bombay. The researchers also estimate that around 5000 young girls and women are either duped or lured into illusionary job market of Indian cities and forced into sex trade every year. One regularly reads, hears and sees the news of disappearance of young children and women from their localities.

Some are also rescued in the process of intra-border trafficking and their pimps are caught red handed. Yet there are very few cases of prosecution when justice is really served in favor of the innocent victims. Political pressure from the influential political leaders obstructs the justice. The culprits caught red hand produces false documentary evidences and gets clean cheat from the law enforcement agencies. Such instances clearly indicate the depth of the root of this crime that has spread into the labyrinthine of our society. Such instances indicate the involvement of organized trafficking gangs that might or might not have linkages with international criminal rackets. The selling of young girls, children and women in Gulf countries, however, indicate the involvement of international gangs in the human trafficking trade.

The criticism can go on and on but merely criticizing them is not the purpose of this scribe. Credit must be given where it is due. There are some powerful NGOs engaged in destabilizing such gangs and uprooting this chronic problem that continues to haunt the innocent girls and women who continue to be grinded invariably in the poverty machine in the rural areas. It is a shame that it continues at a time when the communication system is so well advanced, at a time when the potential victims have access to the means of communication and receive information on how girls are duped into the sex market.

It is a deplorable reality that even now the traffickers manage to gain confidence of the innocent girls and women. The reality could be, one must understand, that an illiterate poor girl of poor parents with a number of children to feed have very little choice when someone entices them with the possibility of a well paying job in a town. It is not the fault of the parents but of the system that fails to take into account the grinding poverty, unemployment and the deplorable situation of girls and women in our society.

Some NGO activists engaged in ending the girl trafficking and discrimination against women blame the government. They claim that the Constitution of Nepal 1990 has clearly stated that there won't be any discrimination against women. In practice it is not so. The government has been blamed for failing to amend around 118 discriminatory laws that still exist. It is also true that neither the government nor the National Planning Commission (NPC) filled with heavy weight scholars with foreign degrees and assignments to their credit have failed to visualize the importance and contribution in nation building of 51 percent of the population, which is represented by the women. Thus to a great extent the lopsided development policy of the government in failing to recognize the strength of women who put up, as the research has indicated, over 25 percent more labor than their male counterpart, should also be blamed for the deplorable situation of women.

It is not only the responsibility of the NGOs to engage in any such activity. Every member of the civil society and the government machinery should think of forging bondage to put an end to such heinous crime. It is, however, natural to expect such responsibility from those organizations and people who claim to be the forerunners and torchbearers of women's liberation and it is natural to make an effort to draw their attention to the deplorable situation of those who are supposed to be the beneficiaries of their programs and activities.

It gives me immense pleasure to take the name of Centre for Legal Research and Resource Development (CeLRRd), an NGO created in 1993 with the initiative of young graduates and their teachers particularly Yubaraj Sangroula from Nepal Law Campus in Kathmandu. As it is said in English, morning shows the day. It could apply to people standing behind the NGOs that they establish and the group they associate with. The Law Campus and the lecturers involved in teaching and research in this Campus should particularly feel proud that it has been in the center of political and legal awareness building both in the villages and in the cities. It is always the young, dedicated, brilliant, tenacious and dynamic people who are the torchbearers of any society in general and a backward society like ours in particular. However, CeLRRd itself was an outcome of circumstances, which led to collapse of program at Law Campus and teachers like Mr. Sangroula,

had to withdraw to workout. CeLRRd should be congratulated for its pioneering efforts in launching the village-based initiatives. The account of the achievements of this NGO has been presented in several working papers and research reports going through which one realized the strength of NGOs in mobilizing the human resources based in the communities who are willing to help themselves but need guidance, supervision and support from those who have access to it.

CeLRRd is just one NGO that seems to have managed to penetrate through the thick layers of mistrust and hatred that the villagers have developed from some NGOs over the years when the self-respect the prestige of the locals have been repeatedly hurt by some NGOs failing to reach the bottom of the problem. Those who understand the social structures of Nepalese villages in Sindhupalchok and Nuwakot would understand the problem that the social mobilizes of CeLRRd might have faced reaching them particularly after the massive damage done to them.

I felt good swimming through the ten chapters of “Defective Value Systems: Trafficking of Girls and Women in Nepal – Building a Community Surveillance System for Prevention” – a book in which the author has made an honest effort to jot down the experience he and his team has had in the hinterlands of Nuwakot and Sindhupalchok. The chapters and short but are full of intriguing details of someone who have been there with victims in each locality of 24 Village Development Committees (VDCs) in Sindhupalchok and 16 VDCs in Nuwakot district, which it focuses with, minute scrutiny. Although the experts of CeLRRd has expanded their activities in 220 VDCs covering over 55,000 women in 14b districts of Nepal but the book mainly focuses on the problems associated with girl and women trafficking from this area, the problem of law and order and the problem of insufficient legal support to prosecute the criminals to discourage others to follow it. The book is an example of how they have remained focused to their initial objective and reached their target groups.

The book describes the methodology that they adopted to enter the villages, which remain closed to the outsiders to this day. Providing legal support and legal training to the local people was the approach cleverly adopted by the resource persons of CeLRRd and its sister organizations, which paved the way for them. The researchers, resource persons and experts from CeLRRd walked long hours in the mountain trails to reach from one remote community to another. They lived with the villagers in their houses, shared both their problems and food. They ate *Dhindo* (a Nepalis dish made of maize flour) and millet bread with them and slept on mat with them. To be accepted by the villagers is the entry point which many NGO activists doesn't seem to realize as many of them still remain urban centric in nature.

The author and his team of researchers have identified not only the inherent poverty but also the male domination in making economic and other decisions and unequal legislation exercised differently for the lot of women and low caste *Dalit* (the down trodden) ethnic community as the defective value system that further aggravates the gravity of vulnerability of girls and women. This is supported by their focus group discussions held with the vulnerable groups in the rural areas where the predators roam in search for their catch.

The book and especially the author also dwells on the economic issues in the village which has been a taboo for many NGOs as the seriousness of the issue prevents them from picking it as a contributing factor to trafficking. Nepalis society itself has become a defective product of bad practices. We live in a modern era connected to the rest of the world. We have seen the world but our behaviour is that of a cave dweller. We talk big but in practice we are very conservative. We are bound by our age-old orthodox practices all of which is not bad but some of which needs some suitable reorientation. It is also an established fact that internal migration in search of alternative employment is very high in Nepal and young girls and women are also among those who migrate in search of employment. It is then that they are subjected to cultural shocks and become victim of several other defective value systems created by cultural mix and constant attack on their traditional value system by international media networks, cinema and colleagues.

The author is fully convinced that girl trafficking is a problem that needs to be tackled in a much broader perspective than the traditional approach of kidnapping and selling of girl child and women by their parents, a theory pushed by many urban NGOs. There can be exception but it is entirely

wrong to push the idea that girls and women opt for prostitution on their own or with consent of their parents. The author also remains fully convinced that this is a problem, which needs multifaceted approach to its solution. In a chapter on the Analysis of the Causes of Trafficking he remains fully convinced that economy is not the only reason for them to leave the house. However, one must not forget that the prime reason for them to leave their houses is to look for a better paying jobs in the cities which will, in one hand, increase their status in the society and on the other help them get out of grinding poverty. Indeed, none of them would volunteer to become a prostitute to earn a living.

In the one hand, the author suggests that the defective value system of our society needs to be modified to make more representative to apply to all the segments of our society, which is diversified and not mono-cultural. They suggest that enough room should be made in our value system to accommodate the sentiments of other segment of our society such as Dalits. The author particularly stresses that the discriminatory laws should either be nullified or modified to embrace the sentiments of all those who compose the ethnic fabric of a Nepali society.

The author prescribes for the formulation of new legislation to curb trafficking and mentions having drafted such a legal framework in consultation with experts in a chapter on National Counter Trafficking Legal Framework. The new draft deals with sections on human trafficking and punishments, procedure and jurisdiction, inadequacies and ambiguities existing in the New Muluki Ain 1964 (State's Code of Laws) and highlights the flaws and weakness inherent in the New Muluki Ain and suggests new legal framework which, it claims to have been prepared with rigorous scholarly input of experts from law, law enforcement agencies and judiciary. However, the entire effort could merely be termed futile in the face of the new draft gathering dust in the safe cabins of ministers and legislators.

CeLRRd has, from very beginning, emphasized the need to induce awareness in the village people. This has clearly emerged as the strength of this organization over the last six years that it has spent in Sindhupalchok and Nuwakot districts. Formation of paralegal committees in the ward, VDC and district level is another achievement of the ongoing legal awareness, education, and scholarships and girl child and income generation activities that the members of paralegal committees have initiated. Today there are 750 paralegal committees in 220 VDCs, which mobilizes around 13,000 local women. The legal awareness and support of CeLRRd generated confidence in them and empowered them to rise to their societal needs.

The active indulgence of village folks, both men and women, in Sindhupalchok and Nuwakot has significantly reduced the cases of girls trafficking. The credit for which should be given to the members of paralegal committees and the support they have managed to get from locally elected representatives and local law enforcement agencies. It could also be called a combined effort of all the local people that the concept of paralegal committees and CSSAT has become a successful model today. The members of paralegal committees not only indulge in the prevention act but also regularly engage in awareness building activities for the vulnerable people in the village. They also conduct counseling classes with the help of manuals prepared by CeLRRd.

Another significant achievement of CeLRRd has been the development of a Community Surveillance System against Trafficking (CSSAT), which has been described in detail in a separate chapter. It is encouraging to note that how proper training, education and support can motivate the innocent villagers to stand and create a model such as CSSAT. It could prove to an effective mechanism to prevent girl trafficking from villages of Nepal. This village based surveillance system has emerged as a model and which should be replicated by all those NGOs working in the area of trafficking and even promoted by the government at national level. Looking at the inefficient Nepalis NGOs and their urban nature these village folks should be replicated promoted to register CSSAT as a national NGO. This is a concept which is not only valid for a country like Nepal but could be equally effective in other countries such as Bangladesh, India, Pakistan, Bhutan, Burma, Thailand, Vietnam, Malaysia, Indonesia, especially those countries where innocent girl child and women are trafficked across borders for sexual slavery and human organ transplant.

The book, as it is written one of the best known lawyers and scholars of our society who have been a part of the system, someone who have witnessed changes in our society over the years, will prove to be a good reference book for all those who take interest and are committed to uprooting the age old problem of trafficking. Despite his scholarly presentation of the data in short and crisp format followed by box items detailing personal experiences of several victims who are no more among us. The book has made them immortal in the minds of people who will read and will find out about their suffering and struggle. The book has been successful also in unveiling the shallow and unseen network that exists in Nepalis villages whose roots are spread far and deep. It could perhaps be termed as a first attempt to uncover the people behind the mask supported by documentary evidences and confessions of the victims. Despite all these facts the author concentrates too much in the trafficking issue, defective value system and derogatory laws against the minority and women but it fails to take into account the changing reality of our society today. How has the society has changed over the years, how the civil society has evolved today and how does boys and girls behave today and why do they behave the way they do. What has been the influence they have had from information technologies, films and television which continue to make us a citizen of a global village would have, perhaps, added to the credit of this valuable book.

As an active journalist for over two decades who have witnessed ups and downs and the evolution of civil society, I have had several opportunities to see and analyze from very close the activities of numerous NGOs and meet the ones who run the show. I do not hesitate a bit to support each and every point that I have mentioned above. Many of the NGO advocates may find my points bitter but I am sure there are definitely some who would agree to what I have written above because I have nothing personal against any one. I just feel concerned for the poverty-stricken people of Nepal who have been repeatedly sold, continue to be sold. I realize the vast opportunity of local development and the employment opportunity that any dedicated NGOs could create in any given location because NGOs don't have any strings attached to them when it comes to hiring an individual or thinking about development. It is up to the intellect and perseverance of the leaders and advocates of NGOs how much they can do because there is no limit to their scope. The only limit that I could see is monetary but that too is secondary now as there is no dearth of well-wisher donors who are ready to support any of them by training and funding. Nepal may have lost its donor pampered status because of bureaucrats and ministers and the dense web of corruption that they institutionalized but there are still enough good friends out there who confide on us so let us not loose them by our greed.

~ Prakash Khanal,
Journalist and Public Relations Consultant

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Acronyms

CSSAT	:	Community Surveillance System Against Trafficking
CeLRRd	:	Center for Legal Research and Resource Development
NGO	:	Non-Governmental Organization
SSNCC	:	Social Service National Coordination Council
VDC	:	Village Development Committee
DVS	:	Defective Value System
CBS	:	Central Bureau of Statistics
UNDP	:	United Nations Development Program
UNICEF	:	
CWIN	:	Child Workers in Nepal
CDO	:	Chief District Officer
CL	:	Clause
LACC	:	
CRC	:	Child Rights Convention
CEDAW	:	Convention on Elimination of All Forms of Discrimination Against Women
CLRC	:	Community Legal Research Center

Gender Relationships in the Existing Social Structure of Nepal

Nepal, lying along the southern slopes of Himalayas, is one of the economically poorest nations in the world. Mountain terrain with physical barriers such as extreme slopes, along with snow-blocked tracks and passes, covers 89% of the country's total landscape. The lower slopes are cleared and terraced for cultivation. The large proportion of non-arable land in the mountain region is one of several major reasons for the country's great poverty.

The economy is predominantly based on subsistence agriculture. The industrial sector is smaller. It provides employment for relatively few people. The country has a rapidly growing population of approximately 21 million people. Owing to the rampant poverty and lack of health facilities, a large number of children suffer from malnutrition and diseases. About 60% of the population is illiterate, and among women the illiteracy rate is about 75%.

Nepal is a predominantly Hindu country. The male section of the population is dominant in matters of ownership of property and in the decision-making process. In the social hierarchy, men maintain a position above the female population. The "social values" maintaining patriarchal supremacy are zealously protected by the idiosyncratic legal system of the country which has prevailed for centuries.

The legal system protects discrimination against women and girl children in matters of social status and development opportunity. Implicitly, women are defined as inferior citizens, and subservient to their husbands, fathers or sons. Nepalese women are virtually deprived of opportunities for economic independence as well as the right to own and dispose of property even though they make a tremendous contribution in the family economy.

Orthodox Hinduism as a dominant ideology governs the Nepalese society. All aspects of family relations are thus shaped by a social structure and value system permeated with patriarchal traditions. Certain hill-tribes preserve a comparative greater degree of women's freedoms and social recognition, but they too are largely influenced by cultural values of other communities that exercise Hinduism. The society nurtures a high preference for having sons. They are considered as economic insurance against the insecurities of old age. Sons are expected to continue to live in the family home, maintain the family business, and provide a daughter-in-law to care for aging parents. Moreover, according to Hindu scriptures, sons are considered instruments for opening a gateway to heaven for parents by performing the death rites, and by carrying on the family lineage and legacy.

This social structure and value system is evident in all aspects of women's lives. Daughters are excluded from the religious obligations of sons, and thus are not considered to be of special religious importance to the natal families. Rather, a daughter is given away in marriage, which includes a strict obligation of taking care of her husband's parents and working for her husband's family. A daughter is expected to give birth to sons for her husband in order to continue his family lineage and legacy. If a wife fails to have a son, the husband is able to have another marriage consummated legally. A wife then has only two options left. Either she should compromise with the husband and continue living with him together with his another wife, or she has to divorce. In the given social circumstances, it is very hard for her taking a decision to make choice of the second option. The law allows to have legal separation with the husband in such a circumstance, but it is hardly realistic in the present context. The husbands do all tricks in order to disable the wives. Since the law is not favorable to women, the justice for them from courts is not only expensive but also almost impossible.¹

Daughters' economic contribution to their natal families is thus limited to their early years. This is a major cause discouraging parents from making investments in education and, often, health care for daughters. The investment in daughters' future is considered "watering a neighbor's tree"—one has the trouble and expense of nurturing the plant, but the profit goes to someone else. Lack of investment in daughters results in high rates of illiteracy among girl children, as well as child marriage and early pregnancy.

A combination of poor general health care and inadequate prenatal medical care results in women facing a high risk of prenatal complications and death. Both acute and chronic nutritional deficiencies that many girl children suffer during childhood often lead to severe effects on their children as well. As women grow older, repeated pregnancies (average fertility rate of 5.7 children per woman²), anemia, continued malnutrition and excessive workload often result in early death. Nepal is one of the few countries in which women's average lifespan is shorter than men's.³

Domestic and field work beginning in early childhood keeps girl children from access to education. This deprives them of possibilities of gainful employment outside the home (especially in professional jobs) and of access to the socio-political process when they gain adulthood. The rate of literacy for women is extremely low. According to the 1991 Nepalese census, it was just 25.54 percent, compared with 54.5 percent for males. The Statistical Division of the United Nations reported an adult female literacy rate of only 12.4 percent for 1992.⁴ The literacy gap between females and males, as measured by the national census, has actually been widened during the decade of the 1980's; the disparity reached 29.46 percent by 1991⁵. The school dropout rate of girl children is extremely high in Nepal. The Central Bureau of Statistics reports that, of the girl children enrolled in grade I in 1988, only 35.3 percent had reached grade V by 1995. It was found that only 21.85 percent of female students were currently attending school in 1991, compared with 39.45 percent of males.⁶ The extreme workload is one of many reasons for the higher rate of dropout for female students. The table given in next page describes the extent of girls' participation in the workforce.⁷

The chart partially explains the basis for the disparity in education of girl and boy children. It demonstrates the traditional attitude of the family, which requires girls to work rather than attend school. The higher female work burden in rural areas demonstrates that girl children are an active labor force in agriculture.

The participation of women in the formal sector workforce is small. Women constituted only 17 percent of total formal sector employment (only 12 percent at the professional/management level).⁸ Over 80% of educated women have never worked in the formal sector, although 55 percent actively looked for jobs.⁹ Women in Nepal are economically dependent. This dependence has a serious and negative impact on the socio-cultural and legal aspects of women's lives.

The statistics show that parents generally do not make an investment—of either money or time—in the education of girl children or in their career development. Many families only educate girls concerning things which are necessary for attracting a “good family” for marriage, such as teaching her to be obedient to her husband and his family. Other investment in a girl's education is considered a drain on the scarce financial resources of the family. The ignorance and illiteracy of the female section of society thus reflects a defect in the value system of Nepalese society.

The multiple impacts of this defect in the value system of Nepal's social structure concerning women can be summed up as follows:

- Girl children are seldom prepared like boy children for the world of productive work outside the home and for decision making.
- Girl children are trained to be housewives, mothers and service providers. From a young age, girls are taught that their duty lies in providing services to their family—the natal family before marriage and the husband's family afterwards.
- The idea that women and men should do separate types of work is taught to both girl and boy children from infancy. Boys are seldom required to participate in household tasks. Household tasks are done by females exclusively.
- Confidence and self-esteem are traits seldom cultivated in the minds of girls during socialization. Instead, subordination to males is taught from childhood. This defect in the process of socialization leads to acceptance by both males and females of the subservient role of women in Nepalese society.

- Self-denial, self-effacement, gentleness, sacrifice, unassertiveness are characterized as “feminine” qualities in the teaching of girl children in the household. Good character in girl children is believed to be demonstrated by absorption of these qualities during their upbringing.
- Boldness in decision making, strength of expression, opinion formation, participation in public forums and assertion of needs and interests are discouraged during the socialization process of girl children.
- Modesty and chastity are depicted as the basis of “ethical existence” in the social personality of girls and women. Hence, females’ social interaction with men is strictly discouraged. Women and girls are allowed to have very few contacts with males outside their families. In this way they are effectively cut off from the information, knowledge and resources possessed by men and boys in Nepalese society.
- Sexuality of girls and women is defined as sacred. Discussion of matters pertaining to sexuality is prohibited.

For the most part, females are secluded from viewing the broader horizons of the world. Ignorance of the world and denial of women’s full potential for participation in society is therefore an imposed fate for Nepalese women.

The Militant Mother-in-Law

In April 1998, Anjan (another mobile lawyer from CeLRRd) and I were trekking, along with a Dutch friend, from Talamarang to Helembu. It was a seven hours walk from Talamarang to Helambu. When we arrived at the edge of Mahankal, next village after Talamarang, we stopped to have a little rest and a snack. A pleasant cool wind re-energized us to travel again. While resting, we encountered a group of women who had been participants in paralegal training held some months before. They greeted us and invited us to go up to their houses and enjoy “khaja” (afternoon snacks). We begged to excuse ourselves for we had a long way to travel, but they were adamant in their request.

A group of young girls appeared with wood for fuel tied on their backs. They carried unbelievably heavy burdens. A nine-year-old girl was facing a difficult climb up the rough steps of a ladder to the main trail. Eventually she fell down under the weight, and hurt herself.

This is a normal experience in the lives of hundreds of thousands of girls in rural Nepal. Girls constitute an active and regular workforce for the family. They collect wood and fodder, fetch water and look after siblings. Only a few girls are fortunate enough to go to school. Many of those drop out either to help with the family’s labors or to get married. Education is considered to have no meaning for women.

Meanwhile, a man, carrying a heavy load of rice on his back, stopped for rest too. A little girl about 10 years old followed him. She was carrying a load of about 25 kgs. of rice on her back.

We eventually followed the group of women to their home to take tea and snacks. The staff and mobile lawyers of Center for Legal Research and Resource Development (CeLRRd) are accepted, and comfortable associating with villagers. They are trained not to allow urban biases to make villagers feel inferior. The mobile lawyers are especially trained to practice simplicity in dress, conversation, food choices and social interactions. This approach is quite useful in developing comfortable relationships between mobile lawyers and local communities. The mobile lawyers’ behavior and respect for villagers are also instrumental in demonstrating commitment to work with the community. Whenever villagers encounter mobile lawyers in their locality, the lawyers are nearly inundated with local legal problems. These problems usually concern partition of property, land ownership and possession, and boundary disputes. Mobile lawyers try to help villagers deal with their legal issues, in an effort to save them the time and money they would expend consulting lawyers on their own. By helping in this way the mobile lawyers generate support for the woman paralegals who are the main pillar of the Community Surveillance System against

Trafficking(CSSAT) program. This is also a part of the program to develop a legal profession with alternative lawyering

When we arrived at the house of a woman paralegal, we were offered a mat to sit on and to relax for a while. The woman's mother-in-law greeted us too. Then they became busy inside preparing something for us to eat. In few minutes, both of them appeared with a bunch of bananas and locally made curd. These were so delicious! This kind of affection and respect are much appreciated by mobile lawyers such as ourselves. We resumed talking. The mother-in-law had changed her orthodox treatment of her daughter-in-law after she participated in paralegal training for three days. She now treats her daughter-in-law with much greater respect.

The mother-in-law briefed us on a huge rally the women of the village organized to protest the increasing menace of alcohol abuse in the village. "We were more than three hundred women," she said. "Schoolteachers helped us in making display-cards with slogans and keeping the women in lines. They also taught us in speech-making, but that is very hard to do. Many men were helpful to us. They also believed that excessive use of alcohol is a source of violence in the village. Many others were angry with us, though. They said we were going against the customs of our fathers. But we will not let them go on drinking too much, like in the past." The older lady expressed strong determination as she told the story of the rally.

