The Gap Between International Law and Enforcement vis a vis Child Trafficking in India and Thailand
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ABSTRACT

This PhD thesis examines the issue of child trafficking in India and Thailand and the enforcement gap that exists in each state with respect to articles 34 and 35 of the Convention on the Rights of the Child, CRC 1989, to which both states are signatories. The thesis specifically examines the crime of child trafficking for the purpose of sexual exploitation in the commercial sex industry, CSI, a problem that has been well documented in both states. It should be noted at the onset that the enforcement regime in both states is weak, according to authoritative sources such as the United States Government Department of State Annual Trafficking in Persons Report.

The research examines factors that propel child trafficking, data on prosecutions and convictions as well as domestic laws designed to inhibit and prosecute child trafficking offences. Critical issues that influence child trafficking in both states are examined. These include: gender discrimination; caste discrimination in India and features of caste discrimination in Thailand; poverty; inadequate law enforcement regimes; the incidence of police and judicial corruption and evidence of inadequate training on child trafficking issues and law. The thesis is focused solely on internal child trafficking within each state. Based upon the research, field work, and interviews, the argument is presented that the enforcement gap vis a vis child trafficking inherent in each state must be understood as not only a law enforcement problem but also as a problem rooted in a multitude of complex, interrelated factors. By examining these factors and their impact upon the enforcement gap and child trafficking to the CSI, new avenues of understanding may emerge that can inform policy on prevention, law enforcement and deterrence.
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THE GAP BETWEEN INTERNATIONAL LAW AND ENFORCEMENT
VIS A VIS CHILD TRAFFICKING IN INDIA AND THAILAND

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RESEARCH ISSUE

To determine the degree to which, 1) gender discrimination; 2) marginalization: the Dalits and Scheduled Tribes in India and the Northern Hill Tribes and impoverished groups in Thailand; 3) police corruption and under-training and; 4) severe poverty; affect the enforcement gap in India and Thailand vis-a-vis articles 34 and 35 of the Convention on the Rights of the Child, CRC, 1989.

INTRODUCTION

Although India and Thailand are both signatories to the CRC 1989, both nations fall short of effective enforcement, prosecution and conviction rates concerning child trafficking into the commercial sex industry, CSI. The United Nations, NGOs and broader human rights community have reported extensively on the serious shortfall within each state in combating child trafficking. This thesis will examine in detail the factors behind the enforcement gap and conclude with policy recommendations. The nations of India and Thailand were chosen as research focus nations because of the author’s extensive work experience in both countries and examination of political, socio-economic and human rights issues therein. Accordingly, respected and valuable contacts were established in both nations which have been invaluable during the research and fieldwork phase. A focus on the subject of child rights is also based upon experience working with UNICEF and gaining an important perspective on the key role that international organizations and law exercise in protecting and promoting
the human rights of children. Serving as the writer and director of an international documentary film that examined the exploitation faced by street children in Mumbai, India, produced by the National Film Board of Canada and broadcast internationally, provided valuable perspectives on the issues of child trafficking and exploitation. Children represent vulnerable and highly dependent persons within society. In societies challenged by extreme poverty and other factors that undermine the quality of life for children, there are increased risks that jeopardize their livelihood and safety. The academic George Kent has noted a hierarchy of protection that surrounds every child. “In ideal conditions, the child is protected and cared for by the family, where the family fails, the community may take over with needed services. Failure at that level, may lead to local government services. If these are inadequate, the state government may exercise the necessary protective role, if the state government fails the child, the national government may be called upon and failure at that level may place an obligation upon NGOs and ultimately international governmental organizations.” ¹

Child Trafficking: The Core Debate

The critical issue under examination in this thesis is the enforcement gap within India and Thailand and the most effective approach for deterring and prosecuting the crime of child trafficking into the CSI.