The paralegal committee was working, by tackling a significant problem in Mahankal. These women were in the process of forming a social defense system, and the CSSAT program was helping. Women are a strong force in society. They can do what men can do. The older lady believed the education and empowerment of women will help prevent violence and discrimination against women, and eventually the trafficking in girls and women for prostitution.

Gender Relationships in the Existing Social Structure of Nepal

Nepal, lying along the southern slopes of Himalayas, is one of the economically poorest nations in the world. Mountain terrain with physical barriers such as extreme slopes, along with snow-blocked tracks and passes, covers 89% of the country's total landscape. The lower slopes are cleared and terraced for cultivation. The large proportion of non-arable land in the mountain region is one of several major reasons for the country's great poverty.

The economy is predominantly based on subsistence agriculture. The industrial sector is smaller. It provides employment for relatively few people. The country has a rapidly growing population of approximately 21 million people. Owing to the rampant poverty and lack of health facilities, a large number of children suffer from malnutrition and diseases. About 60% of the population is illiterate, and among women the illiteracy rate is about 75%.

Nepal is a predominantly Hindu country. The male section of the population is dominant in matters of ownership of property and in the decision-making process. In the social hierarchy, men maintain a position above the female population. The "social values" maintaining patriarchal supremacy are zealously protected by the idiosyncratic legal system of the country which has prevailed for centuries.

The legal system protects discrimination against women and girl children in matters of social status and development opportunity. Implicitly, women are defined as inferior citizens, and subservient to their husbands, fathers or sons. Nepalese women are virtually deprived of opportunities for economic independence as well as the right to own and dispose of property even though they make a tremendous contribution in the family economy.

Orthodox Hinduism as a dominant ideology governs the Nepalese society. All aspects of family relations are thus shaped by a social structure and value system permeated with patriarchal traditions. Certain hill-tribes preserve a comparative greater degree of women's freedoms and social recognition, but they too are largely influenced by cultural values of other communities that

exercise Hinduism. The society nurtures a high preference for having sons. They are considered as economic insurance against the insecurities of old age. Sons are expected to continue to live in the family home, maintain the family business, and provide a daughter-in-law to care for aging parents. Moreover, according to Hindu scriptures, sons are considered instruments for opening a gateway to heaven for parents by performing the death rites, and by carrying on the family lineage and legacy.

This social structure and value system is evident in all aspects of women's lives. Daughters are excluded from the religious obligations of sons, and thus are not considered to be of special religious importance to the natal families. Rather, a daughter is given away in marriage, which includes a strict obligation of taking care of her husband's parents and working for her husband's family. A daughter is expected to give birth to sons for her husband in order to continue his family lineage and legacy. If a wife fails to have a son, the husband is able to have another marriage consummated legally. A wife then has only two options left. Either she should compromise with the husband and continue living with him together with his another wife, or she has to divorce. In the given social circumstances, it is very hard for her taking a decision to make choice of the second option. The law allows to have legal separation with the husband in such a circumstance, but it is hardly realistic in the present context. The husbands do all tricks in order to disable the wives. Since the law is not favorable to women, the justice for them from courts is not only expensive but also almost impossible.¹

Daughters' economic contribution to their natal families is thus limited to their early years. This is a major cause discouraging parents from making investments in education and, often, health care for daughters. The investment in daughters' future is considered "watering a neighbor's tree"—one has the trouble and expense of nurturing the plant, but the profit goes to someone else. Lack of investment in daughters results in high rates of illiteracy among girl children, as well as child marriage and early pregnancy.

A combination of poor general health care and inadequate prenatal medical care results in women facing a high risk of prenatal complications and death. Both acute and chronic nutritional deficiencies that many girl children suffer during childhood often lead to severe effects on their children as well. As women grow older, repeated pregnancies (average fertility rate of 5.7 children per woman²), anemia, continued malnutrition and excessive workload often result in early death. Nepal is one of the few countries in which women's average lifespan is shorter than men's.³

Domestic and field work beginning in early childhood keeps girl children from access to education. This deprives them of possibilities of gainful employment outside the home (especially in professional jobs) and of access to the socio-political process when they gain adulthood. The rate of literacy for women is extremely low. According to the 1991 Nepalese census, it was just 25.54 percent, compared with 54.5 percent for males. The Statistical Division of the United Nations reported an adult female literacy rate of only 12.4 percent for 1992.⁴ The literacy gap between females and males, as measured by the national census, has actually been widened during the decade of the 1980's; the disparity reached 29.46 percent by 1991⁵. The school dropout rate of girl children is extremely high in Nepal. The Central Bureau of Statistics reports that, of the girl children enrolled in grade I in 1988, only 35.3 percent had reached grade V by 1995. It was found that only 21.85 percent of female students were currently attending school in 1991, compared with 39.45 percent of males.⁶ The extreme workload is one of many reasons for the higher rate of dropout for female students. The table given in next page describes the extent of girls' participation in the workforce.⁷

The chart partially explains the basis for the disparity in education of girl and boy children. It demonstrates the traditional attitude of the family, which requires girls to work rather than attend school. The higher female work burden in rural areas demonstrates that girl children are an active labor force in agriculture.

The participation of women in the formal sector workforce is small. Women constituted only 17 percent of total formal sector employment (only 12 percent at the professional/management level).⁸ Over 80% of educated women have never worked in the formal sector, although 55 percent actively

looked for jobs.⁹ Women in Nepal are economically dependent. This dependence has a serious and negative impact on the socio-cultural and legal aspects of women's lives.

The statistics show that parents generally do not make an investment—of either money or time—in the education of girl children or in their career development. Many families only educate girls concerning things which are necessary for attracting a “good family” for marriage, such as teaching her to be obedient to her husband and his family. Other investment in a girl's education is considered a drain on the scarce financial resources of the family. The ignorance and illiteracy of the female section of society thus reflects a defect in the value system of Nepalese society.

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Father Fixes Marriage

One of my lady students had been participating in a outreach program, a joint program between CeLRRd and Kathmandu School of Law, when I received a telephone call from her relatives enquiring of her return home. In fact, her marriage was fixed by her parents, and they wanted her to come home sooner. When she came back, I say her “congratulation”. She was not happy to what parents had decided but also had not enough courage to protest that. The reason was that her father

wanted to fulfil his all responsibilities before he died. His son married two years before, and this year, with wife, he made a long trip to India for a pilgrimage. His daughter's marriage is the only thing now left for complete opening of the gate to "Heaven". Many parents in the search of "Heaven" volunteer to marriages of daughters at their early age. It is difficult to guess whether they really open the gate for their "Heaven", but the gate of "Hell" for daughters may be opened. These mores are prevalent in many parts of Nepal ending lives of many women. The thought of opening a gate for "Heaven" by consummation of daughter's marriage is one of the crystal expression of the "Defective Value System".

Emergence of Trafficking of Girls and Women for Sexual Exploitation

Growth and Magnitude of the Problem: Trafficking in Nepalese girls and women for sexual exploitation began as early as the Rana regime (1846-1951 in the Western calendar), in which a single family held the prime ministership of Nepal as a hereditary position and dominated other aspects of political and military life. The Ranas drew many young girls from the hills surrounding the Kathmandu Valley to their palaces as servants and objects of sexual exploitation. The trade in hill girls for the Rana rulers and their courtiers continued until the Rana regime was overthrown in 1951.

Geeta's Courage

A large number of women involved in the sex market as "gharwali" (brothel owners) come from Sindhupalchok and Nuwakot. Melamchi, Talamarang, Mahankal, Ichok, Kuel, Palchok and Duwachor are few villages severely hit by the problem of trafficking. The first time I came to Sindhupalchok, I was with a group of law students doing clinical training to help them understand community legal problems. Local people told us stories of women who in the past had been sold at brothel of Bombay as sex workers. They sometimes used to come home and return with more women.

The first woman to tell us her life story was Geeta Danuwar, who returned to Duwachour, her village, after 17 years of brothel life. At the moment we met her she was dying of AIDS. She was brave enough to lodge a complaint against Simla Tamang, a millionaire, from Duwachour currently living at Kathmandu. Allegedly, Simla Tamang was one of the richest "gharwali" in Bombay. Geeta was sold to Simla by one of her cousins, the son of mother's sister. Simla allegedly sold hundreds of girls, the villagers said, in supporting Geeta's complaint letter to police.

"Unknown people from city came and requested me to give hostile testimony in the court", Geeta said in a conversation with our group. Two hundred thousand (two lakh) rupees was offered for becoming hostile to the prosecution in court. Her parents pressurized her to accept the offer and go to Chautara (headquarters of Sindhupalchowk district) to withdraw the complaint. She refused. "I will definitely refrain doing so even at the cost of my life," she said. "I want to save the lives of my nieces and other girls in the villages."

Simla was convicted and sentenced to ten years imprisonment by the trial court at Sindhupalchok. She appealed and was released by the Patan Appellate Court, on technical grounds. The evidences were not considered.

When I met Geeta Danuwar, the life she was living was very difficult. She was ejected from the home of her parents. A small shop was given to her by generous donations obtained from some caring people. Unfortunately, the shop was grabbed by her parents.

I wanted Geeta to come and participate in a five-day paralegal volunteer training. Of course, she did. She helped us greatly. She recruited five young village women to participate in the training. She also told her story. Many women cried when they learned that Geeta had to serve over 20 men a day on some occasions.

About a year later, Geeta died of AIDS. The release of Simla, who exploited her for 17 years, had come as a shock for Geeta. The last time when I met her few months before her death, she was seriously sick. “*Simla lai chodne nayadish le nark janu paros, malai thaa chha ghus khayar uslai chode*” (The judges who released Simla will go to hell. They took bribes to let her go.). She repeatedly muttered curses on the judges. I don’t know what had happened in this case, but the decision of the court did not earn respect of the people to the process of justice. Every individual in Sindhupalchowk now nurtures a feeling that traffickers are protected by the state machinery.

After the overthrow of the Rana regime, the Rana class could no longer support hundreds of women servants. Many of these women left the service of the Rana palaces. However, returning home to hill villages was not preferred by many, who had become used to a somewhat more prosperous life as Rana house servants and courtesans. With the downfall of the Ranas, the market for hill girls decreased in Kathmandu.

The traders involved in supplying young girls to Rana Palaces subsequently established connections with brothels in Indian cities. Indian brothels have a high demand for Nepalese girls for many reasons. Firstly, there have long been many Nepalese workers in India, providing a source of ‘buyers of sex.’ Secondly, the fairer complexion of the Nepalese girls is attractive to most Indian native ‘buyers.’ Thirdly, importing Nepalese girls has been safer than selling local Indian girls into prostitution. Ignorance of local customs, procedures and languages makes Nepalese girls less likely to complain to the police.

Trafficking in Nepalese girls and women to the Indian brothels became fully established in the 1960s, and increased tremendously in the 1980s.¹⁰ By the 1970s, criminal links between Indian sex traders and the Nepalese pimps were well established. A segment of pimps also grew out of the Nepalese workforce in India. An ineffective law enforcement system in Nepal and the high demand of Nepalese girls in India attracted a number of migrant Nepalese workers to engage in smuggling of girls from Nepal.

Brothel owners are another group of girl traffickers. These are mostly Nepalese women who migrated to India in search of jobs or who had been trafficked for prostitution themselves. These women, called “gharwali,” visit Nepal and smuggle a number of girls from Nepal to India. The parents or guardians of the girls are assured that the gharwali will help the girls get good jobs. This practice was largely responsible for giving rise to a belief that parents or guardians sell their female dependents for the sake of monetary benefit. Although taken to cities like Kathmandu and across the border with assurance of good jobs, the girls and women are eventually forced into the sex market. In this course, a group of men and women emerged to trade in rural girls and women. During 1980s, when the market for Nepalese girls grew in the Indian sex market, the high demand for a supply of the girls was created. This increased demand caused the emergence of a group of local traffickers in Nepal to facilitate the supply of Nepalese girls. When the Nepalese group established contacts with the Indian sex market, this trafficking began to take the shape of an organized international criminal organization. These organized criminals have a variety of ways of trafficking girls. This has rendered law enforcement agencies in Nepal desperately confused and ineffective.

Following the 1970s, with a larger number of girls being preyed upon every year, Nepalese intellectuals, the press and social workers began to recognize the seriousness of the problem. Some studies emerged strongly suggesting that rampant poverty in the hills was the major cause behind increasing incidents of trafficking. People concluded that poverty drove girls and women to seek employment in prostitution. However, this conclusion had no factual base. It was essentially erroneous to assume that many girls and women voluntarily enter prostitution to gain a livelihood. These studies also presented another factually unfounded conclusion: that many parents intentionally and knowingly sold their girl children into the Indian sex market. Many people also denied the existence of an organized network involved in the trafficking of girls and women. Even today there is a group of people, including a few foreign journalists who advance the thesis that poverty is the major cause of trafficking, and deny the existence of the organized criminal network

of traffickers. The migration of people to cities, including large numbers of girls, has been a phenomenon in Nepal in the last few decades. Many girls do come to the city, with the consent or under the arrangement of parents, to work as domestic workers, carpet weavers or construction labourers. While coming to the city the girls are deceptively enticed and taken away across the borders. An organized group is active in this illegal business. As the stories of many girls returned from brothels reveal the trafficker and local pimps have good connections, and the traffickers and the brothel owners also maintain business relationships. As the majority of cases demonstrate, the trafficking of a girl takes place once the demand is received from the brothel owner. The trafficker has to perform the task with great care and caution as the risk of being caught is always there. Hence, it is almost impossible to “complete the whole process of trafficking by a single person”. The nature of this crime itself presupposes that more than one person should “breadth together” for a successful completion of the act.

In the 1980s, the problem of sex trafficking in Nepal and other developing countries gained wider attention in the outside world. Tragic stories of abduction, fraud, deception, fake marriage and enticement to good jobs by sex traffickers of ignorant Nepalese girls were exposed by the Nepalese press and Non-Governmental Organizations (NGO's). The Nepalese press deserves recognition for its significant contribution in exposing the problem. The press helped attract the attention of the government and NGO's to the problem so that initiatives against it could be developed. The sex trafficking problem gained regional attention when the *Times of India*¹¹ published the findings of a study conducted by Dr. Galida of the Indian Health Organization. The Nepalese press repeated the *Times of India*'s story, an important reason for recognition of the problem by the Government of Nepal.

Despite wider recognition of trafficking as a serious social problem and an atrocious sexual exploitation of the girls and women, very few attempts are made to establish an accurate numerical evaluation of the problem. No official figures are available on the number of girls and women trafficked into the Indian sex market. Neither the government of India nor that of Nepal has made any attempt to identify the magnitude of the problem—the numbers, the health status of those involved in prostitution, the causes and factors for increasing incidents of trafficking, the vulnerable groups, or any possible means of intervention. What figures available are the ones based on intelligent estimation.

The best estimate is that the number of girls and women trafficked is enormous. In January 1989, the *Times of India* reported that, according to the Indian Health Organization, about 100,000 Nepalese girls and women from Nepal are engaged in Indian brothels. Pauline O'Dea, who prepared a report on the problem of trafficking to the United Nations Children's Fund (UNICEF) mentioned that, in 1992 the Government of Nepal had declared the number as 200,000 women and girls.¹² However, the figure was simply a conjecture. A meeting of the Nepalese and Indian organizations held in 1987, speculated the figure is about 153,000 women and girls.¹³ In her report, O'Dea estimated that 40,000 to 45,000 Nepalese women and girls were engaged in the brothels of Bombay alone.¹⁴ Guari Pradhan, chairman of CWIN, however, claimed that the number of the Nepalese girls and women in prostitution in brothels of Bombay is more than 60,000¹⁵. Dr. Galida of the Indian Health Organization reported that 90% of the total population of sex workers in Bombay were migrants from Nepal, Bangladesh and other states of India besides Maharastra¹⁶. All these figures are based on intelligent speculations.

Nepal Television states that it receives about 20 requests per month from the police for announcements about missing girls and women. This figure is not exhaustive, as the bulk of missing are never reported to the police. It is normally assumed that hundreds of girls are trafficked monthly from Kathmandu alone. In most such cases, no follow-up procedures take place except delivering photographs of the missing girl or woman to the border police stations and check points. In many cases, the parents receive information on their missing daughters quite a long time after the incidents take place, if ever.

Despite the wider attention to the problem, incidents of trafficking are still increasing. Previously, the problem of trafficking was confined generally to a few specific ethnic communities and regions.

Trafficking has scattered widely and swiftly to almost every ethnic community and area across the country. The problem has become national. The rural villages that are subject to widespread illiteracy and are inaccessible to development activities are the most badly affected by the problem. The circumstances of abject poverty in the rural villages and the growing migration of young girls to cities in search of better lives help create an environment where it is easy to prey on these young girls. This is a leading reason that the number of young girls being trafficked has sharply increased over the years.

The baseline survey of households at 24 Village Development Committees (VDCs) of Sindhupalchok and 15 VDCs of Nuwakot, for instance, uncovered 2116 girls and women missing from the villages.¹⁷ Information on the whereabouts of the greater number of these girls and women since the time of disappearance is not available. Based on hearsay from relatives of those missing girls and other villagers, it appears that most of the girls were trafficked to Indian brothels. The figure is, however, not exhaustive. Information still might have been concealed. Yet, the figure itself exhibit the size of the girls missing nationwide.

Laxmi's Good Fortune

1996 was the most challenging year for those working in Center for Legal Research and Resource Development (CeLRRd). By this time we had been fully involved in developing "Community Surveillance System against Trafficking" (CSSAT). We had launched programs in 12 VDCs of Sindhupalchok district, and Duwachour was our base of operation.

The trail leading to Duwachour School is high and steep. It is a three hour walk. However, the friendship of Laxmi Giri, a CSSAT-trained paralegal woman, and her husband always made the trip worthwhile. Their house was our place for lodging and eating. My friends and I always enjoyed naune (unpasteurized butter) with food there. Laxmi always insisted that we eat little more.

Laxmi and her husband had three daughters. Her husband was being pressured by his parents to have another marriage, because the village fortuneteller had said that Laxmi would produce no sons. Venica, a Canadian volunteer, was staying in Laxmi's house with us. She told us about what was going on with Laxmi and her husband. It was a sad and difficult situation, as her husband did not want to dishonor his parents' desire to have a son.

We wanted to do something to protect Laxmi from being cast away by her husband's family. I asked Venica to fabricate a story for Laxmi's husband's family that I was a palmist and my readings were never wrong. I quickly learned about the past of Laxmi's husband. Venica told Laxmi's husband that I read her palm and everything I told her was true. Laxmi's husband wanted his palm read. I played hard to get, saying that it is not good to tell people's future. Ultimately, I agreed to read his palm on the condition that he should give me any information he had on traffickers of girls and women from Duwachour and around. At the outset, he hesitated, but hoping that I would read his palm, he agreed to give me information on trafficking in the area. People were afraid of reputed gangsters with strong political connections engaged in trafficking of girls and women. That evening Laxmi cooked food for us quite early, so that the process of reading palms would begin soon. I did it perfectly, because of what I had learned about his past. I told Laxmi's husband that he had undergone a great loss in the business in the past, and he had trouble in his affair with a woman. However, when he became a good husband to Laxmi, everything recovered. Hence, I said to him that taking another wife would lead to financial misery. I suggested forget about another marriage and longing for a son. Instead he should live a good life with Laxmi. This perplexed him.

The next morning he said that he had a very bad dream, and what I told him was one hundred percent true. So he decided not to do what his parents wanted and take a second wife. That evening he handed over to me papers which contained names and details of 78 women trafficked from Duwachour, along with the names of persons allegedly involved in trafficking. It was hard to believe that a man, who was so helpful to us in organizing local programs, was one of the traffickers, and had sold five women. The same evening Laxmi's husband told us the story of

Jhuthé's demise. Jhuthé was suspected of having been involved in trafficking of girls in the past. However, after becoming associated with some NGOs in Mumbai, he came to believe that sex trafficking was wrong. He returned to his village and became involved in anti-trafficking activities. Sadly, after a few months, he was brutally murdered. Suddenly, a woman's scream was heard outside. I peeped out from a window. The woman's husband was beating her with a big stick. This aroused my anger and I began to leave the house to stop him. Laxmi's family tried to prevent me from going, for the man might hurt me. But I didn't listen to them. I approached the wife beater, grabbed a stick, and thought about giving him a few hard blows. But I refrained. The next morning I advised Laxmi to call a meeting of the Paralegal Committee that had been trained by CSSAT to discuss the violence the woman had undergone. This is what happened. The Paralegal Committee called the person to appear before them and make an explanation. He seemed afraid of an organized force of women. He quickly apologized and agreed to separate his wife's share of the family property. This man had two wives, which caused much conflict.

This incident strengthened the team's belief that a collective force of conscious women can make a difference in society.

Stories like the one just told demonstrate the beginnings of empowering women to defend their lives and their right to a secure position of value in society. Yet much still needs to be done.

Although there is no concrete basis for presuming all the missing girls and women were forced into the sex market, there are valid grounds for suspicion. Lack of communication between the missing girls and their families for a long time is one of the grounds to provide a basis for the suspicion that the girls are in the sex market. There is no reason to avoid communication otherwise. The lack of communication is a likely indicator of the virtual enslavement of the missing girls and women.

Distribution of Girls by Age, Marriage, Schooling and Missing

Districts	Total Girls Out of	Girls in Married	Girls Going to School	Girls Not Going to School	Girls Out of District	Girls in Nepal	Girls Out of Nepal
	Child-hood		School	Identified	Place identified	Place not	
Sindhupalchok	15,325	1,135	4,506	10,819	1,713	238	307
1,168							
Nuwakot	8,091	376	2,548	5,343	668	27	168
							473

Source: Baseline Survey of Households conducted by CeLRRd.

As mentioned before, there are reasons to believe that the figures of missing girls and women reported in the survey may not be exhaustive. Many incidents of missing girls may be concealed as some family members do not want to reveal the incidents for fear of prosecution, revenge by the traffickers, or social humiliation. In some instances, the girls are easily forgotten, since daughters are considered less important than sons. The prevailing attitude of parents, extended family, and the society as a whole that daughters are not significant members of the family implicitly makes it easier to ignore or forget missing girls. "Let us forget an egg that is spoiled" is a general expression used when something bad happens to a daughter.

The findings of the survey, mentioned above, indicate the magnitude of the problem. A figure of about 2000 missing girls and women in 39 VDCs of the aforementioned two districts

suggests that the nationwide figure for missing girls and women exceeds what is generally estimated—that is, over 100,000. From press sources¹⁸ and the record of court cases under judicial trial,¹⁹ it appears that the high-risk areas for trafficking encompasses more than 30 of Nepal's districts. The increasing number of districts where trafficking is common indicates an increasing number of girls are being trafficked to Indian brothels.