Clearly, child trafficking into the CSI is a complex issue that precipitates divergent academic and policy responses, each determined to set forth a course of action that is effective and humane. The division of course rests with achieving a workable consensus on what constitutes the most effective approach for narrowing the enforcement gap. The core debate that this author seeks to address is the efficacy of the enforcement regime currently in place in India and Thailand. Despite a myriad of laws and policy responses, which are necessary, both prosecution and conviction rates are alarmingly low. For instance, in the year 2005, according to the authoritative U. S. Government Trafficking in Persons Report, (TIP Report), Thailand recorded only 352 arrests, and 74 convictions for human trafficking while India recorded only 147 arrests for human trafficking and no data on prosecutions or convictions. Moreover, the data is often not disaggregated to distinguish between child trafficking and adult trafficking cases. It is important to begin with a succinct examination of the core debate, areas of contention and the authors’ specific argument and contribution to this important debate. Despite a comprehensive legal regime in place in India and Thailand, expressed through the adoption of detailed domestic and international laws addressing child trafficking, neither state has adopted an effective prosecution regime which is a vital and critical corollary to lawmaking.

\[2\] U.S. Department of State, Trafficking in Persons Report, 2006
A central point of this thesis is that the absence of an effective and functional prosecution regime and culture combined with the weak and inconsistent application of important subsidiary tenets to this approach have exacerbated the enforcement gap. These tenets include: 1) adequate victim protection; 2) police training on child trafficking law and policy combined with higher police salaries; 3) proper application of existing laws, decriminalization of child CSI victims, aggressive prosecution of the adult perpetrators, namely brothel / sex industry owners-managers, family members and those in the transport nexus including traffickers; and 4) social and educational development programs specifically targeted at marginalized children, including Dalits in India and children from the Northeast and Northern Hill Tribes in Thailand. The incomplete application of such measures renders the current law enforcement regime in Thailand and India totally inadequate to the task of narrowing the enforcement gap as arrest/prosecution/conviction data overwhelmingly demonstrates. On the enforcement issue, the core debate can be summarized as a discourse over the efficacy of the law and order approach. Critics of the law and order approach focus on stronger prevention strategies and child centered policies. While these perspectives can and should be complimentary in addressing critical child trafficking issues they are too often in conflict with each other as competing paradigms thus resulting in policy and program polarization.
Critics of the law and order approach often fail to consider that lawmaking alone is not and cannot be the complete response to child trafficking. To be effective, the law and order approach must be conjoined with a strict prosecution regime. A major symposium on female and child trafficking noted that major obstacles to prevention include, “weak legislation that makes prosecution and conviction of the trafficker difficult, or legislation with adequate provisions for prosecution that is not enforced.” In the Indian context, two differing responses have been adopted by law enforcement to the challenge of prosecution. The first is to treat the female victim as a soliciting prostitute with charges usually filed under section 8 of Immoral Traffic and Prevention Act, (ITPA), the other approach is to regard the female as a victim and concentrate on prosecuting the perpetrators. In India, authorities have overwhelmingly adopted the first approach which explains the extremely low trafficking prosecution and conviction rate against traffickers and the high volume of ITPA Section 8 prosecutions and convictions for soliciting in a public place against female CSI workers. The problem with a prosecution approach, which defenders such as this author accept, is that it has not been sufficiently harmonized with other important steps in the prosecution process such as broader victim protection and stronger sentencing for perpetrators.

Critics of the law and order approach readily point out that prosecutions and convictions in India and Thailand remain extremely low, denoting ineffectiveness, thus better approaches need to be adopted or expanded. Jonathon Todres argues that prevention rather than prosecution should be the focus in reducing child trafficking. Although Todres recognizes the need for effective law enforcement in confronting the exploitation of children in the CSI, he nonetheless argues that, “a law enforcement centered approach neglects two critical facts: first, law enforcement has a limited deterrent effect and thus is insufficient for achieving the ultimate goal of prevention and second, if not undertaken with the victim in mind, law enforcement can re-traumatize already severely injured children.”