Prostitution and Modes of Trafficking

Nature of the Sex Market:

The sex market originates in the need of men, and is essentially controlled by men. Sexual activity is often considered a man's activity that women submit to or allow to happen to their bodies. Therefore, it is considered that when a man feels the need for sex, he should be allowed to enjoy it. He should therefore be allowed to buy sex whenever the desire for it occurs. Men, with the help of patriarchal domination, thus create the basic premise of the sex market. Malka Marcovich, an abolitionist, rightly points out, "Prostitution has flourished in patriarchal, merchant societies where women have traditionally been considered to be the property of males. Prostitution is in fact based on the idea that a category of people is intended to be at the disposal of men's sexual purposes."²⁰

In Europe, there has been a movement launched to legalize prostitution. It is clearly established that the policy of regulating prostitution was based on the idea of the irresponsibility of male behavior, necessitating a state-controlled place for them to act it out. In fact, as late as the 19th century, in France and many other countries in Europe, women were still not considered to be citizens and did not have full civil rights. Not being recognized as citizens, their bodies belonged to their husbands inside the house and the regulationist state in brothels.²¹ Prostitution was therefore created as a market for the sole purpose of men and sanctioned by the power of the state, which men kept controlled.

Asia is not different from Europe in this way. Cultures in many countries in Asia unquestioningly value women's virginity or chastity but not that of men. This value system enables or encourages men to be entertained by the sex market. "But women are expected to have one sexual partner, preferably for life. What this tells us is that a 'good' woman is considered sexual territory that men can lay claim to or have property rights over. If a woman is raped or has sex with a man not her husband, she is considered damaged because a man has entered her body and 'soiled' her. There is no equivalent or related notion that men's penises or sperm are themselves polluting so that the men concerned are 'spoiled goods.'²²

In Asia, States did not become obviously "regulationist," but implicitly recognized prostitution as a common social phenomenon. Many kings in Asian countries historically maintained "brothels" inside their palaces. The present presidents and prime ministers turn a blind eye to the exploitation of hundreds of girls and women in so-called red light areas of their countries. They are not interested in protecting these victims of the sexist socio-cultural and political domain.

The sex-market is regulated by the economic theory of supply and demand. Greater demand raises prices, encouraging greater supply. However, this market for sex would not exist without a patriarchal value system that allows the youth and fairness of girls to be put at the disposal of men for their use and enjoyment. This traditional value system, which is prejudicial to females, allows for supplying girls and women to the prostitution marketplace. The girls and women are then condemned as having lost their chastity and virginity, and thus are considered as contemptible members of the society. They are viewed as the lowest of the low, although they are doing precisely what men want. "The culture directs no scorn whatever at the men who use prostitution. The word prostitute is therefore loaded with that contempt, but no word at all exists for the men users of prostitution although they constitute by far the larger population and the more important

factor in the existence and maintenance of the system of prostitution.”²³ Prostitution is thus essentially a market of exploitation and contempt of women. “Millions of women and girls are historically, and in the world today, are held in sexual slavery in brothels and other establishments, and are tricked and trafficked precisely to be put into such establishments. Even in such cases, the women are ‘prostitutes’ with all the contempt the word connotes, and the male users of these sexual slaves are merely ‘men’ with all their social standing intact.”²⁴

As pointed out by Josephine Butler²⁵, a founder of the movement to abolish prostitution, prostitution is a form of slavery. The service required from prostitutes is an attack on the dignity of all women, and of all humanity. Some people talk of the legalization of prostitution and the prohibition of trafficking, but they do not understand that the existence of brothels is by itself an incentive for both national and international trafficking in girls and women. It is not possible to suppress the sex market while protecting incentives attached to it. Prostitution is very close to a system of slavery. It is a market system with five essential elements:

- The states and society, which legitimize this human market;
- The pimps and traders, who earn money from the bodies of women, and girls;
- The clients, always men, who buy the sex act, and pieces of the body: vagina, anus, breast, mouth and hands of women;
- The prostitutes, women who are victims of this market, who, to support themselves, endure the violence of being denied human dignity by being penetrated and tortured many times a day by men for whom they have no desire, destroying their spirits and their bodies;
- Money, which is a crucial factor in the worldwide normalization of the sex market. This leads to the implementation of regulatory policies that allow the transformation of billions of dirty dollars into clean money and help make organized crime respectable through the recognition of the work of the trader in sex, women bodies and human bodies.

Maya's Choice

A girl from the Illam district, named Maya (true name is hidden/pseudonyms), was 7 years old when her mother died. Her father married again. Maya was mistreated immediately. Her stepmother vehemently opposed her schooling. She had to work hard every day, and her father used to beat her after she visited a neighbor's house to watch television. At 13 years old, she fled from her home. She first came to Birtamode, and stayed with relatives. She found work in a brick kiln, and thus earned some money.

She then decided to come to Kathmandu. With help of friends from the district, she obtained a job in a carpet factory. A couple of them hired a room in the Chabil section of Kathmandu. Next to the room was a family. They had a baby and Maya got quite attached to him, and became a good friend of the family. The father of the baby proposed to make her a “sister.” She was happy to have that relationship, as she never had a good guardian. At Tihar, a festival in Nepal at which sisters wish the well being of their brothers, she performed rites of worship for his well being. She then virtually became a part of their family.

Sometime later, her “brother” came up with an idea for starting a business selling Kashmiri wears. Maya and the whole family, including the baby, left for Delhi. From Patna they took a train, but instead of going to Delhi, they went to Bombay. Maya did not know it was Bombay. At a guest house the “brother” made a phone call. After an hour, a group of girls arrived, who, Maya says, looked like college students. They were clean and wearing beautiful clothes. The “brother” said he had a cousin who lived nearby, so they left the hotel.

“He put me in a taxi with the visitors, and his family rode in another taxi,” Maya remembers. “In about half an hour, we came to a place where a Nepalese woman welcomed us. She pretended to recognize me, and offered me a place to sit down. She looked at my face, and asked how long had I

pimples on my face.” The next day Maya was informed that the man, whom she treated as her brother, and his wife had sold her to the woman, a “gharwali” from Nuwakot district. Maya prayed for mercy and asked the woman to let her go back to Nepal. When her pleading was rejected she tried to resist. She was tortured and raped by an Indian man who had been there as a security guard. She tried to commit suicide, but other girls living there did not allow her. There were half a dozen girls in the brothel from different places in Nepal. Finally, she was forced to submit, and she became a prostitute. Sometimes she saw a dozen men a day.

After a few months, she was sent to a hotel to serve a ‘Seikh’, a man from the Gulf. He was quite old and was not interested in sex. She had to be his servant without payment. With this servant position, she had a chance to get out of the brothel. The “gharwali” believed that since Maya was a prostitute, she would not try to return home to Nepal, because prostituted girls feel they are “tormented, spoiled and finished.” She spent about a month with the “Seikh.” He did not treat her badly. She had been able to hide a little money given to her by the “Seikh” as tips. “I felt I could run away and go back to village because many people did not know that I was sold into prostitution,” she recalls with pain in her voice. “But I did not know how to get to the railway station and so I asked a taxi driver for help. I told him my story, and also said that I wanted to run away.” She was taken to the railway station and put on a train by the taxi driver.

My friends Tara Uprety and Renu Sharma called me one day to request legal aid in a trafficking case. They sent Maya to my office and we had a frank conversation. It was apparent from her story that the man and his wife, who sold her, were professional traffickers. They already had trafficked a girl from Nuwakot, whom she met in the brothel. Maya gave this information to the girl’s relatives, as the girl wanted to be rescued. Eventually, the couple was arrested through the efforts of Tara and Renu, and they were taken to a police station. The brothers of the girl from Nuwakot wanted Maya to go to the police to be a witness against the traffickers. Maya had a job, and planned to marry a man working in a trekking agency. Her appearance in court would expose her to the public and it would be difficult for her to have a normal life. It was difficult to make a decision. There were only two options, and both were bad. First, we could forget the case, because without Maya’s testimony there was no good case. Second, we could convince her to be a witness in court and destroy the possibility for her successful reintegration into society. I let her decide. She said she was ready to go to court to give a testimony, and forget having a life. Her courage touched me. Finally I did not take Maya to court and encouraged her to marry as she had planned and begin a new life. I am not sure whether I did good or bad professionally. Such dilemmas are frequent in a life of lawyer who works for public interest.

As Marcovich stated, “This very elaborate system, like other systems of domination, is mainly based on the silence of victims, the women in prostitution, and denial of the fact that this system is violence against women.”²⁶ None of the elements described above justify the existence of prostitution for the benefit of women, men or humanity at large. A man who visits a woman at a brothel never considers the well being of his prey. He pays for his exclusive sexual satisfaction. Sex, ordinarily a matter of biological process between two people, is a matter of equal desire and satisfaction of both. When there is a lack of desire or consent on the part of one, generally the female, and the sex takes place as an involuntary action, it amounts to a “sexual assault” or “rape” depending upon degree of accomplishment of the act. Prostitution is a form of sex where desire or satisfaction of the woman is absent. It is a result of the abnormal sexual behavior of men. A woman having sex with a man without sexual desire on her part is, therefore, being exploited.

One may argue that there is “consent” on the part of a woman to an act of prostitution. However, the consent is in fact involuntary. The presence of a woman in the sex market is essentially an outcome of force of circumstance. Hence, an agreement for the sale of sex is an imposed submission, not a real consent.

The characteristics of prostitution can be summed up as follows:

- The work of prostitution in itself does violence to the bodily integrity and psychological well being of women.

- Women in prostitution experience a higher level of violence than other categories of women. Because masculinity is constructed around notions of power and dominance, male sexuality also integrates notions of power over women. The power is most readily exercised over a woman in prostitution who is usually poor, or socially disadvantaged by class, race or a personal history of abuse. A woman paid for sex is looked upon by society as the lowest of the low is at the mercy of clients, police, lawmakers, and all kinds of moral guardians.²⁷
- “Prostitution has traumatic consequences. Psychological trauma resulting from prostitution is so severe that it forces women to detach themselves from their concept of self”.²⁸
- Prostitution is derogatory to all women. It relays the message that women’s bodies may be put at the disposal of men, and that men have sexual rights and privileges that must be met and served by prostitution. It perpetuates the patriarchal control over women, which is a basis for the anti-female social structure and value system.
- Prostitution provides an incentive for trafficking of girls and women.
- Prostitution is a market where men are the sole buyers, and the transaction is always exploitative. The service providers are forced into the market and then condemned as “unfit for human society.” The buyer, who forces sellers into a world of contempt, is not condemned as “unfit for human society.”
- Prostitution is a market where the spirit and mind of the seller is destroyed. It is a market where seller and buyer have the relationship of “prey” and “predator.”

Prostitution is an Incentive for Trafficking

Large-scale prostitution is the major incentive for trafficking of girls and women. The crime of trafficking of girls and women to the sex market cannot exist in the absence of brothels where sex is sold for money. A major argument put forward for the legalization of prostitution is that, while many women and girls are forced into prostitution, there are also those who are in prostitution by their own choice. Implicit in this argument is that not all forms of prostitution are necessarily oppressive or exploitative. In favor of the argument, the following reasons have been put forward:

- Women practicing prostitution in “upscale markets” may make more money in shorter working hours than in other professions, and will be privileged to choose their clients.
- For women of lower socioeconomic classes, prostitution may provide a source of income to avoid starvation.
- Police and customer brutality would stop if prostitution were legally recognized work.
- Women could come out of the underground of illegality and claim respect for a socially useful occupation.
- If there were enough adult prostitutes, male demand would be sated and female children would be safe from male predators.
- Prostitutes could claim all the rights due to workers, with proper wages and social and labour benefits.
- Prostitution should therefore be a matter of labor relations between men and women. Women can serve needy men with their sex as a market commodity. It is therefore not wrong for women to sell the commodity that they have.

However, those who make such arguments forget to understand that there is no relationship of ‘equal consideration (benefit)’ from prostitution. As once put by a European feminist, in this market women’s bodies are available for men for masturbation. In prostitution a male’s desire is acted out. The woman is merely an instrument. It is not her desire that determines the existence of the sex market.

Trafficking in this sense is the act of feeding the market of sex with victims for exploitation by men. The reasoning put forward in support of the legalization of prostitution are harmful to females, and beneficial to males. It is not really the “work” of prostitution that is legalized. It is the longing of males to buy sex through the bodies of women that is legitimated. By making prostitution legal as regular work to be done by women a new business of training and inducting many adult women into prostitution will arise. The societal message thus given is that men are in control of all things, even women’s sexuality, which is made into a commodity to be bought and sold. The call for legalization therefore ultimately requires the definition of women as a perpetual commodity for men’s sexual satisfaction.

The nature of the service itself shows that, for the vast majority of women, prostitution is a forced choice. They are absorbed into it for many reasons, and in ways in which the whole notion of real “choice” is put into question.²⁹ Kidnapping and deception in trafficking force women into the sex market with no option or choice. Since traffickers need a market for the women and girls they trick or kidnap, brothels spring up and flourish. The conditions of poverty and ignorance among village people aid and abet the traffickers in tricking girls into thinking they will get good jobs, and in encouraging destitute families to sell their girls. As availability of girls and women increases, the availability of brothels makes it easier for more men to use them.

Trafficking is a Means of Enslaving Females

Trafficking takes place in many ways. Kidnapping of girls and women precedes many incidents of trafficking. In such cases, girls and women are put into brothels against their will, which is a true form of slavery. In this kind of induction into prostitution, victims are forced to spend a number of years confined and guarded against escape. They are forced to provide service until they are no longer useful, due to illness, accident or age. Some women become accustomed to the milieu and in these conditions of prostitution and no longer attempt to run away. But this does not mean that the prostitution was accepted as a matter of choice.

Many girls and women are trafficked by means of deceptions, such as the enticement of good jobs, marriage, or other fraudulent schemes. Ignorant and illiterate girls and women are easy prey of traffickers as they can be easily deceived. Girls and women scarred by violence, often at the hands of male partners or family members, are another category of easy prey.

Research studies in different parts of the world have pointed to the unusually high percentage of women and girls in prostitution with a history of child or adult sexual or other abuse. Nepal is no exception in this area. Interviews with victim girls and women reveal that a considerable number come from broken homes, the stepmother or stepfather often being the source of violence. In such conditions, the loss of a sense of self-worth, of trust, of belief in a better personal future away from their current living conditions render these women extremely vulnerable. Such girls and women may be trafficked and engaged in prostitution more easily than other girls and women.

Trafficking is a major means of smuggling girls and women into prostitution. In this sense, sex trafficking should be defined as a “means of enslaving girls and women”. Does an act of transferring a girl or woman from her residence to another place for the purpose of prostitution constitutes trafficking? This is a matter of debate among activists and academics. Although there is a lack of consensus on the definition of trafficking, there have been attempts to define it as the illicit and clandestine movements of persons across borders with the end goal of forcing these persons into sexually or economically oppressive and exploitative situations for the profit of employers, traffickers and syndicates.³⁰ Under the Nepalese law, definition presupposes an act of ‘taking across the border’ as an essential element of trafficking. This approach overlooks the rights of victims subjected to violation while trafficking is taking place. Borders cannot be valid basis for definition of trafficking, because internal sex trafficking also occurs. Trafficking of girls from rural villages to cities for the sex market is a problem within the borders of many countries, including Nepal. The growth of brothel/restaurants in Kathmandu and other cities condemns thousands of teenage girls in the country to lives as “sex girls”. Internal trafficking has been widely covered in the press in recent years. Hence, trafficking should be defined in terms of its consequences or end

results as means of facilitating slavery. The act of trafficking violates the following rights of victims:

- The freedom of unrestricted movement;
- The freedom of independence of body;
- The right to physical and personal integrity, dignity and human respect;
- The right against encroachment upon the body, and infliction of injuries and mental degradation;
- The right to opportunities for personal development;
- The opportunity to fairly compete to promote one's own talent and excellence.

Trafficking for prostitution is a crime against the body, person and dignity of females. It is a crime against both the law and humanity. Hence, use of any particular mode of trafficking makes no difference when the end result is a life of prostitution for the woman trafficked. To argue in support of the legalization of prostitution and trafficking of women would imply recognition for trafficking and amnesty for the crime. Such an argument therefore amounts to advocacy for immunity from prosecution for traffickers. The following chart amply denotes to the negative impacts of legislation.

- It is evident that legalization, which sounds positive to hear, ends at complete slavery of women.
- The argument that open environment protects, prostitutes from injustices, does recognize a theory that women can be used for men's desire of unrestricted sexual desires.
- Eventually, legalization of prostitution protects the institution of "patriarchy" which defines women as inferior human being.
- Elimination of trafficking legalizing the prostitution is something at an attempt to construct a building without foundation.

A Critical Observation on Modes of Trafficking in Nepal

Due to the lack of adequate studies, it is difficult to identify all the different ways in which trafficking is carried out. There is more than one way of trafficking. The nature of the market itself, where women are exploited for the interest and desires of men, as discussed previously, gives important clues that help identify the ways involved.

The existence of the circumstance created by the anti-women nature of the sex market creates an atmosphere characterized by deception, use of drugs, enticement, abduction, fake marriages, misuse of guardianship etc. All the tactics used demonstrate the involuntary ways in which girls and women enter the sex market. Based on the nature of the trade and stories of those who have returned from brothels, it is easily obvious that the majority of girls and women have been forced into the sex market by organized criminal traffickers.³¹

Sunita's "job"

Sunita Damai³⁵ of Kathmandu was deceived by her uncle. She was looking for a job. Her uncle said that he found her a job. She went with her uncle from her village to what was supposed to be Kathmandu. They were accompanied by two other women about her age. During the trip, she was given a glass of milk. Then she lost consciousness. When she awoke, they were in a beautiful building. A woman invited the three young women to bathe. Good dresses were given to each of them. The uncle soon left the building.

The woman who had given them the new clothes said that each of them had been sold for 15000 Indian rupees. They were actually in Calcutta. Sunita's parents had agreed let her go with her uncle in a belief that she would get a good job. They had no idea that she would be sold to a brothel. The police in Nepal rounded up Mr. Kabi Karki and Kanti Gurung, both residents of Lamjung district, at the Lumbini Guest House at Kathmandu, while they were preparing to traffick four more women. The two culprits had already managed to smuggle eight women to Kuwait. They were trafficking women and girls to Bombay by pretending to provide jobs in Kuwait³⁶. Work in Kuwait is used as an alternative mode of trafficking as, since Nepal does not have a Kuwait Embassy, one has to travel to India for obtaining visa. Women, therefore, are asked to arrive at Bombay on their own. When arrived at Bombay, they are instead taken to brothels.

Six other women had been rescued from traffickers at Biratnagar, on the Nepal-India border. The women were bound for Delhi accompanied by a woman called Pavitra Rai, reportedly a resident of Majunkatila, Delhi. The six girls were residents of Khotang district.³⁷

Police at Rani Biratnagar held five traffickers as they were trying to smuggle three women across the border. The culprits were Mr. Chakra Bhadur Budhathoki, Mr. Bhim Ghimire, Mr. Sitaram Ghimire, Mr. Ratna Gurung and Mr. Padam Bahadur Tamang. They were caught while trafficking Ms. Shantidevi Khadka, Ms. Srijana Pakhrin, and Ms. Mana Maya Gurung³⁸. All these incidents clearly indicate to organized efforts to trafficking.

The assumption of many people that the voluntary selling of girls by parents is the sole form of trafficking, is not supported by the facts. As early as 1989, Dr. Poonam Thapa wrote that roughly 35% of Nepalese women and girls trafficked into Indian brothels had been abducted.³² However, this figure does not adequately represent the recent trend, in which trafficking in teenage girls has become an even larger phenomenon. Interviews with returned girls and many individual stories published in the press demonstrate that a majority are now abducted³³ or deceptively sold by traffickers. The promise of a good job is the most commonly practiced form of deception used to entice girls and women across the border of Nepal.³⁴ The traffickers have established good linkages between Indian cities and Nepal. There are many examples indicating the emergence of a strongly organized network of local suppliers, pimps and brothel owners. There are plenty of stories supporting the organized network behind trafficking.

The incidents mentioned in the box are only a few examples of what happens weekly at the Nepal-Indian border. These incidents establish the regularity of organized trafficking. The problem of trafficking does not simply arise because women get involved in the sex market because their families are poor. The assumption that parents are selling girls into prostitution because of poverty is for the most part untrue, and that is why many interventions are meaningless, as they are based on false assumptions.

A sample review of the Nepalese press, covering the a period of six months from Baisakh, 2056 (May, 1999) to Marga, 2056 (December, 1999), confirms the existence of an organized racket operating for the purpose of trafficking girls and women from various parts of the country. The review of press coverage discloses deception, fraud, false marriages, enticement for jobs, etc., as strategies commonly practiced by the traffickers. The articles published in the press³⁹ also make it clear that victims were deceived by traffickers. The details of the press coverage are encapsulated in the following table:

N	Victims' names	District	Alleged Relation Between Traffickers	Victims and Perpetrators	Modes	Suspicion of Trafficking by Victims and Parents
1	Nisa, Suju, Jhapa Steli, and Priti Rai	Person Absconded/ False Identity	Acquaintance	Job Promise	No	

2.	Kalpana Lama	Makwanpur	Chameli Lama	Step-Sister	Deception	No
3.	Chameli Lama	”	Sita Lama	Friend	Deception	No
4.	Kala Pariyar**	Rupandehi	Kumar Sang-dang, Saili Damini	Acquaintance	Job Promise	No
5.	Muna Bhujel	Jhapa	Rajkumar and Devi Choudary Shayam Karki	Acquaintance	Job Promise	No
6.	Two Girls	Nuwakot	Balaram Pariyar	-	Job Promise	No
7.	Shanti Khadka* Srijana Pakhrin Manmaya Gurung	Sunsari	Chakra Budhathoki Bhim Ghimire Sitaram Ghimire Ratna Gurung Padam Tamang	Acquaintance	Job Promise	No
8.	Kaili Tamang Sunmaya, Maili Mejmindu	Nuwakot	Raju Lama Rajendra Lama	Acceptance	Job Promise	No
9.	Pramila Jha*	Sarlahi	Bhikari Paswan and his wife	Acquaintance	Deception	No
10	No	Tirtha Kumari Tamang	Nuwakot	Bhoj Bdr. Thapa	Acquaintance	False Love
11	No	One Tamang, One Chettri and One Rai Girl	Bhaktapur Kaski	Sindhupalchok Devi Choudhary Shaya Poudel	Rajkumar Choudhary	Deception
12	No	Dil Kumari Rai, Devi Rai, Maya Rai, Krishna Rai, Sabita Rai**	Khotang	Baita Rai (Delhi)	Acquaintance	Job Promise
13		Kamala Sarki***		Shriman Lama	Deception	No
14	Job Promise	Five Girls No	Sindhupalchok	Surya Bdr. Tamang	Acquaintance	
15		One girl Kapilvastu	Milan Ahir	Neighbour	Job Promise	No

16	Miya Tamang	Kavre	Prem Gurung	Friend	False Marriage	
No						
17	Chandra Kala	Jhapa	Kamala Shrestha	Friend	Deception	No
Kharel*	Ratna Tamang					
	Dhan Bd. Magar					
18	Khuma Devi	Ilam	Durga Thapa	Uncle	Deception	No
Chauhan						
19	Dalli B.K.***	Sunsari	Ganga Thapa	Acquaintance	Job promise	
No						
	Bishnu Maya Tamang					
	Deepak Tamang					
	Sarmila Tamang					
	Binu Tamang					
20	Rekha* Parsa	Sagira Kathun	Neighbour	Deception	No	
21	Purnima Thing**	Makwanpur Circus Company		Job promise		
Circus/yes						
Alisha Lama			In Circus			
Samina lama						
Milan Rana						
Bina Lama						
Meena Rana						
22	Laxmi Shrestha*	Tanahu	Kumar K.C.	Acquaintance	Job Promise	
No						
	Buddhi Maya K.C.					
	Maya Gurung					
	Tara B.K.					
	(racket operating					
	from Nauthanuwa					
	India)					
23	Babita Gurung	-	Samsudin Muslaman	Acquaintance	Helping	
No						
and 4 others		(India)	in Treatment			
	Babauram Gurung		(Deception)			
	Bishnu Shahi					
24	Dibi Maya	Makwanpur Jaya Moktan	Relatives	Deception		
No						
Renu Moktan		Sunmaya Moktan				

* *Brahmin, Chettri and Newar.* ** *Dalit.*

*** *Mongoloid tribes.*

The articles from the press summarized above demonstrate important characteristics of present trafficking:

Ram Maya's Escape

Ram Maya (true name hidden) has spent her past eleven years at one of the brothels in Bombay. She recently succeeded in escaping with the help of a Nepali man who worked as a driver in the area.