Kapur is another scholar who is unconvinced about the efficacy of a legal prosecution approach noting that an expanded law and order focus regarding prosecutions may push exploitive, criminal practices underground. Moreover, there is a deep division between neo-abolitionists and pro-sex work groups who posit sharply divergent approaches toward corrective action on human trafficking. According to Segrave, Milivojevic and Pickering, ‘neo-abolitionists urge for legal reforms, the criminalization of pimps, brothel owners and clients, and for rescuing victims; while the

pro-sex advocates argue for the legalization of prostitution and better working conditions, benefits and protection for sex workers.\textsuperscript{7} Such polarized debate tends to divide rather than unite efforts towards effective policy and a critical understanding of an issue that is already rooted in complexity. According to Long, “most disturbing of all in these debates is that the ideas and views of girls and women themselves are rarely considered and each perspective serves some larger institutional and political views.” \textsuperscript{8} Other critics of the law and order approach focus upon the court procedures themselves which can be difficult for children. The group ECPAT suggests that, ‘cases brought before the courts often fail because the process of taking evidence from children and young people has not been handled appropriately and is considered unreliable and also because children who have been trafficked are often traumatized and easily revictimized.’\textsuperscript{9} The literature on child trafficking and law enforcement often notes a judicial system in both Thailand and India that is adult oriented, intimidating for children, not fully cognizant of their special needs and subject to corruption and influence, including from those who have been

\textsuperscript{7} Marie Segrave, Sanja Milivojevic and Sharon Pickering, SexTrafficking: International Context and Response, (Devon: Willan Publishing, 2009)
\textsuperscript{9} ECPAT, Europe Law Enforcement Group, Second World Congress against CSEC, Workshop W22/16.
responsible for the trafficking and exploitation of children. In India, the TATA Institute of Social Sciences and the National Human Rights Commission, in a joint report, have been critical of the current judicial process involving child trafficking victims. Some of their recommendations include: “a process of rescue and rehabilitation that has a victim friendly approach, the statements of victims should be recorded before repatriating them, recognition that the issue of victim protection is very important in the post-rescue stage as she is often the prime witness in the case, understanding the possibility of the victim being harassed and tortured by the traffickers.”¹⁰ One of the obvious shortfalls that critics of the law and order/enforcement approach are quick to point out is that arrest/prosecution/convictions rates in Thailand and India are extremely low despite considerable resources that have been marshaled in this process. Although this point is established in the literature and through statistical analysis of data on judicial proceedings, it is nonetheless a misrepresentation of the validity of a law and order approach due to the fact that the enforcement regime in Thailand and India has not demonstrated a full commitment to a prosecution regime. This is a major assertion of this thesis. The enforcement regime in both states includes the development and

enactment of specific laws to inhibit child trafficking and prosecute
offenders. Moreover, international treaties have been ratified, such as the
CRC 1989. However, the establishment of laws, as Muntarbhorn asserts,
are not meaningful without effective implementation. \(^{11}\) Thus in both states
there is an impressive array of legal sanctions but extremely weak
implementation of the law and the concomitant problems, of 1)
inadequate police/judicial training; 2) misapplication of relevant sections of
the law; 3) a prosecutorial culture that is hostile to the victim; 4) low police
remuneration which invites corruption and collusion in the judicial process.
To illustrate this point, one notes the data in India on arrests of girls
involved in the CSI which clearly demonstrates a profound misapplication
of existing (ITPA) Immoral Traffic and Prevention Act laws. Child
trafficking victims are routinely criminalized to such an extent that it has
become systemic. “About 90% of the cases registered are under Sec. 8(B)
of ITPA. Only 5% of cases are against traffickers. About one-third of the
cases in all the States are against girls who are under 18 years of age.\(^{12}\) Data
on arrests, prosecutions and conviction is inaccurate and highly suspect due
to serious flaws in the investigation, law enforcement and judicial process.