She was 16 years old when a trafficker, disguised as an employment agent, approached her and lured her to Delhi to work as a maid. Her brothers went to school, but she was not given the same privilege. Maya and two sisters were involved in the household work and a small household business of carding of wool into yarn. The agent was persistent in trying to lure her to a so-called good job in Delhi. His frequent job offers eventually persuaded her to accept the offer. One day, without the knowledge of her parents, she left with him to go to Delhi, planning to return after some months. She had been told that there was lots of money to earn in cities in India. She was not aware of the existence of trafficking of girls for sexual exploitation. Arriving at Kathmandu, the agent bought her a new set of clothes and they continued traveling across the border into India. She was sleeping almost day and night while traveling and she did not really know where they were going. Eventually, she was told that they had arrived at Bombay. She was sold to a brothel.

The brothel was worse than a prison. "We were a few women in one room and the door was locked from outside," she describes. "I actually had no chance to see the sky outside, or meet with other women until I succeeded in escaping three months ago," she says. "In the beginning, I resisted hard to becoming a prostitute, and tried to commit suicide, but the owner of the brothel stopped me. They then beat me up very badly and left me without food and water for days. The owner showed me a paper with a written amount of money the agent had received from her," she remembers. "She asked me to pay the money back to get released from the brothel. But I had no money to pay."

Ram Maya reveals that a prostitute has to entertain 8-9 clients every day. If they tried to refuse the owner beat them and left them without food. Ram Maya doesn't know how much the clients paid the brothel owner for a prostitute. "If you become an obedient prostitute, the owner will give you some freedom and money, nice clothes, and presents for your family," Ram Maya says.

Ram Maya is now married to the man who helped her to escape. They are unfortunately living in poverty and hardship. When she returned to the village, her family was happy to see her again, but the community did not accept her. She was then forced to come back to Kathmandu, where she is now trying to start a new life.

- The traffickers often approach women and girls in groups. This is a well designed strategy to make the women and girls feel comfortable. This approach helps traffickers gain the trust of the women and girls, because, while in a group, girls and women feel secure.
- Traffickers are both male and female. Female traffickers are necessary to approach victims.
- Girls and women from the so-called untouchable (Dalit) community are targeted. The trafficking syndicates have recruited traffickers from the untouchable community itself.
- The promise of good jobs is the most effective form of deception.
- The parents of victims are generally not informed of the contact between victims and traffickers.
- The same traffickers are involved in trafficking in the different districts of Nepal.
- The trafficking syndicate is generally organized at the border between Nepal and India.

Mr. Rajaram Singh, a philanthropist, who spent many years in Indian cities conducting research on the trafficking in girls and women from Nepal, reports that 94% of girls and women in 83 brothels he studied in Indian cities claimed to have been sold by agents who enticed them with the promise of good jobs and a better life.⁴⁰

As all the information discussed above demonstrates a large number of girls and women are trafficked by using the false assurance of a good job in India. Such deception⁴¹ and fraud are used frequently by traffickers. Long acquaintance, friendship, love and marriage, close family relationship, business etc. are masterfully exploited in order to camouflage the true intentions of the traffickers.

The assumption that “voluntary” trafficking with the collusion of parents happens frequently is also negated by countless stories told by victims of trafficking. Many tell stories of severe torture they underwent while resisting prostitution. Many women and girls have returned with unremovable scars of cigarette burns and other types of mutilation. They are frequently raped by gangsters and pimps to force them into submission. These stories question the idea that the women and girls go voluntarily with their parents’ approval. If everything is voluntary, then why do the women and girls resist? Why do they subject themselves to torture if they enter into prostitution voluntarily? The statement of parents selling daughters are exaggerated facts.

The following arguments demonstrate that victims of trafficking are victims of organized rackets or syndicates with a massive cross-border network:

- Most of the culprits evade capture by concealing their true identities. Such planned deception is not likely for novice criminal traffickers.
- A trafficker whose identity is established or who is recognizable by the victim is sooner or later caught by the police. Only experienced traffickers with clever disguises are repeatedly successful in absconding. Such deceptions by the traffickers require planning and access to false identity papers, etc.
- If parents or siblings have trafficked the victims, the prosecution is seldom obstructed when (and if) the victims return. There are no reasons for victims who have escaped to excuse the parents or siblings. Incidents of trafficking by parents or siblings are only exceptional cases.
- If selling by parents and consent of victims did exist, the circumstances of beatings and torture of the victims would not occur. If the trafficking occurs with voluntary consent of the victims, there would be little likelihood of interest or inclination on the part of girls and women to be rescued.
- If the victims were trafficked by their parents, the parents themselves would likely to travel to the brothel with the victim. There is no evidence that this happens. Exceptions cannot be ruled out. However, the available evidence demonstrates that the traffickers generally establish contact with the victims without the parents’ knowledge or consent.

Hence, almost all trafficking incidents are the outcomes of designed activities of groups of traffickers. Since, the sex market is governed by rules of economics, a relationship between “buyers” and “sellers” is indispensable. Without the criminal agent to provide the prostitute, no girls or women would sell themselves into prostitution. Prostitution is not a normal legal market, where everyone can fairly sell a commodity. The illegal trafficking and sale of women and girls is governed by the traffickers ability to gain the confidence of their victims without the victims understanding that her body is the commodity to be sold⁴¹. Legal market place trade is acceptable between two parties only when both parties understand what is being sold and agree to the sale.

In 1997, we were doing a paralegal training for a group of 48 women at Melamchi, Sindhupalchowk district. A government supported NGOs hired worker approached our team with a request of giving some time for “singing” songs composed to raise awareness against trafficking. We agreed because he was accompanied by police. He then began to “recite songs”. One of the songs condemned

parents as “traffickers”. In the song the daughter at a brothel her curse her parents.” You have no hearts and you are poisonous snakes,” etc. Participants then resisted and questioned. Girls have been taken by agents and police is not taking actions against, but how can you sing a song like this hurting the parents ?, they questioned. There was not protest from women, who generally were adults. The discussion broke into fights, many women attacked the person accusing him of spreading wrong message, and helping to conceal the truth. The man ran away after a difficult escape. I could see the deep concern of local women towards the problem of trafficking. However, these uneducated women could not say their feelings and understanding of the problem in systematic ways. We then realized that people will no longer tolerate the people who were making profits out of so-called programs.

Recent Trends of Trafficking

A few current trafficking activities can be summed up as follows:

- The problem of trafficking is no longer confined to specific ethnic communities, whereas in the past it was predominantly confined with Tamang community. In the past the problem was confined to a limited catchment area surrounding the Kathmandu valley. Over the last few years it has rapidly expanded to over 30 districts in Nepal⁴².
- The information gathered from the interviews and stories of rescued girls and women demonstrate that girls and women from socially oppressed and backward community are increasingly vulnerable. The previously gathered press coverage demonstrates that Dalit (low caste) girls and women are the most vulnerable group⁴³.
- The diversification of the destination is also a troubling new aspect of trafficking. Gulf countries are fast becoming a destination for the sexual exploitation of Nepalese women. Hundreds of Nepalese women have been subjected to sexual slavery in the Gulf countries⁴⁴.
- Trafficking of increasingly large numbers of teenage girls as opposed to women is another new and disturbing pattern.
- Trafficking is increasingly an act of organized criminal rackets operating from both inside and outside of Nepal.

Based on recently reported trafficking trends it is apparent that the problem of trafficking in girls and women has increasingly crossed the barriers of ethnicity and mountain geography. It is traditionally thought that Nepalese women are preferred in the market because of their fairer complexion and unparalleled obedience. The problem of trafficking for sexual exploitation is now happening in numerous communities. This is corroborated by the appearance of a large number of Dalit (low caste) girls and women in the market. The incidents of trafficking in Brahmin, Chettri and Newar girls and women are also increasing.⁴⁵ There are two major factors responsible for the increasing numbers of girls and women being trafficked in Nepal:

- The village to city migration process has become a common phenomenon in Nepal over the decades. The main intention of migration is to earn money to provide the basic necessities for the family. The process of migration has contributed to the multi-billion dollar sex industry. As pointed out by Nimalka Fernando, president IMADR, that “today the sex trade flourishes more than the arms sale industry.”⁴⁶ With the massive migration of women and girls for purposes of legitimate work in Nepalese cities and abroad, trafficking has been facilitated through such means as promise by agents of the sex trade of high paying jobs or marriages. Trafficking is now-the packaging, the marketing, in short the commodification of women, which has become systematized, organized and trans-nationalized⁴⁷. Rapid urbanization and job prospects entice teenage girls to migrate to cities in Nepal. They seek work in the carpet industry, garment industry, restaurants and domestic service. These unsuspecting girls arrive in a cities and one cohered into the sex trades. Cities such as Kathmandu, Pokhara, Dharan are serving as transit centers for trafficking abroad. Such migration is an expected outcome of development

activities including increased accessibility to transportation, communication and business activities between village and cities.

- The gradual erosion of the traditional norms of the social regulation has resulted in more heterogeneity in cultural and social relations. In the past, the homogenous clusters of villages maintained a system of regulation based on traditional hierarchy and cooperation. Every group kept track of and cared for its own members. The members of each communal group were aware of the situations of those around them. With greater mobility over the decades the homogeneity of villages has been diminished. Individuals are thus less aware of what is happening to the people who live nearby. People are less aware of each other's situations and the social relations between people generally more superficial. The enforcement of law is weaker. A large number of illegal activities go unreported. The failure by the police and governing bodies, in general, to address these changing conditions has created a breakdown of the traditional regulatory norms. This societal structure breakdown has helped traffickers gain a foothold in various community groups.

The increase success on the part of traffickers has resulted from these recent societal changes. Mobility and the resulting social breakdown have tended to marginalize the weaker sectors of the community. Migration and mobility detach girls and women from their traditional framework of protection, and exposes them to an unfamiliar world. This makes them extremely vulnerable. The animating of urban areas lend to an atmosphere conducive to the sex market. Migration to cities by woman and girls has increased the danger of these females being caught up in the sex market since marginalized girls and women constitute easy prey. This problem is, therefore, largely a failure of the government's security system. In summation :

- Poverty and lack of resources results in an increase in migration and mobility.
- Intensified migration and mobility causes a breakdown of the traditional norms and social regulations.
- The process of migration and mobility is especially unfavourable for marginalized girls and women in the sense that they, being ignorant of circumstance around them and not having the security of communal protection become easily accessible to sex traders.
- Economic needs and hopes of a better life render marginalized women and girls easy targets.

These factors are not independent in their relevance to the sex market. The lack of societal stigmatization of men who buy sex with women acts as a contributing factor to trafficking as well. Migration for the intention of a better life is a normal human response, and as such it should not result in trafficked into the sex market. Migration by women and girls has been exploited by the semi-underground sex trade to supply the "prostitutes" to the market. The acceptance of men buying sex creates a market place into which those who would engage in trafficking quickly move.

Socially and Economically Marginalized Girls and Women are Increasingly becoming Prey

The listing of rescued girls and women demonstrate that Dalit females are fast becoming a very vulnerable social group of traffickers. Traditionally imposed seclusion from the development mainstream make Dalit girls and women easy prey for traffickers. The socio-cultural, economic and legal deprivation of the Dalit community, often lead to inhuman treatment of Dalits by the more privileged classes, is largely responsible for the innocence, lack of literacy, legal knowledge etc. that puts Dalits at a disadvantage. The discrimination and exploitation of Dalit girls and women is multi-faceted.

- First, they are subjected to long-standing traditional oppression and exploitation of privileged classes as a segment of Dalit population. Dalit girls and women, like dalit males, are considered

untouchable. This societal and cultural mistreatment creates obstacles to the education and social development of Dalit girls and women leaving them in an especially difficult personal and financial circumstance.

- Second, they are sexually exploited by the privileged community which considers them as individual who have less significant human dignity, and sexual morality. Sexual violence against Dalit girls and women is not taken as seriously by authorities as would be sexual violence against girls and women of privileged classes. Rape of a Dalit girl is not given same gravity of seriousness as the rape of a Brahmin or Chhetri girl. The sexual dignity or chastity of Dalit is not valued by the privileged classes in general. Hence sexual abuse of Dalit girls by men of privileged classes is easily excusable. Incidents of sexual harassment or abuses of Dalit girls do not generally concern members of the so-called upper class.
- Third, Dalit women are discriminated against and wrongly treated even by the female population of the privileged classes.
- Fourth, Dalit women are subjected to the gender discrimination of Dalit men. As in other communities, girls and women in the Dalit community undergo disparity based on gender segregation. Boy children receive preferential treatment as compared to girl children. Domestic violence is a problem in the Dalit community and many other communities, as well.

Dalit girls and women are doubly disadvantaged and vulnerable. They are socially, culturally and legally suppressed, and sexually harassed by the privileged section of population. They are also subjected to gender discrimination within their own community. Economically and educationally, Dalit girls and women are forced to live in extremely backward and difficult circumstance. These disadvantages marginalize Dalit girls and women and result in them being the most vulnerable group for trafficking.

The disadvantages and deprivations experienced by Dalit girls and women create a group in society, where injustices become a characteristics of life.

Currently, Nepal is experiencing a diversification of the sex market for trafficking of girls and women. Previously women and girls were trafficked mostly to the cities of India. The market has now opened to the Gulf countries as well. There have been reports in the press that hundreds of Nepalese women and girls have been forced into the sex market in the Gulf countries. The problem of sexual exploitation of the female workers not engaged specifically in the sex trade is also widely reported by the Nepalese press. *Kantipur Daily* reports that more than 30 women cross the border of Nepal from Kakarvita, Sunauli and Birgunj on the way to Gulf countries. A number of such women and girls continue to end up in Indian brothels to which they have deceptively sold⁴⁸. Other women and girls are flown to the Gulf countries to face terrible times. While living in Gulf countries Nepalese women are forced to sexually service their employers⁴⁹. Employment Agencies in Kathmandu are the main source for the increasing number of Nepalese women who are being subjected to the sex market or sexual exploitation by employers in Gulf countries. These Employment Agencies promise women and girls a good salary and benefits for taking jobs in Gulf countries. These agencies do not reveal the true terms and conditions of employment. A weekly newspaper from Kathmandu, *Ghatna Bichar*, reports, according to a letter sent by group of Nepalese women in Kuwait, 20 to 30 Nepalese women fly from Delhi to Kuwait every day⁵⁰. The Gulf region is emerging as a labor and sex market exploiting hundreds of Nepalese women. To have employment is good from every points of view. However, the government's apathy to what is happening and lack of efforts to protect these women at workplaces are rendering the problem even chronic.

A recent and disturbing trend of traffickers is to 'prey on teenage girls'. Dr. Poonam Thapa, in 1989, stated that approximately 20% of the Nepalese women working in the brothels of India were below 20 years of age⁵¹. A survey conducted by CWIN in Mahankal and Ichok villages of Sindhupalchok found that a majority of those working in Indian brothels were girls aged between 13 and 20 years of age. As reported by the Survey, 45% of women in brothels from Mahankal village were less than 20 years old and 30% less than 18 years old⁵². A survey in the Nepalese press from

1990 to 1994, which collected the details from the stories of trafficking of 121 girls and women, revealed that all the victims, except one, were below 18 year of age at the time of trafficking. Of them, 12 girls were just 13 years old. These findings demonstrate an increasing preference by traffickers for teenage girls. The Police Station at Sunauli rescued Kumari Darji and Sushila Pariyar, both aged 16, at Sunauli, when they were being deceptively taken away from their local area. Laxmi B.K. who was recently rescued, was only 11 years old when she was sold to a brothel in Pune⁵³. A group of four girls, all below 16, were reportedly trafficked from Rautahat⁵⁴. Hiramaya Bishokarma, and Lalimaya Bishokarma both 16 were enslaved in a brothel owned by Bishnu Maya, a Nepalese woman⁵⁵. Babita Praja, 14, saved herself by running away when she discovered that Sita Bishokarma was conspiring to traffic her⁵⁶. These are only a few of many actual incidents mentioned here to demonstrate that teenage girls are increasingly becoming the targets of traffickers. It is difficult to say exactly why teenage girls are increasingly being trafficked instead of grown up woman. From interviews with girls and women who have returned from brothel life, a few reasons are suggested :

- **Many teenage girls are made obviously vulnerable by the unethical and illegal practice of using domestic girl children as service workers:** Over the years, the domestic service sector has been a major employer of child laborers. Every day village girls and boys are brought to cities as household servants. Child domestic labor is accepted and used by Nepalese Urban Society. It is more common in the households of political leaders, senior bureaucrats, judges, police officers, businessmen and professionals. It is often argued that domestic service is a best and safest form of labor for poor children. With the increased use of girl child labor in cities, many girls are forced to leave home for jobs in early childhood. Many of them lose the chance to go to school. CWIN, as early as 1994, reported 10,652 domestic servants in Kathmandu and Patan, of which 45% were girls⁵⁷. Two years before CWIN conducted a study, a local newspaper estimated that there were 10,000 girl children domestic servants in Kathmandu⁵⁸. In 1994, Unicef sponsored a micro-study in Kathmandu, which reported the following⁵⁹ :
 - Based on 793 girl domestic servant respondents, 17% of girl children were withdrawn from school to work as domestic servants.
 - 62% of girl children worked more than 12 hours a day.
 - 55% complained of unfair treatment in the household.
 - 4% complained of sexual harassment by their employers.
 - 38% reported indifference by employers to their illnesses.

These unfavourable circumstances of employment create opportunities for traffickers to entice young girls into the sex market. They are not mature enough to make wise choices about their lives. The bad circumstances of their employment such as improper treatment and sexual harassment, lead to them becoming easy prey of traffickers. The increasing numbers of teenaged girls being trafficked are the direct result of the unethical and illegal practice of using children for domestic labor. The argument is supported by the following facts:

- The girl children are forced to live without a protective parent or guardian.
- The prevalence of bad treatment and sexual harassment encourages girls to look for alternative work without the ability or guidance to make decision about what to do with their lives.
- Not going to school or dropping out at a young age leave these girls at an extreme disadvantage both in knowledge of the world and job prospects.
- A disappeared domestic servant does not bother the employer greatly. It, thus, takes some time for parents to learn that their daughter is missing. The trafficking of a girl domestic servant is a comparatively safe trafficking strategy.

The relationship between exploitative domestic service and trafficking is demonstrated by numerous stories related by victims⁶⁰. The growing number of domestic servants in Kathmandu

and other cities have provided the traffickers with easy prey. Trafficking of domestic servants is safer, since there is the less potential of attracting the attention of police or parents. For traffickers, it is always convenient to work in an urban set-up; People are anonymous and dis-interested with other's affairs. This urban characteristic is a great "aid" to criminals who would engage in trafficking.

The Unaccountable and irresponsible carpet industry

Until recently, the carpet industry was notorious for using child labor. Hundreds of carpet factories opened in poor neighborhoods and suburbs of Kathmandu and Patan. They used child labor while law enforcement looked the other way. A large number of girls were brought to Kathmandu by labor brokers for jobs in the carpet industry. Most workers were girls between 11 and 14 years old. These girls were illiterate. A few of them had been forced by their parents to drop out of school and go to the city to work for relatives or friends. The hope of earning, a decent wage was not realized. Low pay and long work days was the norm. Labor brokers, moneylenders, factory owners and managers took away much of the girls already low wages in various ways. The problem of girl workers were not limited to exploitation within the carpet factories. They were also vulnerable to be used for prostitution because of the relationship between the unregulated carpet business and sex trafficking, the availability of often unsupervised girls in unpleasant low paying carpet jobs provided an opportunity to Indian brothels⁶¹. The exploitative conditions in carpet factories were supportive for traffickers to prey on girl carpet workers by promising them better jobs in India which in fact turned out be forced prostitution.

The problem of child labor largely diminished in Kathmandu and other cities with the reduction in size of the carpet industry. The carpet industry thus left a large number of teenage workers unemployed. Many of them became the victims of traffickers. At present, the carpet industry, especially those carpet making businesses which are not registered with the government and are set up in shanty towns, maintain an indirect market for girls to be trafficked since such carpet factories provide a good place for traffickers to recruit vulnerable girls. The following conditions of characteristics of carpet work create a climate favorable to sex traffickers:

- The carpet business frequently provides only seasonal employment. The weavers are contracted through labor contractors. The girl weavers plan to make a good income. The contractors hunt for inexpensive workers, and they are frequently the adolescent girls(14-18 years old). As a result of so many young girls working in one place, carpet factories are good places to find unsupervised adolescent girls.
- Older girls/women are generally married. Rural married women do not generally leave home to work in cities unless accompanied by their husbands. Hence, unprotected girls working at factories are the choice of traffickers.
- Working condition in carpet factories, with a few exceptions are bad. Workers are not provided with safe housing. There is no mechanism in place to prevent violence and harassment in a city in Nepal because it is expensive and beyond the means of low paid carpet workers. Hence, in many factories, the women and girl workers are forced to sleep at the work place.
- Sexual violence and abuse by male workers is phenomenal. In a survey, 247 girls, out of 469, complained of frequent incidents of sexual harassment on the factory premises. This living situation puts young girls in danger of sexual exploitation⁶².
- The factories have no provisions for counseling on legal support for workers who experience violence, sexual harassment and exploitation. The factories make no effort to deny access to traffickers and take responsibility of providing security of these girls against sexual exploitation. The factory managers have no kind of system to protect the girls from enticement for the purpose of trafficking. As stated above, the system of registering and providing with employment letters and related benefit does not exist as workers work in a piecemeal basis through approach of labor contractors. Officially, this is denied by the industry and even the government,

but in practice this is a reality. Under the given circumstances, from the above-mentioned survey, 83% of girl workers indicate they feel that they are in danger of being sold into sex market⁶³.

Analysis of Causes behind Trafficking

Defective Value System

As briefly discussed before, the flourishing sex market in India is the major incentive and driving force behind the increasing number of trafficking incidents in Nepal. Many people argue that factors like poverty, ignorance and illiteracy are the major causes of trafficking of Nepalese girls and women. This argument is based on wrong premise. A stereotype approach for studying the problem which focuses solely on inquiry and analysis of the problem depending on the “profiles and situations of victims”. Prostitution has traditionally existed as a system and an institution in which patriarchy has a stake. A patriarchal system will maintain prostitution with or without women’s consent. The promise of big money and legitimate jobs persuades women and girls or their families to allow women and girls to leave their homes for better opportunities, then they are tricked and trafficked. Either way, the supply of bodies must be ensured⁶⁴. Clients of women do not ask them whether or not they are prostitutes by choice. The male client does not consider what situation or conditions brought the women to the sex markets. Without any regard for their situation, he engages in sex with them. Men’s intentions in creating, promoting and strengthening the sex market are simply ignored while examining the causes and factors of trafficking for prostitution. The fact that the girls and women are trafficked to the sex market for the sole interest of men is seldom taken into account to identify the factors involved as driving forces behind trafficking. The only objective of trafficking is to exploit the bodies of women. The interests of the women in prostitution and their well being is seldom a matter of concern for their clients. In an organized sex market, someone else makes a profit from the exploitation, not by the women themselves. In such an obviously exploitative circumstance, to argue that poverty is the driving force behind trafficking of increasing numbers of girls and women for prostitution is an attempt to explain and thus justify the sex market. It helps the sex traders promote the market for their financial benefit. There are no benefits for girls and women. We are aware that the Nepalese girls and women feel shameful even talking about sex. It is thus unimaginable that they would volunteer to join the sex market for economic benefit. As the available information suggests, the abundance of girls trafficked in their early adolescence further refutes the claim that submission of girls and women in prostitution is voluntary. The approach to studying the causes of trafficking which focuses on profiles and situations of girls or women trafficked or prostituted can lead to conclusions which support the “legalization of prostitution as an alternative to poverty”. In the context of the Nepalese women, the legalization of prostitution is opposed on several grounds.

- Firstly, many pro-legalization protagonists have failed to recognize the distinction between the concept of ‘decriminalization’ and ‘legalization’. Decriminalization is anti-prostitution concept, whereas ‘legalization’ the pro-prostitution concept. Decriminalization opens up possibilities for the state to have aiding victimized women. Since criminalization of prostitution drives it deeper underground. Decriminalization makes it easier for state agencies to locate and rescue women forced into prostitution. Further, the concept of decriminalization incriminates the men as ‘culprits’. It puts the state in a situation of liability for ‘forcing the women into prostitution’. The state then also has a role of accountability for reintegrating the victims of forced prostitution into society with dignity and human respect. The ‘concept of legalization’ is a bad idea as it accepts the perpetuity of prostitution for the benefit of males. Legalization empowers men to buy sex in the market. Legalization reduces state’s role as a ‘regulationist’ mechanism. Legalization of prostitution promotes and strengthens the ‘patriarchal domination over women’. When woman’s sexuality is for sale, women’s dignity is diminished and all aspect of women’s lives are negatively impacted. Legalization of prostitution is directly and indirectly a process of increased institutionalization of patriarchal control over woman’s lives and their bodies.

- In a society like Nepal, the legalization of prostitution would further validate the long-standing gender biases against women. This would define females as a sexual commodity in the family and the society. It would lead to the increased vulnerability of females. Taking into account the fact that patriarchy in Nepal is very much the social norm, more girls and women would be forced into prostitution if prostitution was legal. Males would likely claim the right to control the choices of their sisters, daughters and wives. Thus if prostitution was legal men would decide which woman would be prostituted. These circumstances would further limit the possibility of women's education and development.
- Nepal has a flourishing tourism market, which has an indirect nexus with sex market. The greater the expansion of tourism, the larger the potential for sexual exploitation of the Nepalese girls and women by tourists. The Nepalese urban sector has the potential to engulf thousands of the Nepalese girls and women as it is increasingly transformed into a metropolitan status with widespread heterogeneity in cultural lives. The resultant breakdown of clan/family/cast groups leaves woman unprotected in the urban setting.
- Nepal maintains an open border system with India and cross border mobility is uncontrolled. The growth of a local sex market would, therefore, be a great incentive for the trafficking of girls and women to Indian brothels. It would be easier for traffickers to force rural girls into prostitution locally and then divert them to the Indian sex market. It would be a formidable factor adding to the number of trafficking incidents.
- Nepal already has organized trafficking rings operating to traffic girls and women. Legalization would encourage and help the rings to operate as strong organization for the purpose of the sex trade. The legalized brothels will serve as centers for trading girls.

Ignoring or forgetting the role of the patriarchal societal value system and the states' regulationist role in creating and protecting prostitution, does not allow for the proper understanding of the problem of trafficking in Nepalese girls and women. It is undeniable fact that "men" are the main consumers in the sex market. It is thus essentially regulated by male behavior. Why then is the "poverty" or "ignorance" of girls or woman victimized always put in forefront as cause of trafficking ? Why is men's lust for the right to buy sex through the bodies of women and girls not considered as a cause of trafficking ? Why is the State's continuous failure to prevent the incidents not looked at as a formidable cause ? Why is the State's insensitivity to the problem of women's exploitation not taken into account when examining the cause behind the problem ? Why is problematic value system of the Nepalese society, which inflicts damages on the potentiality of females, considered as a cause of rampant ignorance of girls and women leading to vulnerability ? Hence, the following three characteristics of the sex market presupposes the examination of causes and factors focusing on men's behaviours and domination instead of women's profiles and situations:

- Men are the main clients in sex market. No existence of sex market can be conceived without the appearance of men in the market.
- Women's subordinated positions in the society and constant subjection to violence in the family and society as a whole diverts women and girls into the sex market. Subordinated positions and violence are both the results of men's domination of women.
- Money plays a crucial role in the control of the sex market. Men directly control the sex market, which is essentially governed by the rules of economics. A flourishing sex market is regulated by an underworld economy, which is controlled by men.

Obviously, the circumstances of victims never constitute important factors for the rise and fall of the sex market. Rather, it is men's control over the systems of society with the invisible gender biased social construction of sexuality, which determines the rise and fall of the sex market. It is therefore the patriarchal domination in the society, which subjects women and girls to absolute domination by men. Patriarchal domination of a society creates the opportunity for the acceptance of trafficking in women and girls for sexual exploitation. The flourishing Indian sex market and an

organized syndicate controlling the sex trade provides an incentive for increasing incidents of trafficking. The vulnerability created by the powerlessness of the Nepalese women and girls in society is a factor, which aids the process of trafficking. The factors weakening the position of women and girls are deeply embedded in the societal value system dominated by patriarchy. The value system denies equality of status to women. This leaves women in a powerless position in the society. Thus men's absolute control over their personality and sexuality is rendered possible. This male control results in a defective value system. The following three characteristics of this defective value system of Nepalese society render women and girls vulnerable to trafficking to the flourishing sex market in Nepal and India:

- Total disregard for the independent personality of each woman.
- Invisible, but absolute control over the sexuality of women and girls.
- Treatment of women and girls as the property of men

Disregard for the Women's Personality

Every human being has three basic rights to constitute the development of his/her personality, (1) the right to identity, (2) the right to contract and (3) the right to own property. The right to identity directly relates to his/her "self", so that every person's right to have a name and a legal safeguard to protect their "reputation". Gender is an identity in itself and as such is protected from infringement upon, or disregard of any kind. The right to identity itself has no 'gender'. Every human being is a whole person, this is why the International Human Rights Conventions and the Constitution of Nepal have referred to a person as the holder of fundamental rights. The right to identity is a strong basis for recognition of the 'nationality' of a person. However, in Nepalese law, the situation is different. The Section 3 of the Citizenship Act, 2020, by defining the father as a sole source for Nepalese nationality of the child,⁶⁵ flouts the birth right to a child's national identity of his/her mother. The provision prohibits a mother to transmit her nationality to her children. Many people consider this circumstance as a "limitation" for the child imposed by law. This view is apparently a mistaken understanding of the fact. It is a limitation imposed by the law on "women" in order to incapacitate them as the source of nationality by their children. This legal provision is an instrument devised to rebut the right to identity of women. Implicitly, the provision prohibits a woman from giving birth to a child without identifying a man as his/her father. In turn, the implicit, as a severe dishonor of the right to identity, restrains a women from the independent exercise of her 'sexuality'. By incorporation of the given gender biased provision in Article 8, the Constitution of the Kingdom of Nepal itself adds to the concept of 'women's subordination to men's personality, a defective value system practiced over centuries.

Denial of Property Rights

The right to property is referred to mean claims, power, liberty and immunity in relation to things and reputation. It enables person to hold possession, maintain ownership, and realize disposal of the goods of property. Except for certain general conditions of limitation, the right to property is absolute and universal. Like the right to identity, it has no element of gender attached to govern the exercise thereof. However, the Nepalese property law prevails over the centuries in contravention of fundamentals of universality, secularity and perfection of the right to property. The legal system in Nepal has maintained full control of men over women in relation to their property rights.

Muluki Ain (State's Code of Laws), promulgated in 1853, was the first codified law in Nepal providing for, among other things, the rules on property. The promulgation of the code in 1853, although it was heavily influenced by Hindu scriptures on the conduct of human beings heavily influenced it and marked the beginning of modern era of the Nepalese legal system. This is so viewed because the Muluki Ain introduced the comprehensive code of 'legal rules' governing the substantive and procedural realm of law in Nepal. Until this period, the Hindu scriptures had unquestioningly been treated as the source of 'rights and duties of the peoples' in Nepal⁶⁶. The promulgation of the Code was an attempt to introduce a uniform legal system. However, it was

deeply influenced by Hindu philosophy. It is evident from the framework itself which envisaged to reinforce the cast system and gender distinctions as the basis of social relations. In reality, the code appeared merely a collection of Hindu dogmas and customs. Junga Bahadur Rana, the first Rana Prime Minister and promulgator of the Muluki Ain, also partially abolished the custom of “Sati”, the practice of widow burning themselves with the bodies of their husbands while cremated. The practice of “Sati” denotes to absolute denial of “selfness” to women. The custom overtly recognized a proposition that “women’s existence is not possible without a husband”. It is a legacy handed down by orthodox “Hinduism”.

Rana Prime Minister Chandra Shamsheer, politically one of the ruthless successors of Junga Bahadur, did abolish the custom of “Sati” giving way to recognition of “mortal existence of women” even after death of their husbands. It was the first step to disassociate the “person” of women from that of “men”. Women’s position was quite limited in the formal system. For example women were not accepted as witnesses in the courts, and were prohibited to dispose of property by their independent choice. These provisions apparently reduced women to “matters of men’s property”. Having incorporated the dogmas of Hinduism, the Muluki Ain made an attempt to define the legal relations of individuals in society in terms of “Kul” (kin group), Santan (family lineage), Jat (caste) and Linga (sex) as the societal bases. The status of individual was, therefore, determined by his/her caste and gender. The clause of the Section on “Aungsabanda” (partition of shares of property), for instance, allowed the father to discriminate, in matters of property, against his sons born out of wedlock with a woman of inferior caste⁶⁷. Likewise, the Muluki Ain prohibited the illegitimate son to claim a share in property, if he was born from a “prostitute”. Prostitutes were legally denied the status of normal human being.

The New Muluki Ain, 1964, repealed the former one, and, to some extent, it was a progressive piece of law. It did away with the “castism” as a basis of socio-legal relations. It thus created a ground for movement ending the oppression and inhuman treatment inflicted upon the “Dalit” community. Unfortunately, it prolonged gender discrimination on as many matters as in the past. The New Muluki Ain prohibited daughters from sharing the parents property as “coparceners”. This Muluki Ain is still in effect as a general law in matters of property in Nepal.

The property law of Nepal defines the personality of women in terms of their sex and marital status. The “Aungsabanda” section of New Muluki Ain, in particular, is an intensely gender segregative law. According to clause 16, if a woman is not married till 35 years of age, it qualifies her to share the property with other coparceners. But subsequent marriage would forfeit the share obtained. A woman by virtue of marriage becomes coparcener of the husband’s property, and as such is entitled to share the property with the husband. Nevertheless, the right is dependent on certain conditions to be fulfilled: first, she has either to reach an age of 35 years or 15 years of marriage; second, the marriage should not be broken due to extramarital relations or anything else; and third, there should not be a divorce. Absolute sexual loyalty is the most required condition for entitlement to the right to be a coparcener in the husband’s property. The status of a woman is, therefore, subjected to her age, sex or marital status. The following information provides more understanding of the property rights of women:

- Daughters are secluded from “Aungsabanda” (becoming coparceners of parental property) for they do not constitute members of the natal family. It is the “sex” they are endowed with that deprives them of the membership in the natal family. However, sons’ position is different. They are recognized as having inherent right of “Aungsa” to the parental property. There are no other grounds of difference but the “sex” for differential treatment. The identity of a woman as a “person” in the natal family is thus denied simply because of her “feminine gender”.
- Daughters, unlike sons, have to go unmarried if they want to inherit property from the parental family as coparceners. The legal stipulation that a woman must reach 35 years of age and remain unmarried to receive a share in the parents’ property, is a legal instrument which virtually defines a woman’s personality in terms of her marital status. It implies that a woman is not a “person” by virtue of her birth as a human being, but by her “condition of matrimonial

life". She is entitled to obtain "Aungsa" by reaching 35 years of age and remaining unmarried. This implicitly relates her "personality" to her marital status, because at age of 35, there is only a limited possibilities of marriage. There is an explicit provision to return the property obtained in "Aungsa" back to other coparceners in case she gets married even after 35 years of age. The acquisition and termination of the right of "Aungsa" has no other basis but the marriage.

- By marriage a woman is entitled to be a coparcener to the property of her husband, but the termination of the marriage takes away this right too. Again, the marriage is a sole determining factor of her "personality".
- The right to succession is also conditioned on marriage. A daughter is prohibited to succeed the deceased parents so long as the sons and sons' sons of the deceased person survive. If no sons or sons' sons survive, the married daughters get one share of the property whereas two shares go to an unmarried daughter. Here again, the legal capacity is determined by marital conditions.
- A divorced woman can claim alimony from her former husband under condition of her incapacity to earn a livelihood of her own. However, a subsequent marriage terminates the right to receive alimony. The marriage is again a matter of determining the position of a right.
- A widow is entitled to succeed the share of her husband's "Aungsa", but gets forfeits on consummating a sexual relation subsequently.

Marriage and sexual relations are prescribed as fundamental elements of woman's personality. These elements remain as "condition precedents" for acquisition and exercise of rights over property. These elements also largely determine the characteristics of other rights i.e. the rights to identity and contract.

The traditional concept of kinship is the fundamental basis of the gender biased property law jurisprudence of Nepal. The Hindu societal value system recognizes only sons having capacity for continuity of ancestral lineage. Hence, daughters are seemingly secluded from having "kinship" relation with the natal family. Daughters are supposed to constitute "kinship" with the ancestors of the husband. The "ancestral kinship" is taken by the property law of Nepal as a "primary source" of any rights relating to identity and property, which, together with the right to contract, constitute the 'legal personality' of every individual human being. Ancestral kinship is, therefore, the most fundamental element qualifying an individual for the membership of the given family. Daughters are considered as having no attachment of "ancestral kinship" with natal family. They are supposed to be disqualified to obtain the membership thereof. Marriage is considered as an instrument to create a woman's kinship with their spousal family. Hence, gender based discrimination in the Nepalese society begins at this point- kinship which is a unavoidable qualification for family membership is obtained by son through birth, whereas the same is obtained by daughter through marriage. A daughter is a liability to the parents until she reaches puberty. At the moment she achieve puberty, she is given away for marriage. This defective value system is pervasive in property and family law of Nepal. The following examples will explain the statement:

- It is not the mother but the father who is the source of nationality of the children. (section 3 of Citizenship Act, 1964 and Article 8 of the Constitution of the Kingdom of Nepal, 1990)
- The marriage of a girl at 16 years of age is valid irrespective of the girls consent. Parents can decide who should be their daughter's husband. (Section on Marriage, Muluki Ain)
- Since parents can decide on their daughter's marriage, the girl's right to remain unmarried and qualify herself as coparcener to the family property is easily avoided.
- Divorce, extra-marital sex and sexual relation by a widow terminates the marital relation and thus the right to obtain "Aungsa" from the husband. Such incidents do not return her to her status which she had before the marriage. She remains in a "kinshipless" state. In this state she will remain without a recognizable status.

Having been denied the "natal kinship" and consequential rights and interests, a girl child is forced to face several disadvantages and difficult circumstances. A few instances can be cited as follows:

- Not taken as members of the family, daughters are simply considered to be the liability of parents. Hence, investment in their education and other development opportunities is something like ‘watering the neighbour’s flower plant’. Rampant ignorance and illiteracy is therefore the result of this defective societal value system. This ignorance subjects women to the vulnerability of exploitation of all forms. Trafficking has roots in a defective societal value system.
- Parents eagerly wait for daughters to reach 16 years of age as a minimum marriageable age. Finding a suitable marriage partner for a daughter is a religious and moral obligation for parents. Child or youth marriage is a common phenomenon. Such marriages lead to early pregnancies. Early pregnancies result more often complications for the mother and child and a great possibility of maternity related deaths.
- Uneducated wives are virtually enslaved, and taken as “machine” to procreate children for the husband.

Prohibition on Exercise of Right to Contract:

The right to contract is a power to agree or disagree on matters with another person. The right to contract is one of the instruments for exercising the right to self-determination. As such, the right to contract is an instrument of full status as an individual human being. With hindrances or impairment of the right to contract, the legal position of an individual is severely affected, leading to the loss of ‘individual status’. The law on marriage is one source in Nepal which impairs the right to contract for women. Impairment in the right to contract also affects the exercise of the right to property, and eventually diminishes the ‘independent personal identity of the individual’.

Section on Marriage of the New Muluki Ain prohibits a girl from consummating a marriage with her independent consent until she reaches an age of 18 years. However, the same law allows the parents to arrange the marriage for her, when she is aged 16 years. There is no other reason but to diminish the independent personality of a women by denying her the right of contract and to agree or disagree on matters of marriage. If one’s marriage is considered legal when it is arranged by parents, what element makes the same marriage illegal when it is performed by the choice or independent will of the women herself. A close analysis of the prevailing laws presents the following findings :

- The provision for legalizing the marriage of a girl arranged by her parents exists in the sole interest of parents, not the girl. The said law indirectly empowers the parents to deflect the rights of women to remain unmarried and thereby qualifying the right to share the parental property. Since the parents are legally empowered to arrange the marriage of a daughter when she reaches the age of 16 years, the daughters are virtually prohibited from exercising the right to contract on matters of marriage.
- By empowering the parents to play a decisive role in the marriage of their daughters, the right to determine who should or should not be their husbands is virtually eliminated for a young woman. It forces women to have a life that their parents prescribe to them. Eventually, the women are forced to make a submit regardless of their wishes or better interest.
- This provision of law virtually ‘commodifies’ a woman. It indicates that the sole purpose of marriage is to formalize a ‘station’ where women serve their husbands. Personal development of women is not a matter of marriage. Marriage, under the Nepalese law and customs, is therefore, simply an instrument of formalizing men’s control over a woman’s person.

These defects to several weaknesses in the status of women. For instance;

- Women’s right to own property is dependent on marital status.
- Women are burdened with the obligation of procreating for the continuity of the ancestral lineage of the husband. Childless women face a situation where the husband is allowed to consummate a marriage to another woman, to produce children.

- Women's choice of development is virtually governed by men's decision and
- Women are prohibited to play role in determining the nationality or identity of the children they produce.

All these circumstances are apparently the outcome of the defective value system, which can be better illustrated by a tree :

Depersonification of Women by Laws

Imperfections or limitations imposed upon the above mentioned three rights virtually render the "status" of women subjected to men's control. "Control over sexuality" is the main purpose of limitations on women's status. The existing legal system, despite the constitutional guarantee of equality of the sexes and a safeguard against exploitation, maintains the men's control over female sexuality basically through the following instruments:

- Restricting women from transmitting her identity to children. The implication of the restriction extends to ban on transmission of mother's nationality to children. Hence, man as a father maintains predominance over the family.
- Restriction on birth relation of women to their fathers' ancestors. The implication of restriction obliges women to consummate marriage mandatorily, and to accept the family lineage of husband. The system of acquiring family lineage of alien family through the institution of marriage, disqualifies a woman from entertaining rights over natal property.
- Recognition by law for the prevalence of parents decision on matters of marriages of daughters, virtually converts the marriage into an institution granting to husband the full control over the sexuality of his wife. The implication of this practice subjects the woman's right to property to "sexual behaviour". This is one of the best instruments of maintaining control over wife.

Keul is one of the remote villages in Sindhupalchok where my colleagues and I have spent a lot of time raising consciousness against the defective value systems. The custom of discrimination against and the ill-treatment of the girl children and women is commonplace. In 1998, I had been there for the purpose of conducting a paralegal training for women and also escorting a journalist from the Netherlands. We traveled about seven hours on foot after three hours drive from Kathmandu to arrive at the training spot. Yamuna and Anjan, both my students in the past and now colleagues working to develop CSSAT, were busy discussing various laws with participants. On our arrival at the spot, the session was adjourned for few minutes in order to help us exchange greetings with participants. At that moment, I noticed a girl, about 14/15 years of age, wearing *pote* (the religious beads signifying that one is married), around her neck. I asked, when did you marry ? She felt little shy, and tried to 'hide the fact'. That evening we had been escorted to the house of this same girl for night stay. Her mother wanted to discuss some legal issues with me. We have a practice developed to help the local people so that they benefit from our presence in their village. Hence, we discussed several local legal problems with the people on every visit to the village. Otherwise they have to travel to Kathmandu for such counsel. This practice has helped us gain the cooperation of the people in the villages. After a traditional rural dinner, the girl's parents described to me of the bad situation of their daughter's marriage. My guess came true; the girl was married one year before when she was 13 years old. The family had a *puran*, a religious ceremony of recitals of Hindu mythologies. At such an occasion, a *kanyadan*, giving a daughter for marriage, especially a young one who have had no menstruation yet, is believed to be a good luck for performers to achieve salvation. A boy was therefore, looked for. A family from a nearby village was willing to marry and thus the marriage was fixed. The boys family promised that the girl would be given chance to continue her education. Eventually, the marriage took place. The girl left her parent's house to go to her husband's house, who was also a child. She had chance to go school with her husband. But she could not appear in the final examination since her fee was not deposited. So she fled to her parent's house, and did not like to return to her husbands house. The relationship then became hostile between the two families. What can we do in such a situation ? The mother

wanted me to advise her. Of course, I had no answer. It was a child marriage, and as such was a illegal marriage. Action was not possible to take in order to reinforce the marriage, nor was it possible for filing a divorce suit. I said, “I don’t know whether you will go to ‘heaven’ or not, but you definitely made a way to hell for your daughter.” I said this to the mother with a little annoyance at their stupidity. The girl could understand what was happening to her, but had no girt to resist it. She was silently crying sitting close to her mother. It was a terrible situation, as I had nothing for solution. Forget that she was married, I advised. She should continue going school and prepare herself to stand on her own feet. The admission time was already past, and we had to struggle hard to get her admitted to school.