\(^{11}\) Vitit Muntarbhorn, “Human Rights vs. Human Trafficking in the
\(^{12}\) Tata Institute of Social Sciences and the National Human Rights
Commission, Report of the National Workshop to Review the
Implementation of Laws and Policies Related to Trafficking: Towards
An effective prosecution regime, applied in the Indian context for example, would see the proper application of the ITPA section 8 laws so that the traffickers and other profiteers in the CSI are prosecuted instead of the victims who currently represent the preponderance of CSI section 8 cases investigated by the police and brought before the judiciary. Another area of concern relates to judicial gaps in witness care and protection, often criticized by opponents of the law and order approach, which do appear to have an effect upon lower rates of trial completion and hence the conviction rate. “Aspects of intimidation include victims and witnesses who have been kept waiting outside the courtroom in public areas where they can be intimidated by trafficker associates.”

The Case for an Integrated Prosecution Regime

Adopting a stronger prosecution regime that is integrated with other elements of effective enforcement will lead to progress in narrowing the enforcement gap. Accordingly, an integrated prosecution approach includes stronger and targeted application of existing laws to penalize and prosecute CSI organizers and profiteers and the de-criminalization of child victims; expanded witness protection and care; police-judicial training on child trafficking law and policy; increased police salaries to combat the lure of corruption and social development targeted towards marginalized children.

At present, integration within the enforcement process in both India and Thailand is piecemeal and largely uncoordinated. Child trafficking victims in India, for example, do not meet with their counsel before the case is disposed. In both countries, victims and witnesses often complain of lax witness protection procedures. Making criminal procedures more child-friendly is widely believed to facilitate the work of law enforcement officials and to secure more convictions of child traffickers.”  

A stronger prosecution focus serves a powerful social and judicial function by swiftly and transparently sanctioning criminal conduct. In order for a society to have trust and confidence in governing institutions and the legal framework, the integrity of the law must be demonstrated. The law in essence is a central and vital aspect of social control. A European Union policy paper on human trafficking noted that human trafficking must be addressed as a clear law enforcement priority. “It has to be converted from a low risk- high reward enterprise for organized crime into a high risk- low reward one. Law enforcement must use all the resources and capacity available to enforce the prohibition of human trafficking.”  

At present, as the literature demonstrates, cases rarely reach the sentencing stage and weak sanctions against child trafficking offences offer little deterrence.

It may also be argued that in India and Thailand, because of the low conviction rate, denoting a lax prosecution regime and culture, child traffickers and their associates in the CSI operate with impunity. If no maximum penalties are handed to the traffickers, law enforcement against human trafficking does not take full effect and has limited capacity to act as a deterrent against others involved in the criminal activity of human trafficking thus a comprehensive criminal justice response to trafficking should support the full implementation of the law against the traffickers.”

The prosecution approach serves the twin functions of deterrence and restoring a sense of justice to the crime of child trafficking and its victims. Improving victim centered services is important as Todres and others note, but it does not lead to sustained progress in combating CSI crimes against children if the laws are not properly applied and the sentencing is minimal as current practices suggest. A major examination of sex trafficking reported that the majority of participants, both state and non-state actors, accepted prosecutions as central to anti-trafficking campaigns.

Hudson (2003) argues that the criminal justice system is important for distinguishing the boundaries of acceptable behavior and “to communicate the wrongness of criminal acts, in this sense, prosecution and convictions

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serve a critical social/political role rather than an individual purpose, indeed criminal law is founded upon the identification of crimes against the state not the individual.” 18 The dictum that justice must not only be done, but be seen to be done is particularly relevant in relation to the crime of child trafficking. A strict prosecution regime serves an important judicial function and strengthens the integrity of the law. Moreover there is a significant educational function of benefit to society which flows from a legal culture that is put in place and observed in practice. Thus legal enforcement is not only a question of justice but also one of deterrence and establishing societal norms around the observance of law. Obi N. I. Ebbe has asserted that, “legislation without stringent enforcement of the law is tantamount to criminalization of the masses. When laws are made to control certain aberrant behavior but the laws are not enforced, it makes some people in the society commit other crimes far and above those prohibited.” 19 In sum, the ongoing debate over the enforcement gap and realistic efforts to contain child trafficking is an important subject of enquiry.