Next morning when we returned from headmaster’s place, the girl and her young brother were fighting on lawn. There were books and clothing lying scattered on the lawn, and the girl was crying. We were informed that they had a fight and the brother threw all her belongings out claiming that it was solely his ‘house’. She should go to her own house, he said. It was amazing how a little boy like him can develop an attitude like that. It was a good education for me to understand the pervassiveness of the defective value system in our society. Anyway, the girl had been admitted in the school, and is still continuing to attend.

These three instru-ments maintain full domination of men over women’s position in the Nepalese society. They help in elaboration of rules to be adopted or practiced by women in their general life. A few such rules to mention, for instance, are that:

- The girls should be educated to behave well to their husbands, and should remain always sexually faithful to husband.
- The sooner the marriage, better the chance for settled life.
- The women should not interfere in public affairs.
- The girl children should learn domestic skills from an early age by helping their mothers.
- The education has no meaning for women, as procreating and rearing children is their natural obligation.
- The woman who suffers infertility is unlucky and abnormal.

The social taboos and milieu based on those perceptions are responsible for:

- degraded social status of girl children, and their commodification;
- seclusion of girl children from development mainstream ;
- deprivation of girl children from investment on education and mental development;
- de-personification of women;
- emergence of sex market, where men can buy “sex” through bodies of women.

The imposed vulnerability of women allows traffickers to operate more successfully. The weaker position for women is also sustained in the legal system of Nepal. The principal legal terms in law books (statutes) used to define women are related to marriage and sexual relations. Women are characterized as “kanya” (virgin), bihe nagareko (never married), bihe gareko (married) “liyako” (brought as wife but not formally married), “bahira rakhako” (kept informally outside the home), “santan hune and nahune (with or without children) and bidawa (widow). These terms are derogatory as they relate to the situations women are in and not the personality of woman in themselves. They also denote an inferiority in women’s competency to enter into contract a relationships with men.

Ignorance, illiteracy and exploitation of girls and women are the outcomes of this defective value system which is inherited and zealously protected by Nepalese society in the form of archaic laws.

The lack of the State's (three branches plus political parties) commitment to bring about changes in the laws previously discussed, has nullified the potentiality of the constitution's plan of equality of gender. The State has failed to understand the significance of empowered women in the development and the society at large. It is interesting to note that a woman who is constitutionally capable of becoming Prime Minister of Nepal, is not thought capable of transmitting her nationality to her children. This is ridiculous. It is only one of many examples of inequality based on gender.

Lack of Political Commitment and Adequate Legislation

Due to the influence of the defective value system, the state lacks the political commitment to safeguard the female community from exploitation of all types including sexual. Male chauvinism is dominant in every aspect of the policy and decision making process. The security of girls and women from being sexually exploited or discriminated against is not considered a serious matter of concern for law enforcement. Both the legislation and the law enforcement mechanisms are not set up to protect the female community from violence, discrimination and exploitation. The matter of education of the girl children and the socio-economic empowerment of women are still greatly neglected sectors of development. The vulnerability created by ignorance and poverty is largely an outcome of the state's attitude of indifference to this defective value system. Indeed, the lack of political commitment of the state to bring about changes in the condition of the female population is one of the causes behind the increasing number of trafficking incidents. The lack of commitment is obvious in the following circumstances :

- The State has shown no sincere interest in amending the existing counter trafficking law in order to remove its weaknesses. The Ministry of Women and Social Welfare endeavored to prepare a new draft of the legislation. This initiative was prompted by pressure from the civil society rather than by the legislative or law enforcement bodies. The government itself did not perceive the problem to be a serious one.
- The Government has no strong counter trafficking law enforcement institution to combat the problem. The existing police administration has raised no special police unit to combat trafficking, even taking into account the fact that over 5000 girls and women are trafficked every year.
- The Government has no coordination with locally active civil organizations. The Ministry of Women and Social Welfare has begun to organize committees at the district and village levels. The committees in the districts include the Chief District Officer (CDO) and other government employees such as the land reform officer, the education officer, the tax officers, etc. They hold meetings at the district level. The meetings are prompted by the allowance they receive, but not by sensitivity to the seriousness of the trafficking problem. These officers frequently get transferred from district to district and, as such, are unaware of the problems of any given district in particular. Taking into account the nature of the problem, the mechanism developed to combat the problem is inconsistent and inefficient.
- Nepal and India maintain an open border and cross-country mobility is unregulated. Notwithstanding the fact of smuggling of thousands of girls and women every year, the government has no plan and strategy developed to check the problem. The government has displayed big signboards at the border, checkpoints with warning that trafficking is a crime. There is little sense that a warning sign not backed up by enforcement can prevent trafficking. Many non-governmental organizations are also active in displaying similar types of signboards and advertising themselves.
- In early 1990s, the campaign against HIV/AIDS gained momentum in Nepal. Many non-governmental organizations, with donor's support, conducted awareness education against the deadly disease. The campaign solely related the HIV/AIDS epidemic to the trafficking problem, creating a serious negative impact which worked against the possibility of social reintegration of the victims of trafficking. The message that trafficking should be prevented to stop the import of HIV/AIDS was massively launched among people in the villages where much of the trafficking took place. The unregulated campaign against HIV/AIDS raised hatred of villagers

toward victims of trafficking. This led to a situation of double victimization of women and girls who had been trafficked with tricks and fraud. The campaigners did not understand that men brought HIV/AIDS into Nepal. Men visiting brothels and transmitting infections to wives were not condemned but women and girls lured into sex market were ostracized. The government was unaware of the negative impact of this anti HIV/AIDS campaign. This is apparent from absence of any programs for reintegrating victimized girls and women. Instead, the government is promoting 'urban based rehabilitation centers', which, in the long run will create other problems.

- Political interference in enforcement of the law is widespread in Nepal. This is obvious from the frequent withdrawal of trafficking cases by the government. Political interference during investigation is a serious problem for the criminal justice system in Nepal.

Unregulated Migration and Highway Syndrome

The increased urbanization process invites the influx of people to the cities and urban centers. It is a characteristic in both developing and underdeveloped economies. Nepal over the years has faced the problem of urban bound migration. Migration and mobility are accompanied by certain unavoidable results, for instance :

- homogeneity of the value and social structure is broken,
- indigenous social regulatory systems become defunct,
- competition for urban resources becomes tougher, and
- weaker sections of society are marginalized by unhealthy competitions.

Women and girl children are the most marginalized section in Nepalese society. Women are always in demand in cities for low paying domestic jobs. The influx of women and girl children into urban areas is not smaller than that of men. There are certain areas of work, where women and girls are always preferred in Nepal. These sectors tend to be exploitative by nature. The following sectors can be cited :

- Domestic service; hundreds of young girls are recruited as domestic servants.
- Labor intensive manufacturing industry; carpet, garment and brick kiln employ a large number of adolescent girls.
- Restaurants, highway pubs and food stalls are the emerging sectors for employing young girls.

All these employment markets are unregulated and thus marred by multiple forms of exploitation. Employment of children in spite of legal prohibition is a common phenomenon in many sectors of the economy and domestic service. The work places are often unhygienic and easily accessible to agents and pimps of the sex market. Highway and urban settings are especially good places for traffickers to recruit young girls. Since migration is not recorded, the security of unsupervised girls is a big problem.

A few of the trends in exploitation can be summed up as follows :

- Most teenage girls recruited are paid only a subsistence wage and a limited amount of money is paid to their parents. Sexual exploitation of such girls by the employer and relatives is always a danger, and no protection for such exploitation is provided by state. Women as opposed to girls are not preferred for exploitation. When young girls who have been in exploitive jobs grow older they are generally reluctant to return to their home villages. In this transitional circumstance, women are easily preyed upon by local or cross-border sex market traffickers.
- Carpet, garment and brick kiln industries generally provide only seasonal employment. Girls work long hours in unpleasant and often dangerous situations and the employment period is insecure. The traffickers have easy access to women and girls in these industries when employment is terminated. The low salary paid by these industries leave the women and girls in

a transitional situation with little money giving sex traffickers an opportunity to entice the girls into the sex market.

- Many girls are diverted from domestic service and other sectors to restaurant work in cities like Kathmandu, Birgunj and Pokhara. The sexual harassment and exploitation is a great problem in the restaurant business. Restaurants are frequently raided by the police and publicly condemned for using women labor. This creates a problem for young girls to continue employment in the given city. The police and media's well intentioned crusades against sexual exploitation frequently put girl laborers out of work and on the streets, thus becoming easy prey for sex-traffickers.

All the factors and circumstances previously discussed are behind the increasing number of trafficking incidents. The pornographic literature market is destroying the traditional sexual modesty of the Nepalese people, and thereby aiding the growth of the local sex market in each and every urban center. The government has little in the way of control mechanisms for curbing the emerging sex market in Nepal.

To sum up this chapter, it can be argued that a defective value system and the state's failure to legally protect the girls and women are the main causes of the increasing problem of trafficking in Nepal. While poverty may be an aggravating factor to induce urban bound migration, it is not the cause of trafficking. Better planning and regulation of migration would go a long way to ensure the safety of rural girls. For example, deprived rural girls and women can have access to the employment in the cities. Unfortunately the lack of safeguards and safety against exploitation resulting from unregulated migration has the unfortunate result that many women and girls are forced by circumstance into prostitution.

International Obligation Taken by Nepal to End Violence and Sexual Exploitation

His Majesty's Government of Nepal is a signatory of Universal Declaration of Human Rights of 1948 and many other international human rights instruments. In order to eradicate slavery, violence against women, sexual exploitation and gender discrimination, the Kingdom of Nepal has ratified the following international conventions:

International Instruments	Ratification or Accession Date
Slavery Convention	7 Jan. 1963 (a)
Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institution and Practices similar to Slavery.	7 Jan. 1963 (a)
Convention on the Prevention and the Punishment of Genocide	17 Jan. 1969 (a)
International Covenant on the Elimination of All Forms of Racial Discrimination	30 Jan. 1971 (a)
International Covenant on Economic, Social and Cultural Rights	14 May 1991 (a)

International Covenant on Civil and Political Rights	14 May, 1991 (a)
Optional Protocol to the International Covenant on Civil and Political Rights	14 May 1991 (a)
International Convention on the Suppression and Punishment of the Crime of Apartheid	12 July 1977 (a)
Convention on the Elimination of All Forms of Discrimination Against Women	5 Feb. 1991 (r)
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	14 May 1991 (r)
International Convention Against Apartheid in Sports	1 March 1991 (r)
Convention on the Rights of the Child	14 Sept. 1991 (r)
Convention on the Political Rights of Women (11)	26 April 1966 (a)
Convention on the Suppression of Immoral trafficking and Protocol	10 Ashad 052

Through ratification of these international instruments, the Kingdom of Nepal has endorsed the international commitment to eliminate sexual slavery and exploitation.

The Universal Declaration of Human Rights, 1948.

- **Article 1:** All human beings are born free and equal in dignity and rights. They are endowed with reasons and conscience and should act towards one another in a spirit of brotherhood.
- **Article 4:** No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.
- **Article 5:** No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.

But despite these guarantees, the exploitation of human beings through the inhuman institution of slavery continues. Trafficking in human beings for prostitution still continues. Considering the inhuman characteristics and cruelty involved in sex trafficking. The Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution was adopted by UN in 1949. The Convention concluded that prostitution and the accompanying evil of traffic for the purpose of prostitution were incompatible with the dignity and worth of a human being. To further strengthen their anti slavery commitment, the Supplementary Convention on Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery was adopted in 1956. Sadly, the most powerful countries in the world continued to demonstrate a lack of political will toward the implement of the Convention. To address this problem and protect women and girls from discrimination, violence, exploitation and traffic for the purpose of prostitution, the convention on the Elimination of all Forms of Discrimination against Women was adopted by UN in 1979, which obliges States to take appropriate measures, including legislation, to suppress all forms of trafficking and exploitation of women for prostitution.

Nevertheless, sex trafficking is still a big problem in the world. There are some circles of thought that favor the legalization of the sex market. This author is convinced that the marketing of a human body for the sexual satisfaction of others by means of a market system, violates the universal principles of respect for human dignity and rights, and can be considered in some circumstances a

form of slavery. Taking into account the fact, the buying sex cannot be claimed to be a market. The so-called market degrades the human dignity. There has been mounting consensus emerging that :

- The prohibition of any commercial trade in human organs should equally apply to the sale of the human body for sexual acts.
- Prostitution objectifies and negates the physical and mental integrity a human being.
- Prostitution, like slavery, cannot exist without cruel, inhuman and degrading treatment; domination and violence; the silencing of victims and loss of their integrity and dignity. With adoption of several anti-trafficking international instruments, Nepal has virtually admitted to ending trafficking.

Validity of the International Treaty and Convention

The Treaty Act, 1993, stipulates that the government must give notice about ratification, accession to, acceptance or approval of the treaties or agreements to the concerned party or authority. It has expressly laid down a rule that treaties or agreements are enforceable as the law of Nepal⁶⁸. The Treaty Act further provides that the provisions of the municipal laws inconsistent with the treaties or agreements as such becomes null and void⁶⁹.

Unfortunately, the enforcement of the international instruments and the Treaty Act, are largely neglected in respect to the equality of men and women. The Government of Nepal has not removed or amended inconsistent laws. The country report submitted to the Beijing Conference made a commitment to identify and amend laws inconsistent to the Constitution. The report stated that the government would prepare and present a bill in the parliament within on year providing equal ancestral property rights to women. Similarly, the Nepalese government made a commitment to address the problem of violence against women including trafficking practices by reviewing legislation and strengthening law enforcement agencies. However, none of these commitments have been kept.

It is regrettable that the Government of Nepal has failed to take the problem of trafficking seriously enough. The government recognizes that the problem exists but does almost nothing to prevent more girls and women from being victimized. The government's lack of seriousness and inaction are visible from the following facts:

- No regulations exist to safeguard the rights of thousands of female workers in cities. These workers have no access to any type of governmental support.
- There has been little attempt to regulate the Nepal-India border to prevent trafficking of the Nepalese girls.
- The Government of Nepal has no plan or policy to encourage or press India to develop strategies to protect the Nepalese girls and women from being trafficked to brothels in India. The Government of Nepal has shown no interest to set up a system of 'extruding the traffickers' for judicial action.
- Nothing is done to prevent the political protection of criminals. Corruption in the major political parties has encouraged and sometimes even benefited from organized crime including trafficking for prostitution.

It seems that the government has done hardly anything but to pay a lip service to the prevention of the trafficking. The government has done no research for identifying the magnitude of the problem of trafficking. Like many people from Nepal and abroad, the government officials view that, due to poverty, the Nepalese girls and women volunteer to prostitution. Only little interest is shown to curb the organized racket of traffickers.

Article 20(1) of the Constitution has guaranteed a right against exploitation by prohibiting trafficking in human beings, slavery and serfdom or forced labor in any form. Any act contrary to the constitutional provision constitutes an offense against the State, and is punishable with terms of imprisonment and fines. There are two laws to govern the crime of trafficking in human beings in Nepal.

Section on Human Traffic of the New Muluki Ain, 1964

New Muluki Ain a common law applicable in lack of specific statutory law, defines the crime of trafficking in human beings as an act of taking any person or persons, by fraud or enticement, out of the territory of the country with an intention of selling⁷⁰. It is a crime punishable with terms of 10 to 20 years of imprisonment. Any individual involved in the buying and selling persons is liable for punishment.

Clause 2 of the Section on Trafficking in Human Beings prohibits the separation of a minor person or any one having mental disorder from their parent in guardian without the consent of his/her parent or legal guardian. Clause 2 also restricts the act of enticing such a person or persons for the purpose of separating them from their legal guardians. Such an act is punishable by a term of 3 years imprisonment or a fine of five hundred rupees or both.

Human Trafficking (Control) Act, 1986

In 1986, the Human Trafficking (Control) Act was enacted to combat the growing traffic in women and girls for sexual exploitation. Since, clause 4 of the Section on Preliminary Arrangement of the **New Muluki Ain** stipulates the application of the specific Act to specific matters, the new law replaced the provisions of the **New Muluki Ain** relating to human traffic. Also, section 11 of the Human Trafficking (Control) Act, 1986 stipulates that no law should apply in matters covered by this Act. The Human Trafficking (Control) Act, 1986, is, therefore, a specific law relating to crimes of trafficking in human beings⁷¹.

Section 4 of the Human Trafficking (Control) Act considers the following acts as the crime of trafficking in human being:

- Selling of a human being for any purposes;
- Taking any person to foreign territory with an intention of selling them;
- Involving any woman in prostitution by enticement, allurements, fraud, threat, or coercion, or by any other way or means; and
- Abetting, assisting or conspiring and making an attempt to carry out any of the above mentioned acts.

The above mentioned acts are, as per section 8 of the Act, liable of following punishments:⁷²

- 10 to 20 years of imprisonment for the crime of selling a person.
- 5 to 10 years of imprisonment for the crime of taking a person to a foreign territory with an intention of selling them.
- 10 to 15 years of imprisonment for the crime of forcing a woman into prostitution.
- 5 years of imprisonment for the crime of abetting, assisting, conspiring, or making an attempt to accomplish the above mentioned acts.

Sub-section 5 of Section 8 provides also for the pecuniary penalty. The person convicted of the crime of selling human beings is penalized, in addition to the imprisonment, with a monetary fine equivalent to the amount allegedly involved in the transaction. The Act, however, does not provide for any punishment or pecuniary penalty for the person who is engaged in the crime of purchasing persons. The Act, thus, indirectly recognises the existence of brothels and the prostitution. This also

indicates to sheer insensitivity of the government to address the growing menace of trafficking. By ignoring criminal liability of the “purchasing part” the legislation indirectly encourages the traffickers.

Special Provisions

The Human Trafficking (Control) Act, 1986 provides for a stringent penal system. The complex circumstance associated with this kind of crimes, means that the Act has made a special provision of shifting the burden of proof on the defendant. The accused person therefore has to discharge the evidentiary obligation to prove his innocence. However, the practice of this provision has led to almost total failure of the investigation system. The provision requiring an accused to discharge the burden of proof, has induced investigators to refrain from collecting relevant evidence to prove the offense beyond reasonable doubt. Forced confession is therefore resorted to as primary evidence, thereby leading to weaker prosecution. In many cases, the confessions do not sustain in lack of other corroborating evidence and the accused is granted benefit of doubts. Obviously, the enforcement of the Act is severely weaker.

Procedure and Jurisdiction

The State Cases Act, 1993, has defined the crime of trafficking of women and girls as an offense against the State. It obliges the State to investigate and prosecute the offense. As provided for by the Act, the investigation is initiated by a complaint by the victim or any person having knowledge thereof. The complaint of the victim is recorded by the concerned government attorney and the prosecutor and then authenticated by the judge of the concerned district court. The victim then becomes an important witness for the prosecutor.

The Human Trafficking (Control) Act, 1986, is one of the few statutes which recognizes extra-territorial jurisdiction. The Act extends its jurisdiction over any crime including the one committed beyond the frontiers of Nepal. As such, any crime relating to the trafficking taken place in the foreign territories is cognizable in the courts of Nepal. However, the Government of Nepal has made no request to the Indian Government of extradition of single trafficker. This situation leads to a conclusion that the state machinery is largely unconcerned with the problem of trafficking.

Inadequacies and Ambiguities

Human Trafficking (Control) Act, 1986, suffers from serious weakness in terms of its definition as it fails to bring within its ambit the act of separating any person from her legal guardian with the intention of selling her into prostitution. Hence, no crime is established against someone engaging in separating women or girls from their guardians with a purpose of trafficking, but not having yet taken the victim out of country. Similarly, the Act has no provision for punishing a person who is involved in the purchase of women and girls for prostitution.

As mentioned above, the victim of trafficking is an important witness for the prosecutor during the trial. However, the State has no means of protecting such witnesses. The victim is often threatened or forced by the traffickers to change their statement or become indifferent to the case. This has been found in several judgements of the courts in which the accused has been released due to the victim failing to turn up at court for testimony⁷³.

Cases relating to trafficking of women and girls are tried by the courts openly like other ordinary crimes. This practice poses problems for the victims, especially the younger girls who have become prey to the agents. There are risks of many kinds as no protection is guaranteed by the State once the case is being prosecuted. Since the victim becomes a special witness to the prosecutor the offenders may create obstacles to the victim's testimony in court. Thus, only rarely do victims appear in the court once their deposition is recorded. The courts acquit most of the offenders because the victims decline to testify in court. Moreover, the women do not want to appear in the court because they want to avoid the humiliation they are supposed to be subjected to during examination and cross-examination in the open court.

Enforcement Situation

Although the trafficking of women and girls is the most pressing issue in Nepal over the years, the enforcement of the Act has not been found effective. There is an intelligent estimation that 5000 to 7000 women and girls are being trafficked to India every year for prostitution. It is often said that the Human Trafficking (control) Act is one of the more poorly enforced Acts. As per the official record, only 150 cases were reportedly investigated by the enforcement agency in the fiscal year of 1994-95. The number of cases has decreased in subsequent years as only 133 were investigated in 1995-96, and 107 in 1996-1997. As learned from the Government Attorney's office, out of 150 cases reported in fiscal year of 1994-95, only 39 cases were produced in courts of law.

Cross-examination a Mockery

Cross-examination in the trial courts takes place in open court. The system of cross-examination is fully obsolete and archaic. Protection of the fundamental rights to privacy and personal reputation is generally subjected to jeopardy during the cross-examination. Although there has been a legal provision that the sitting judge should preside over the proceeding, it hardly happens so. Generally, the statement of the witness is recorded by the court clerk, and the judge is generally absent in the bench or busy listening arguments of other cases.

There has been a danger of defence lawyers becoming unethical during cross examination. Firstly, there has been no due attention of the presiding judge to the progress of the cross-examination. Secondly, there has been almost no trainings for lawyers are available in Nepal on the skills and ethics of cross-examinations. Obviously, the defence lawyer's questions are largely embarrassing to the victims. In a research concerning fair access to trial, I found that a large number of victims found the prevailing court procedures prejudicial to victims. Many victim respondents responded that "girls are doubly raped in the courts". Indeed, cross-examination is a "free entertainment for many people."

Initiatives to Improve the Counter Trafficking Law

The Institute for Legal Research and Resources (ILRR), CeLRRd's sister organization, was the pioneer organization to take the initiative to improve the legislation on trafficking. The National Consultation meeting held at Melamchi in April 1997 was the first effort in this respect⁷⁴. The National Consultation meeting ended with adoption of concrete resolutions for the new bill. The meeting also assigned a committee to carry out the task of drafting the new bill, and launching the advocacy for its enactment. The task force prepared the bill after a lengthy process of consultation with a wide spectrum of people. The bill was produced as a result of the following procedures:

- The task force headed by the ILRR's chairperson nominated a committee of experts for preparing the content paper and the draft of the bill⁷⁶. The expert committee conducted through research on the multiple aspects of the existing statute in order to identify the limitations and drawbacks in it. The areas needing

Tara Testifies

Dambar Bahadur Chettri Vs. HMG. Dambar Bahadur married Ms. Tara Kumari Bishokarma and promised her a good life. She left home with Dambar Bahadur for Krishna Nagar, a border town in Western Nepal. After four days travel, Tara arrived in Bombay and found that her husband had sold her to Suni Tamang's brothel for IC. 20,000.00. In the brothel, she was forced to entertain customers. Fortunately, she was able to contact the Indian police force, which rescued her and made arrangements for her return to Nepal.