Research Methodology and Approach

The research, field work and field interviews have led to the construction of core issues of exploration around the child trafficking enforcement gap in India and Thailand. The interviews were also examined for themes related to child trafficking drivers as well as the main factors contributing to the enforcement gap. The work also emphasizes data on arrests, prosecutions and convictions in each state and the legal framework for addressing and investigating the crime of child trafficking in the CSI. In addition, the research focused upon major factors that have been identified as contributing heavily to child trafficking and the relevance of these factors to weaknesses in the enforcement regime operating in both states. These preponderant factors include law enforcement problems, caste poverty and marginalization, police corruption, gender discrimination, inadequate police-judicial training on matters of law and policy related to child trafficking import, the misapplication of existing laws to deter and prosecute child trafficking as well as procedural problems during the disposition of trafficking cases. Each of these factors have been identified as contributors to child trafficking and have been explored in further detail. Moreover, the influence of these specific factors on the investigative and judicial process has been examined, aided by field work, interviews, the literature review and research to determine their level of influence on the enforcement gap.
The literature review helped to inform the questions that were used in the interviews. In the literature review, within the context of child trafficking and enforcement, there were ten references to gender discrimination in India and seven references to gender discrimination in Thailand; six references to human rights problems in India and 5 references to these problems in Thailand; five references each to caste related problems in India and Thailand; six references to corruption in India and five references to corruption in Thailand. There were also references to the visibility of child trafficking in each state; child trafficking as a law enforcement problem; references to ineffective government law enforcement and finally, references to governmental enforcement of articles 34 and 35 of the U.N. Convention on the Rights of the Child.

**Research Interviews**

The field research conducted in Thailand and India included interviews with persons active in the areas of human rights, human development, law, child welfare and child trafficking prevention. All interviews were conducted in person. Persons were asked open ended questions based upon the surveys. For example, in Thailand, one interview question related to whether or not corruption was a factor in child trafficking law enforcement effectiveness. Interview subjects were also free to contribute additional comments. All of the individuals selected have extensive experience and many are considered leading experts in their field of work, such as Vitit Muntarbhorn, United Nations Special Rapporteur on the sale of children,
child prostitution and child pornography; David Feingold, consultant and program Director with UNESCO in Thailand; Dr. I.S. Gilada, founder of the Indian Health Organization and a leading global expert on AIDS as well as child rights; and Priti Patkar, founder of PRERANA, an acclaimed center in Mumbai and across India for child rights which is active in anti-trafficking measures and programs and which has published authoritative studies on child trafficking and prevention measures.

**Thailand: Data Interpretation**

Ten interviews were conducted in Bangkok, Thailand in 2006. Utilizing content analysis, the interviews were scanned for core concepts that contribute to child trafficking and the enforcement gap. Content analysis is a research tool used to determine the presence of specific words or notions within texts. Researchers utilize content analysis to quantify and analyze the meanings and relationships of words and notions and to then make inferences about the messages that are drawn from the findings. Content analysis is utilized in a wide range of fields such as ethnography, political science, sociology, cognitive science, gender studies, and many other fields. A list of uses for content analysis adapted by Berelson, 1952, includes 1) identifying differences in international communication; 2) identifying intentions and the focus of individuals and groups; and 3) describing attitudinal and behavioral responses.
Interview subjects included: 1) Vitit Muntarbhorn, Law Professor, former U.N Special Rapporteur on the sale of children, child prostitution and child pornography; 2) Isabel Lloyd, Technical Advisor, UNIFEM, 3) Lance Bonneau, Program Director, International Organization for Migration; 4) Alan Dow, Program Officer, International Labor Organization; 5) Taneeya Runcharoen, Program Director, International Program on the Elimination of Child Labor; 6) David Feingold, Director, UNESCO; 7) Ms. Sudarat, Thammasat University, founder of End Child Prostitution and Trafficking (ECPAT); 8) Elaine Pearson, Consultant, ILO, 9) Melissa Macdonald, Program Manager, South East Asia Regional Cooperation on Human Development, SEARCH; 10) Michael Miner, Regional Manager, SEARCH. The interviews were arranged in Canada prior to the field work trip. The interview subjects were chosen due to their expertise and familiarity with child trafficking, government, cultural, law enforcement, human rights and child welfare issues. Using content analysis, the transcripts of the interviews, once back in Canada, were scanned for core concepts that relate to child trafficking enforcement. Seven core concepts were identified which were color coded.