On her return to Nepal, Tara lodged a complaint in the police office in Rupendhehi district. The accused Dambar Bahadur was arrested on his return to Nepal. He was prosecuted for committing a crime under Clause 1 of the Section on Human Trafficking of the Code of the Country.

The case was filed in the Rupendhehi District Police Office where Tara Kumari had lodged the first information report accusing Damber Bahadur of deceitfully marrying her with an intention of trafficking her to prostitution. Damber Bahadur confessed the crime. The prosecution was accordingly made on the basis of the confession of the defendant. The Rupendhehi district court found the defendant guilty gave him 20 years of imprisonment his punishment. The Supreme Court reviewed the judgement, and held that “since the defendant had failed to provide adequate evidence to prove his innocence, the punishment given by the Rupendhehi district court needs not to be altered. The punishment of twenty years imprisonment according to the Clause 1 of the Section on Human Traffic in the New Muluki Ain, therefore, must be executed”

The Supreme Court in this case held that the onus of proof lay on the defendant to prove that he had not sold Tara Kumari for prostitution. Although the Supreme Court did not elaborate the principle in detail, it was the first case in which the Supreme Court deviated from Section 25 of the Evidence Act, 1975 that stipulates that the prosecutor must prove the guilt of the defendant beyond a reasonable doubt. This particular case has had lasting bearing in subsequent cases relating to trafficking in women and girls for prostitution. Even the Human Trafficking (Control) Act, 1986, was influenced by this judgment, as it expressly laid down the principle that the onus of proving innocence in the trafficking cases lies with the defendants.⁷⁵

changes and improvement were then settled. A detailed description of the justification of the changes in the existing statute was also prepared. Finally, the preliminary structure of the draft was completed.

- The first draft of the bill was presented in the plenary session of the task force. It was then discussed for two days. The task force meeting scrutinized and probed each provision of the draft. The principles enshrined in the bill were adopted with certain suggestions to be considered in the final version of the draft. The task force meeting ended with constituting an approval committee headed by the Dean of the Faculty of Law.
- The approval committee adopted the draft bill.
- Finally, the committee edited and published the bill.

The draft bill was made available for public debate for over one-year. The bill was extensively discussed in Martin Chautari and the British Council. A feminist group strongly condemned the bill for avoiding the issue of the legalizing prostitution. A few improvements were made following the long debate on the bill. The task of expediting the adoption of the bill was later on taken over by Center for Legal Research and Resource Development (CeLRRd). The CeLRRd draft adopted the procedural clauses of the 1986 Act on title, commencement, burden of proof, government prosecution, detention and framing rules, and added the following clauses:

1. Expanded on the provisions relating to external application of the Act (CL.2).
2. Provided definitions for “human trafficking and prostitution” (CL. 3).
3. Expanded on the range of acts considered to be human trafficking by adding new offenses relating to trafficking, forced marriage and separation of minors from guardians (CL.5).
4. Placed obligations on the police in relation to the investigation of alleged offenses (CL.7).
5. Expanded on the procedures for lodging a complaint by placing an obligation on local officials to act (CL.6).
6. Provided for the presence of witnesses during the initial recording of a victim’s statement rather than a governmental attorney (CL.8).
7. Allowed for proceedings to take place on camera (CL.9) and for confidentiality to be respected and security protected (CL. 11).

8. Increased the penalties for those convicted of trafficking offenses (CL.12).
9. Provided for the payment of compensation to victims at the discretion of the court (CL. 14); and
10. Provided for the repeal of the 1986 Act.

About two years after the CeLRRd draft was complete the police decided to develop a separate bill. The police draft contained several new provisions, which had no counterpart either in the existing 1986 Act or the CeLRRd draft. These new provisions are controversial as they contain elements, which contradict the spirit of the constitution concerning fair trial⁷⁷. The draft, provides for:

1. The exercise of powers of entry searches seizure and arrest without warrant - (The constitution however prohibits arrest without warrant.)
2. Compulsory medical examination of victims of trafficking – (The constitution has guaranteed the right to privacy.)
3. Compulsory and indefinite victims of trafficking are found to have certain diseases - (Constitution prohibits arrest and punishment for any acts which are not defined as crimes by law.)
4. 90 days detention power for police investigation.

Community Surveillance System against Trafficking (CSSAT) as an Emerging Model for Prevention

A device to regulate and monitor social affairs, a surveillance system can create and strengthen a community-wide response to the problems causing breakdown of the law and order in the society. Key factors contributing to the deterioration of social relations in Nepal often include discrimination and segregation based on gender, caste, religion, language, culture, and economic status. Crime and other anti-social behavior both reflect and reinforce this lack of social equanimity. A surveillance system that monitors social affairs is, therefore, a critical step to regulate and maintain a healthy society that takes special care of vulnerable and disadvantaged section of population. CSSAT is, therefore, a mechanism to prevent trafficking through constant vigilance, monitoring and social actions.

Having the benefit of first-hand knowledge and experience, the community itself is often best able to create a system that addresses its own particular set of social problems. Thus, a ‘community surveillance system’ refers to a system organized and implemented by the community and includes the following defining characteristics:

- community ownership of the entire system, including all decision-making and policy-implementation; and
- voluntary participation among the collective members of the society.

The goals of the community surveillance system include:

- the realization and implementation of a community protection scheme; and
- the ability of every member of the community to protect herself or himself from crime and other social problems.

Community Surveillance System against Trafficking (CSSAT)

The primary objective of the CSSAT is the grassroots prevention of the trafficking of girls and women in Nepal and the correction of a defective value system. The sex market represents a patriarchal value system that privileges men to buy sex from the bodies of women. Therefore, the CSSAT prevention model begins by examining the individual factors that explain *why* trafficking, but also large-scale sexual exploitation of women and girls, is endemic to Nepalese culture. Through a gradual process of changing cultural assumptions and roles, the ultimate goal of CSSAT

is to achieve gender equality in Nepal. CSSAT is thus basically founded on the concept that gender inequality is the main cause of all problems like trafficking.

CSSAT Mission Statement

The CSSAT mission statement is summed up as follows:

- To challenge the patriarchal culture that dominates female identity and sexuality, resulting in the ignorance, social alienation, economic deprivation, and sexual exploitation of Nepalese women.
- To organize and mobilize the collective participation of the community to prevent trafficking.
- To foster gender equality through:
 - increased access to education for girls and women
 - economic development and opportunities for women to become entrepreneurs
 - prevention of child marriages
 - access to fair justice
 - amendment of discriminatory laws affecting women; and
 - political empowerment and social leadership of women.
- To encourage women to assert their rights and men to serve as positive role models through:
 - grassroots paralegal training for both men and women
 - leadership training for local authorities and paralegal women
 - gender sensitivity training for lawyers
 - employment generation training, focusing on empowering vulnerable girls and women to reduce their dependency on male counterparts
 - CRC and CEDAW orientation for school teachers to familiarize them with the rights of children and women in the villages
 - establishment of women's surveillance groups in the villages
 - establishment of hotline service centers in cities to help prevent trafficking and the mobilization of state resources to rescue victims
 - creation of an outer-school program (short-term, non-formal educational facilities) for vulnerable girls from disadvantaged communities; and
 - implementation of an efficient and effective law enforcement program.

Primary Phase: Development of a Protection Triangle

CSSAT adopts a preventive approach that seeks to address the problem at its source. Building a “protection triangle,”—a network of solidarity between ordinary citizenry, women in particular, the local authority, and schoolteachers—is the first step. The protection triangle is designed to safeguard girls and women from all kinds of sexual exploitation and requires the following three training programs:

1. Paralegal Training for Women and Men: Paralegal training is a process of empowering women to learn and assert their constitutional rights as well as educating both women and men about the negative implications of a defective value system. The participants are exposed to discriminatory laws and encouraged to form independent opinions that challenge male dominance and increase female access to justice.

The paralegal training course also educates women and men about culturally prescribed gender biases and how such distinctions create social behavioral expectations. The training sessions begin with a simple definition of society and its functions and provide a description of gender distinct from the notion of sex. Emphasis is placed on the full integration of women into Nepalese society. Finally, men are encouraged to become more proactive regarding the rights of girls to education and economic development and the importance of creating positive models of masculinity.

2. CRC and CEDAW Training for School Teachers: School teachers are among the most respected participants in rural village life. In constant contact with the children they are both regularly aware of happenings in the villages and are able to influence the children and their parents to develop in a positive direction. However, even the schoolteachers themselves are not

free of the influence of the defective value system. Many are unaware of the national and international laws and standards regarding children, women and gender equality. Given that successful community surveillance depends on the mobilization of all available resources in the village, it is critical that the school-teachers become familiar with international treaties such as the Convention on the Rights of Children and the Convention on the Elimination of All forms of Discrimination against Women. As the majority of teachers are male, the training course also works to promote positive male role models and stresses the role of educated persons in the fight for social change.

The terms sex and gender have particular definitions in sociological work. Sex refers to the biological identity of the person, signifying whether one is male or female, whereas gender refers to socially learned behavior and roles associated with the two sexes. Thus, whereas “maleness” and femaleness” are biological facts, becoming a woman or becoming a man is a cultural process. Like race and class, gender is a social category and our notions of what is masculine and what is feminine are merely socially constructed concepts. Although one’s biological sex need not be linked to specific types of gendered behavior, in Nepal, both socially and culturally, femininity signifies inferior characteristics whereas masculinity signifies superior ones.

In Nepal gender differentiation begins from the moment of birth. The names that children carry throughout their lives are marked with gendered expectations. Fear of blurring traditional gender roles often discourages parents from giving their children more gender-neutral names. Girls’ names should be “feminine” and pretty (such as Sita, Payru, Shanta) symbolizing goodness, sweetness, and beauty. Conversely, boys’ names should be “masculine” and short (like Ram, Krishna, Prem) symbolizing bravery, strength, determination and intellect. Male middle names often include adjectives such as *bahadur* and *bikram* (brave and winner). Moreover, to suggest extraordinary masculine strength, boy’s names are often those of powerful predators such as a lion, giant animals such as an elephant, and legendary Gods and kings such as Shiva and Ram.

Although naming children is an often taken-for-granted reality. It is a child’s first lesson in the socialization process that will shape his or her gender role throughout his or her life. Personal recognition becomes inextricably conflated with such culturally prescribed gender roles. As the following examples serve to illustrate, gender differentiation in Nepalese culture is stark, in terms of treatment, dress, attitude and expectations. For instance:

- children must dress differently: a *chhori* (daughter) is given a *jama and ghagra*, whereas a *chhora* (son) wears a *daura*; school uniforms are also distinct for boys and girls
- daughters may not reveal parts of the leg above the knee
- beyond age of 10/12, girls may not socialize with boys in isolated places
- girls are trained to assume responsibility for household chores
- if girls do attend school, they must return home immediately and are forbidden to mingle with boys

- games appropriate for girls involve less physical activity: in villages schools girls play *gatta* (a game of using stone balls on ground with tricks of hand), whereas boys play football or volleyball; extra-curricular activities appropriate for girls may be dancing lessons, whereas boys would again engage in athletics.
- boys and girls sit in separate groups as mixing is inappropriate behavior.

Such cultural practices shape gender behaviors as well as legitimize sex-based discrimination as girls and boys grow to become women and men.

3. Leadership Training for Local Elected Representatives: Establishing a community surveillance system is not possible without the support of the local authorities. This training is designed to foster the commitment of the local leadership to social causes and includes a detailed orientation on the ethical and legal obligations of elected representatives to their constituency.

The ultimate goal of the CSSAT protection triangle is to achieve a gradual process of empowering local women. The paralegal training, schoolteachers' training, and leadership training activities are all aimed at facilitating local female leadership in the CSSAT program as well as in the economic and educational life of the village.

Secondary Phase: Development of Additional Community Resources

Hotline and Rescue System: Most trafficking incidents take place in cities where rural girls and women have migrated. Although some do travel voluntarily, many are seduced by false promises of legal employment. Often insecure and without any form of protection, such women are easily found by traffickers who skillfully con them into traveling to India by various forms of enticement and deception. A hotline and rescue system is necessary to connect the village paralegal committees with urban institutions established for the protection of vulnerable girls and women. It should include the following components:

- A surveillance system that will monitor the whereabouts of girls and women in the carpet and garment industry as well as waitresses and domestic servants.
- A system to identify and rescue trafficked girls in the initial stages by intercepting their travel over the border.
- A network of experienced counselors and social workers to provide treatment to rescued victims.
- Prompt legal actions against culprits and legal representation for the victims.
- Information service centers to provide prompt information and advice to girls and women.

Community Outreach in the Legal Profession

In developing and under-developed countries, the responsibility of lawyers is rarely limited to representation of individual person within the judicial system, but often includes protecting entire communities from exploitation by State apparatus and educating communities to assert their civil and political rights. In a country like Nepal, such community advocacy is one of the lawyer's primary commitments. Unlike many developed countries, where similar services are often state-funded, there are few provisions in Nepal to support such community legal aid. In the CSSAT model, this type of professional outreach for the benefit of the public at large is referred to as alternative lawyering. Alternative lawyering assumes a proactive and community-based approach to encourage public access to the judicial process and includes the following programs:

- continuous gender sensitivity training for lawyers
- advocacy for the protection of the rights of vulnerable groups
- applied research of legal problems, including sociological and psycho-legal analysis

- mobile legal aid support
- lobbying for adequate and efficient legislation; and
- promotion of a fair judicial process.

Community outreach in the legal profession is an essential part of CSSAT program being launched by CeLRRd. Training, action research and legal aid service delivery are few instruments to achieve community outreach in the legal profession. Under the program a sizable number of lawyers have received training on knowledge and skills of developing community surveillance against trafficking, which can be easily replicated in other problems. Over the years, CeLRRd and its sister organizations have made great efforts to attract the young lawyers to the need of working for community, the vulnerable groups in particular. Obviously, within the legal profession in Nepal, a strong group of public pro-active alternative lawyers is gradually emerging, which believes in:

- legal profession is an inseparable means of securing justice for disadvantaged sections of the population,
- community advocacy is a prelude for preparing the ignorant people to capable of asserting their rights and interests,
- state's apparatus might not be fair and cooperative to disadvantaged population if they are not strongly assisted by lawyers through continuous legal education,
- efforts to secure equality in the grassroots level is a primary task of justice, as no justice can be made through a judicial fights between powerful and weaker,
- the judicial systems of the developing societies, like Nepal, are marred by formalism, 'proceduralism', favoritism and insensitivity to issues of women, children and other minorities, which creates a circum-stance of fight between unequals,
- wealth plays a role in the making of justice; for instance a wealthier person can buy services of formidable lawyers to abolish the poor adversary in litigation, and the circumstance can be avoided only by securing an outreach in the legal profession, and

The concept of alternative lawyering in the context of Nepal was promoted through Clinical Legal Education course at the Faculty of Law in 1992. The present team of CeLRRd was then engaged in the program as faculties and students. In 1993, for the first time in the history of legal education of Nepal, a component of placing students in rural villages for study of grassroots legal programs was included in legal education curriculum. In that year, a group of 40 law students worked in Nuwakot, one of the high trafficking risk districts of Nepal, for raising legal awareness of the community. In 1994 and 1995, they were placed in Sindhupalchok and Dolakha respectively. However, the Clinical Legal Education Program could not sustain due to bureaucratic hurdles of the university. Immediately, law teachers involved in the faculty's clinical program founded the program outside of the law campus. "Bridging the Gap" program was then introduced for fresh law graduates in order to help them, among others, understand the roles of legal profession to the protection of vulnerable groups. Kathmandu Law School is now founded, promoted by CeLRRd as a pioneer organization in Nepal to advance the concept of alternative lawyering, for introducing a legal education system to secure justice in the society through generating the legal human resource to act as role models in the society.

- a lawyer cannot be a competent professional by ignoring his/her accountability of defending the community at large.

Development of CSSAT as an Effective Preventive Model

CSSAT is the outcome of many years of experiences of a group of lawyers and law teachers. Initiated by a team of law teachers hoping to expose their students to the complexities of problems plaguing the rural communities, female trafficking becomes their top priority. The current CSSAT model, and its emphasis on extensive problem definition and analysis, was first developed seven years ago in the Sindupalchok and Nuwankot districts. The process began with observation studies and the launching of paralegal training in five VDCs in Sindhupalchok in 1994. Since its inception, the program has emphasized the defective value system as the main factor underlying the problems of sexual exploitation and has established paralegal training for both men and women that challenge the norms of a patriarchal culture. In 1994, a seminar conducted by ILRR, a sister organization of CeLRRd, was turning point in the growth and evolution of the model. Subsequently, it was refined and then replicated in additional 19 VDCs. With the financial support of Unicef Nepal, the program is now established in 220 VDCs, and over 13,000 women have been trained and currently participate in paralegal committees.

CSSAT Structure

The three tiers of the paralegal committee system (women, educators, and local authority) combined with mobile legal aid clinics as well as hotline and rescue centers constitute the physical structure of the CSSAT. The village level (VDC) paralegal committees are the baseline structure. VDC paralegal committees are then clustered into regional paralegal committees with a single district paralegal committee as the coordinating body. An intensive training course precedes the formation of the paralegal committee at each level. For example, the district level paralegal committee is established following a five-day paralegal training course and the regional and VDC paralegal committees are established after three-day paralegal training courses. While the VDC paralegal committee is an elected committee, the other two are nominated bodies. Committees at each level function with full autonomy within their given responsibilities. Quarterly reorientation courses are compulsory for all committee members.

Directly accountable to an individual community, the VDC paralegal committees are in charge of the following surveillance activities:

Baseline Data Collection: Given the lack of information on trafficking, the main objective of the baseline data collection is to generate an accurate count of the trafficking problem. The paralegal committees are asked to update their information monthly. The collected data is stored on special software where the paralegal committees can analyze it to identify problems and plan interventions. Currently, the baseline data collection is complete in 220 VDCs covering 14 program districts. The baseline database includes the following demographics:

- Distribution of children based on age and sex
- Distribution and proportion of female children attending school
- Proportion of married female children
- Number of girls who have migrated from their village
- Number of girls whose whereabouts are unknown

This information will be used but will be used to target the most vulnerable communities in future planning.

Scholarship and CRC/CEDAW Classes for Girls from Disadvantaged Communities: Disadvantaged communities such as the Tamang, Dalits, and Danuwar, have very little access to education. The girl children of these communities have been utterly deprived of all opportunities for education or economic development. These girls are both illiterate and ignorant, and therefore very vulnerable to trafficking. Thus, paralegal committees in these areas provide the following two educational opportunities for such disadvantaged children:

- **Schooling of Girls from Disadvantaged Castes:** This program promotes compulsory education for the girl children from disadvantaged communities identified through the baseline database.
- **Literacy and CRC Classes for Girls of Disadvantaged Communities:** This program provides literacy and CRC/CEDAW orientation for girls from communities with high rates of trafficking. Under this program, girls between 12-16 years will be placed in outer school classes for a period of nine months.

Students' Mobilisation through Extra-Curricular Activities: Together with schoolteachers, the paralegal committees organise and conduct activities ranging from rallies to cultural events to mobilise the students against trafficking. Programs include:

- **CRC/CEDAW Orientation for Students:** Teachers specially trained in child and women's issues visit schools to educate students about their rights.
- **Brother and Sister Solidarity:** This is a series of special classes to sensitize brothers to the plights of their sisters and to encourage them to advocate at home for their sisters' futures.
- **Students for Social Movement:** This is a child to child program where children themselves speak out for the rights of other children through demonstrations and other cultural programs.

Income generation programs: Organizing income generation activities such as bee keeping, sweater knitting, vegetable and fruit plant raising, is another significant responsibility of the paralegal committees. With the help of CeLRRd, the paralegal committees are currently working on establishing an independent cooperatives system for women. Over a three-year period, CeLRRd, and each paralegal committee will contribute a fixed amount to establish the system. The funds thus raised will be put into a special banking system and each committee will then have the privilege of borrowing funds, up to a certain amount, whenever a need arises.

Impact and Obstacles

In implementing educational and organizational program in various villages, the conservative attitudes held by the village men proved to be the most formidable obstacle to the active engagement of the local women. In some families, husbands simply refused to let their wives participate at all. The participation of young girls was further limited by work demands as well as early marriages and subsequent migration from the village. Another problem the program encountered was the growing distrust shown by villages to NGOs who had previously assumed somewhat elitist approaches to community organizing. However, the paralegal committees have worked hard to overcome such problems.

The following few case studies illustrate the progress the CSSAT program has made in overcoming these challenges and the impact that CSSAT has had on community development and the promotion of gender equality.

Sindhupalchok District

Sindhupalchok district is one of the areas most vulnerable to trafficking. Since the first paralegal training was launched in 1996, 24 paralegal committees have been added to the district. The committees have worked effectively to promote awareness and protect women and child rights, and have achieved tremendous changes in their communities.

Thangpal Kot

Thangpal Kot is one of the VDCs located in the northern part of the Sindhupalchok district. During the three years since the paralegal committee was established, it received over 150 complaints, including domestic violence, disappearances, and child marriages. The committee has established its own system to process such complaints. First committee members try to correct the problem by discussing it with the involved family members. If that proves unsuccessful, the committee will turn to the police for assistance. As a final measure, the committee will contact CeLRRd for legal aid and support.

We recently met with Goma Khadka, president for the paralegal committee in Thangpal Kot, outside her clay-house where she lives with her husband. She emanated strength and confidence when she told us that “One important reason for our success is the good cooperation that has been established among local political leaders, police, and the villagers.” CeLRRd’s lawyers constant support in legal matters is pushing us to more and more success, she says.

In Nepal, the police are often insensitive to the problems and crimes the women face, therefore the paralegal committees play an important role in educating the local law enforcement. Throughout the Sindhuupalchok district the police are very pleased with paralegal committee’s presence. Commenting on the Thangpal Kot paralegal committee, police assistant sub-inspector Prabash Kumar noted that due to their assistance, “my work is easier and we have noticed a considerable reduction in all kind of crimes including trafficking. In the past, 10-15 girls were trafficked per year, but for the last two years no girls have been trafficked from Thangpal Kot VDC”.

The paralegal committee of Tangpal Kot has earned an influential position in their village community through courage and hard work. “Once a man, who had refused to give any support to his first wife after he married a second time, threatened me with a Khukuri,” Goma Khadka reported, “but I told him if you try to kill me I will certainly kill you first.” As a result of Ms. Khadka’s brave confrontation, a small parcel of land has been secured for the first wife.

Bhotang VDC

Bhotang is a predominantly Tamang community VDC in the northern part of the Sindupalshock district. Due to its isolated location and difficult terrain, the Tamang people face many hardships such as farming and collecting wood. The health post for medical care and vaccination is inadequate and there are still no adequate teachers in the village. Thus ignorance has resulted in several incidents of female trafficking.

One evening after Ms. Geeta Syangbo, president of the paralegal committee in Bhotang, returned from a day’s work in the field, we sat together to eat ‘Dhido’ (a common dish made of corn flour) and to discuss the committee’s work and the problems of trafficking. In the past many girls from Bhotang were lured into trafficking by false promises of marriage. Others traveled to the cities hoping to find work that would provide them with economic independence. Some girls returned to tell stories of the great money they earned in India, however, they never discussed their means of employment. Several other girls followed their village friends back over the border, ending up in the sex industry. Ms. Syangbo told us that our current program to educate young girls about the dangers of trafficking has “done a lot to keep girls in the village or to seek only legal means of employment in the cities.”

Due to the long distances between the village, police stations and health posts, many of the problems in Bhotang must be solved directly by the villagers and committee members. To first win the approval and confidence of the community members, the paralegal committee began by undertaking various development activities in the village. They cleaned the schools, constructed separate latrines for girls and boys, and organized a drinking water supply system for both the school children and villagers. With the help of other villagers, the paralegal women constructed a pathway through the village. Later, that road hosted the committee’s first rally for women’s rights in their community. The committee has achieved an end in the community, and is highly appreciated among the people. Due to their efforts, more village girls are attending school and last year there was only one girl reported to have disappeared. This year no cases have been reported. Furthermore, having identified excessive alcohol consumption and card playing as factors contributing to domestic violence and sexual exploitation, the Bhotang committee has waged a successful campaign to ban all alcohol production and consumption in their village.

Despite all this progress, many problems still persist. Although the committees have worked extensively to educate the community to take responsibility for victims of trafficking who have returned to the village, many are treated poorly. Sadly, most girls who manage to escape often have difficulties getting married or ever living a normal life. The reality of village life also makes female committee members dependent on the support of their spouses, who must be willing to assume extra

household responsibilities so that their wives can dedicate time to the committee. Ms. Syangbo's husband is a superb role model; whenever she needs to spend time with the committee, he takes care of the household including their five children. He has participated in a father's paralegal training program and has also taken an active role in combating many of the social problems. However, much work still needs to be done before all village men are as supportive as Mr. Syanbo.

Melamchi

At the conclusion of a three-day CRC/CEDAW training course for schoolteachers from 24 VDCs of the Sindhupalchok district, we met with Ms. Mira Shrestha, schoolteacher and president of paralegal committee in Melamchi. She has been teaching in Indreshori Secondary High School in Melamchi for five years and has served as president of the committee since its inception three years ago. She teaches approximately 80 student in one class. In the past, the majority of her students were boys, however, Shrestha reported that now more parents are becoming aware of the importance of educating their daughters. Because many parents are unable to pay the school fee for all their children (and consequently choose to educate only their sons) the paralegal committee selects girls from disadvantaged communities, and provides them with scholarships funded by UNICEF to attend school.

Sabitri who is nine years old and Ram Maya who is eight are among 18 girl students in Shrestha's class who receive Rs. 500 yearly to cover their school-fee, school-uniform, and books. Both of the girls belong to ethnic group Danuwar who live on the green hillsides of Melamchi. Their family's small parcel of land is not registered and therefore they are not entitled to any land rights. Moreover, their land is too small to produce even enough food to sustain the family and they are dependent on the local landlords. The girls' fathers occasionally work as porters or as construction workers. "Without this support we are not able to send our daughters to school," one father told us. "We never had the opportunity to go to school when we grew up; and look at our miserable state." For these fathers, education for their daughters is their hope for a better future.

In school, Ms. Shrestha and the other teachers discuss children's rights and the problems of female trafficking. In past years the community experienced several incidents of girl trafficking, but report now that the problem has decreased considerably. The horrors of trafficking in Melamchi are well known. Gita Danuwar, Sabitri's father's sister-in-law, returned to her village in Melamchi after many years in Indian brothels. Like many women who returned from the sex-industry she was infected by HIV/AIDS, but unlike the other women she spoke openly and frankly about her experience. Ms. Danuwar passed away last year. Even though she lived an isolated life, alienated by the community, her efforts to educate the villagers about female trafficking made a tremendous impact on the people of Melamchi.

Existing Challenges:

Dolakha District

When a police troop from Charikot was dispatched to investigate some Maoist activity, they entered one village family's home at around midnight. Described as "drunk and out of control" by the family, the policemen beat the mother and the daughters and responded with more violence when the father tried to stop them. Assistant Inspector, Mr. Rakesh Kumar Sing, allegedly commanded his men to restrain the family while he raped their 18 year old daughter several times, and beat her into an almost unconscious state. The next morning while the policemen continued drinking wine and slaughtered a Rs. 3000 goat in the village to barbecue, the girl's older sister went to her husband in Charikot to report the incident to the police inspector. Later that same day the girl's family brought her to the police station in Charikot where she filed a report together with the doctor and police inspector.

Although the police administration has obstructed the investigation, local community pressure has kept Mr. Singh in police custody. CLRC (Community Legal Research Center, a partner organization of CeLRRd) has assumed legal representation. The accused is now in custody by order of the trial court.

The life of the girl and her family has been changed forever. Although they have done their best to resume a normal life and have made sure that the girl continued her studies, villagers gossiping about the incident have blamed the girl for the rape. Fortunately, the family continues to support their daughter in their struggle for justice. Aware of widespread police corruption,⁷⁸ they are afraid that evidence will be destroyed or tampered with. “They have the power and money to do such things,” lamented one family member. However, they remain optimistic and trust the police inspector and their lawyers. In the words of the family member, “If this case will be a success, we can prove that it is possible to achieve fair justice, and that everyone can claim their rights. That is what we hope.”

This family’s legal struggle represents only one voice out of the thousands that are silent in Nepal. This tragic incident sadly illustrates that women’s rights are still egregiously violated and that corruption and police collusion is a formidable obstacle to achieving justice.

Kanchanpur District

The Kanchanpur district is situated on the banks of the Mahakali River which separates India and Nepal in the west. Quite a scenic location, the fast current of the river makes it difficult for the traffickers to smuggle girls and women into India. Nonetheless, the paralegal committee from one VDC in Kanchanpur informed CLRC about the following incident:

A 14-year-old girl, accompanied by a male relative, crossed the border to shop in an Indian market for the Tihar festival. As they passed the market place and continued into the next town, the girl became suspicious and scared. Soon the relative began drinking and behaving abusively. When onlookers asked about the crying girl, the man declared that she was mentally ill and that they were going for treatment. In the evening she heard him negotiating to sell her for Rs. 200,000. Waiting for a better price, they checked in to another hotel where he raped the girl. During the night the girl somehow escaped from the hotel and with help from the local people, she traveled back home to her family.

When the girl and her father tried to report the incident, the local police were not willing to investigate their complaint. The man in charge of the CLRC in Kanchanpur explained that the relative is a powerful political leader in a local party that put pressure on the police not to press charges. However, the CLRC compelled the police to register the case again and began a lawful investigation. The police claim that they are unable to arrest this man as he has left the country. However, the villagers know that he is around - he has simply moved underground where his friends can protect him.

While discussing the case with CLRC members it became apparent that several influential people, protected by their positions, have established an underground network of traffickers. Thus the life of a 14-year-old child has been forever marred by a terrible crime and her only chance for justice has been swallowed by a dark shadow of political corruption. That she is further alienated and excluded from her own community speaks to the ignorance and defective values still pervasive in Nepalese society. However, with her family standing behind her and with the legal support of the CLRC, she remains hopeful and trusts that justice will prevail.

Footnote

1. For detail picture of access for women to justice system, see the report of a survey study on “Impact of Corruption in Criminal Justice System on Women”. A joint project of Center for Legal Research and Resource Development, CeLRRd and The Asia Foundation. The report reflects on situation on criminal justice system. However, the situation is no different in the context of civil justice too. Women are generally not interested to approach the court for justice. For Laws concerning violence against women, see a Research Report on “Use of Existing Legal System in Violence against Women”. Research carried out by Yubaraj Sangroula and Sapana

- Malla for Unicef Regional Office, 1998. Also See, Ruth Finney Hayward, Breaking the Earthenware Jar, Lesson from South Asia to End Violence against Women and Girls. 2000. United Nations Children's Fund.
2. Report of the Central Bureau of Statistics (CBS) His Majesty's Government of Nepal.
 3. See, Children and Women of Nepal, A Situation Analysis 1996, and Chapter 2,3 and 4. Adapted in web site Nepalnet: <http://www.panasia.org.sg/nepalnet>
 4. UNDP, Human Development Report, 1995, p.53.
 5. CBS, Population Monograph of Nepal, pp.460
 6. Ibid, pp. 369, 399.
 7. Ibid. p. 463.
 8. "Employment for Women in Formal Sector in Nepal." New Era, a Research Institute in Private Sector based in Kathmandu. The Formal Sector here means formally established sector of works like industry, government corporations etc. It excludes small scale self employment projects.
 9. Ibid.
 10. See Susan Maskey, "Nepalese Girls in the Indian Sex Market," Asmita, Vol. 3, No. 10, 2047 (1991).
 11. January 2, 1989. New Delhi, India.
 12. See Pauline O'Dea, "Gender Exploitation and Violence: The Market in Women, Girls and Sex in Nepal: An Overview of the Situation and Review of the Literature," UNICEF, Kathamandu, Nepal, 1993, p. 7.
 13. Gauri Pradhan. Road to Bombay. In Voice of Child Workers, Issue No.15/16, December 1992. P. 49. Kathmandu Nepal.
 14. Ibid., footnote 4.
 15. Gauri Pradhan, "Trafficking in Girls in Nepal: Realities and Challenges," CWIN, Kathamndu, 1992, p.59.
 16. Ibid., footnote 4.
 17. CeLRRd has completed the baseline survey in 220 VDCs of 14 districts. The result of the survey will be released in few months. The baseline information generated by the detailed household survey on multiple aspects is being put into a computer for analysis and organization. The survey is being conducted by trained persons with support of the VDCs. The survey gives baseline information on missing girls from 220 VDCs, which are most badly affected by the problem.
 18. Nuwakot, Dhading, Jhapa, Sindhupalchok, Chitwan, Makwanpur, Illam, Sunsari, Morang, Khotang, Rauthat, Rupendehi, Dhankuta, Kailali, Banke, Parsa, Kaski, Gorkha, Sanngiya, Dolakha, Sindhuli, Bara, Sarlahi, Ramechhap, Panchathar, Tahanau, Dang, Kapilvastu, Bardia, Rasuwa, Nawalparasi, Plapa, Bhaktapur. Hundreds of girls and women from these districts were rescued in 1999 on the way to India. The districts of Jhapa, Morang, Nuwakot, Makwanpur, Udayapur and Rupendehi are the highest-risk areas. For details of stories of girls and women rescued, see the following newspapers: *Deshantar Saptahik* (2056/8/12 and 2055/1/14), *Kantipur Daily* (2056/8/3, 2056/7/16, 2056/6/10, 2056/5/21, 2056/5/11, 2056/4/19, 2056/4/12, 2056/3/23, 2056/2/19), *Sapthahik Janasata* (2055/12/14, 2056/4/15), *Gorkhapatra* (2056/2/23, 2056/2/15, 2056/5/31), *Chhalphal* (2056/4/23) *Patrika Satdine* (2055/12/19), and *Prabatkalin* (2056/1/16).
 19. Kathmandu, Bhaktapur, Lalitpur, Jhapa, Sunsari, Dlakha, Rupendhi, Kailali, Kanchanpur, Sindhupalchok, Nuwakot, Rasuwa, Makwanpur, Chitwan, Parsa, Ramechhap, Sindhuli, Nawalparasi, Kapilvastu, Nawalparasi, Morang, and Udayapur are identified as districts having at least one judicial trial of trafficking cases.
 20. See Prostitution is Violence against Humankind in website-<http://www.uri.edu/artsci/wms/huges> (Women Studies Program, University of Rhode Island, USA. The Coalition Against Trafficking in Women)
 21. Ibid.

22. Questions and Issues on Prostitution: What we need to Know, Cecilia Hofmann, Coalition Against Trafficking in Women—Asia Pacific, page 5.
23. Ibid., Page 6.
24. Ibid.
25. Josephine Butler created the abolitionist movement at the time when slavery was abolished in many countries. The struggle of Josephine Butler and of the abolitionist movement led to the first international agreement against trafficking in 1904, followed by others in 1910, and 1933. In 1927 and 1931, the League of Nations conducted two major inquiries into international trafficking and established that the existence of brothels was an incentive for both national and international traffic in women. See Prostitution is Violence against Humankind in website-<http://www.uri.edu/artsci/wms/huges> (Women's Studies Program, University of Rhode Island, USA. The Coalition Against Trafficking in Women).
26. Ibid.
27. Cecilia Hofmann, Questions and Issues on Prostitution: What we need to Know. p13.
28. Ibid.
29. Ibid p.20.
30. A Step Forward, the third report on the implementation of the agenda for action adopted at the world congress against commercial sexual exploitation of children, Stockholm, Sweden, 28 August, 1996. P. 9.
31. See Ibid.
32. Thapa, Poonam. Trafficking of Girls and Women in Nepal, A paper presented at national seminar on the girls in Nepal, Women's Service Coordination Committee, Kathmandu, Nepal, 23-25, September, 1989. p.1.
33. Chanda Devei Saha and Meena Kumari Saha, two sisters, had been Kidnapped at Madhubani Railway Station of Bihar, while they were travelling to visit their relatives in Purnia district of Bihar. Reported by Prabatkalin (daily) Newspaper published from Kathmandu, 2056/1/16. Pramila Kharel, 16 years, Sabita Mainali, 15 years, Gopani Pandey, 16 years, and Pramila Prasai, 13 years, were reported missing while gone to collect fodder. They are reportedly trafficked. Their parents are aggrieved by incidents of missing daughters. Reported by Gorkhapatra National Daily, 2056/2/15. Belhia, on the Nepal-India Border, is plagued with traffickers. They have been engaged in trafficking in girls by enticement to jobs. Reported by Gorkhapatra National Daily, 2056/2/23.
34. The majority of girls and women returned to Nepal or rescued on the way to trafficking destinations profess to be enticed by the promise of good jobs in Indian cities before they are sold.
35. Reported by Patrika Satdine, 2055/12/19.
36. Reported by Chhalphal weekly, 2056/4/23.
37. Reported by Kantipur Daily, 2056/2/19.
38. Reported by Kantipur Daily, 2056/3/23.
39. The sample survey is based on the review of the following newspapers. Gorkhapatra, 2056/2/17 2056/2/15, 2056/3/16, 2056/5/31, 2056/4/23, 2056/5/16, Prakash Sathahik, 2056/4/31, Prabatkalin, 2056/4/24, 2056/5/28, Deshantar, 2056/8/12, 2056/4/23, Kathamndu Post 2056/5/9, Kantipur Daily, 2056/5/16, 2056/2/26, Himalayan Times, 2056/2/21, 2056/1/11.
40. An Interview of Mr. Raja Ram Singh. In Asmitha, Issue No. 10, Vol. 3, 1991.
41. Many Girls from Nawalparasi had been trafficked to India by performing false marriage. In such cases, the identity of the culprit is concealed. Culprits often operate with false address and identity. See, Deshantar Weekly, 2056/8/19.
42. See foot note 9 for expanded catchment or high risk areas of trafficking.

43. See for instance the table on sample survey of the press.
44. See Kantipur Daily, 2056/1/28.
45. See list of girls and women given in the Press Surve
46. Trafficking in Asia-an overview. IMADR, International Secreteriat , Tokyo. Japan. See IMADR's Website.
47. Ibid.
48. A 18 years old woman was rescued from J.P. Road Delhi. She was taken over there with false assurance of "employment in Gulf countries". It demonstrates that " the pretext of employment in Gulf Countries" has been used as one of the means of trafficking by deception. Sopurce, Kantipur Daily, 2056/1/28.
49. As reported by Kantipur Daily, 2056/1/28, Chandra Maya Dhimal is hospitalized for treatment of bone fracture. Over 150 women are undergoing such treatemnt. Kantipur Daily, quoting Mary Hopkins, a human rights activist, reports" About 150 women have been hospitalized for treatemnt of bones fracture caused by beatings male employers. The batings takes place when they resist to do accroding to the desire of the male employers, desire meaning the "unnatural sex".
50. 2056/4/5.
51. Dr. Poonam Thapa, Trafficking of Girls and Women in Nepal. A Working Paper presented at the National Seminar on the Girl Child in Nepal, Women's Service Coordination Committee, Kathamndu, Nepal. 23-25 September, 1989.
52. CWIN. Trafficking In Girls: A Social Plauge in Mahankal Village. In Voice of Child Workers, Issue No. 15/16, December, 1992. Kathmandu, Nepal. PP.50-54.
53. Reported by Himalayan Times, 2056/1/11.
54. Reported by Gorkhapatra Nataional Daily, 2056/2/19.
55. Reported by Kantipur Daily, 2056/2/4.
56. Reported by Prakash Weekly, 2056/2/17.
57. Budathapa, Chetman. 'A Description on Domestic Child Workers'. In *Bal Sarokar*, Issue No. 16, Feb, 1994, P. 2.
58. From *Pratipachay*, Kathmandu, Falgun 11, 2048 (1992).
59. Girls in Especially Difficult Circumstances;An Action Researc. Unicef. Research carried out by Yubaraj Sangroula and Kishor Silwal. 1995. PP. 29 and 30.
60. For best example , we can take a shocking story told by herself in "Jagriti" program of Nepal Television. Tuesday, April 4 and 11, 2000 (2056/12/22 and 29). She says, she was hardly 12 years when she was trafficked. When she was working as a girl servant, she was sexually abused by the employer. To escape abuse, she left the place. However, she never realized that she would have to face hunger. A woman, who was a fruit vendor, offered food and promised 'help'. She promised a good "household" to work in. One day they went to Bairawa. But until she knew that it was not Bairawa, she was already sold. This is a story of one girl, but it is also a story of hundereds of "innocent and ignorant" girls, who are forced to end up in sex market.
61. Ibid, P. 30. Also, Rajendra Dahal in Surichi Weekly, Kathamndu. 2049/4/18.
62. Unicef, 1995. Girls in Especially Difficult Circumstances: An Action Rsearch. P. 29.
63. Ibid.
64. Cecilia Hofmann, Questions and Issues on Prostitution: What we need to Know.p 22.
65. Article 3 of the Citizenship Act, the nationality law of Nepal, is the fundamental law governing the acquisition of Nepalese nationality. For obtaining Nepalese nationality by descent, the said section provides " the father of the child must necessarily be the citizen of Nepal". A mother, who is a bonafide Nepalese national, cannot transmit

her nationality to her child, born out of wedlock with foreign husband. The law was challenged in the Supreme Court through a writ petition by Walter Peter, a man who was born out of wedlock of a Nepalese national with Indian husband. Walter Peter was born and brought up all through in Nepal. He took Nepal as a country of allegiance. He had never been to Father's country. He spoke Nepalese language as a mother tongue and professed culture of Nepal as a culture of his family. Despite the facts that he was "Nepali" by every criteria, the Supreme Court rejected the writ petition on the ground that "he was not a child of Nepalese father".

66. See "Brief Historical Overview of Legal and Justice System in Nepal" in Analysis and Reforms of the Criminal Justice System in Nepal, 1999. A Research carried out by Yubaraj Sangoula and other for Center for Legal Research and Resource Development, CeLRRd.
67. If a Brahmin married to a Chhatri Woman, the son born out of their wedlock was entitled to have only one fourth share of the property compared with those born out of wedlock with woman from same cast. Sons born out of wedlock with woman from same caste enjoyed equal share with father. For more detail see, Clause 3,4,5,6,8,10 and 11 of the Section on Aungsabanda of Muluki Ain, 1853.
68. **Treaty Act, Section 9(1)** : Anything contained in any law of Nepal shall be void if it is inconsistent to any provision of a treaty or agreement in which Nepal is a party through ratification of, accession to, or acceptance of or approval of the parliament, and such provision of the treaty or agreement shall be enforced as a law of Nepal.
69. Ibid.
70. Clause 1 of the Section on Traffic on Human Beings.
71. Section 11, Human Trafficking Act, 1986.

"No matter what is provided for by Section on Human Traffic of New Muluki Ain related to human trafficking, all that is provided for in this law shall be treated in accordance with this Act."
72. **Section 8(1)** : "An individual engaged in selling a human being shall be punished by a term of imprisonment of 10 to 20 years".

Section 8(2) : "An individual who takes a person abroad with the purpose of selling him/her shall be punished by a term of imprisonment 5 to 10 years".

Section 8(3) : "An individual who makes a woman engaged in prostitution by undue persuasion or enticement or coercion or threat or by any other means shall be punished by a term of imprisonment from 10 to 15 years".

Section 8(4) : "An individual who conspires for committing any act, or assist to commit such act or makes an attempt to encourage any one to be engaged in such act shall be imprisoned for a period not exceeding 5 years".
73. On first information report of Geeta Danuwar, His Majesty's Government vs. Mrs. Simla Tamang and others.

"Geeta lodged the first information report that she was engaged into prostitution in several brothels of Bombay by Mrs. Simla Tamang. Based on the report Mrs. Simla Tamang, Mr. Ranjit Tamang and others had been prosecuted. Geeta did not turn up to the court to testify her statement. Based on the reason that the statement was not testified in the court, the allegation was found not sustainable. This is only one example to mention.
74. The National Consultation Meeting was attended by high level governmental and non-governmental organizations. The then Chief Justice, Trilok Pratap Rana, inaugurated the meeting in a ceremony witnessed by hundreds of local paralegal women and men from Sindhupalchok, known as the most high risk area of trafficking. Dignitaries attending the meeting were the then secretary of the Ministry of Law and Justice, the Chairperson of the District Development Committee, Chief District Officer, Chief of the Police, Government Attorney's Office and representatives of the political parties from Sindhupalchok districts. Also present in the meeting were the representatives of the Ministry of Women and Social Welfare, National Planning Commission, Nepal Bar Association, The Asia Foundation, Unicef Nepal, Unicef Regional Office, Kathmandu and district judges and government attorneys from Bhaktapur, Kathmandu and Kavrepalanchok districts. Several papers were presented in the meeting for discussion.
75. Nepal Kanoon Patrika (Supreme Court Reporter), 1988, Issue No. 12, Page 1313.

76. The expert committee was headed by Yubaraj Sangroula. Other members of the committee were advocate Gajendra Acharya, Bhimi Kharel and Government Attorney Udhav Khanal.
77. The bill was drafted by a committee of representatives of Police, Attorney General's Office, LACC, Maiti Nepal.
78. Corruption in the law enforcement bodies as well as in the judiciary has resulted in extensive distrust of the police and the criminal justice system. Gender-based discrimination exists at every stage of the criminal proceedings. For example, police do not consider an offense against a woman a crime that poses a serious threat to the security of the society. A common perception among both law enforcement and members of the community is that women who are victimized deserve it because of their own "immodest" dress, or *bainse* (acting seductively). Moreover, failure on the part of the lawyers and courts to scrutinize all available evidence and investigate all relevant documents seriously hinders the attainment of a just result. Consequently, many women see no reason to bother with the humiliating process of reporting an assault, allowing thousands of incidents of rape, violence and trafficking to committed without redress.