**The seven core concepts include:**

1. General corruption and police corruption
2. Enforcement issues
3. Gender
4. Caste
5. Poverty
6. Parents or relatives sell the child
7. Age at entry into the CSI
The core concepts were chosen because they relate to recurring themes from research and the literature review as key factors contributing to the enforcement gap and child trafficking. Using content analysis, core concepts were scanned to determine their prominence in the interviews. All interviews were conducted in person. The interviews were taped and then transcribed. Many valuable findings were discerned from the interviews. For instance, Thai Law Professor Vitit Muntarbhorn, one of the foremost experts on child trafficking law and policy, and the architect of the 2006 draft Anti-Trafficking Law, noted in the interview that law alone is not the solution to the child trafficking problem and considerable enforcement gap therefore solutions must also address social and educational issues.20

India: Data Interpretation

Nine interviews were conducted in Mumbai, India in 2006. As with Thailand, interview logistics and confirmation required extensive planning. However, all subjects were interested to share their insights on child trafficking causes and factors bearing upon enforcement challenges. Again, utilizing content analysis, the interviews were scanned for core issues, identified by the respondents that contribute to child trafficking and the enforcement gap. For example, in Interview #1, there was one reference

20 Vitit Muntarbhorn, Personal Interview, Bangkok, 6 May 1996.
each to corruption, enforcement, gender and caste, as issues of significance to the problem of child trafficking. There were two references each to poverty and parents/relatives selling a child. There was one reference in the interview to the issue of entry age of the child into the CSI. The nine interview subjects included: 1) Dr. I.S. Gilada, founder, Indian Health Organization, now Peoples Health Organization, 2) Joe Periera, founder of KRIPA drug addiction centers; 3) Pravin Patkar, co-founder of PRERANA; 4) Mr. Rahul, Project Manager, ASHA; 5) Kumar Tamang, Project Officer, ASHA Street Child Project; 6) Dr. N. Dabir, Tata Institute of Social Sciences; 7) Mr. Vijay, Program Director, Tata Institute of Social Sciences; 8) Sarita Shankaran, Director, Committed Community Development Trust, CCCT; 9) Dr. Asha Mukundan, Assistant Professor, Center for Criminology and Justice, Tata Institute of Social Sciences.

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After completion of the content analysis on the interviews, information came forward to strengthen assumptions about the prominence of certain factors or issues pertaining to child trafficking and weak enforcement. In summary, the methodology is based upon three research steps.
Step 1: Literature Review. In this step, a review of the literature led to the emergence of key factors seen as drivers of child trafficking and weak law enforcement in Thailand and India. From the literature review, eight research assumptions emerged that are noted.

Step 2: The completion of interviews in India and Thailand. Content analysis was used to identify information on key drivers and to map the answers to the original hypotheses.

Step 3: Data and information from the interviews is noted in the thesis to emphasize the key drivers of child trafficking and significant contributing factors to the current enforcement gap in India and Thailand.

**Structure of the Work**

This thesis is divided into seven chapters. Chapter One includes a literature review of important contributions in the field as well as core themes and critical debates that are relevant to the topic.

Chapter Two examines in detail the issue of caste oppression and gender discrimination and their attendant influence upon the enforcement gap. The caste system is historically entrenched in India and a notable factor in child trafficking and the enforcement gap. This work posits the view that an unofficial caste system operates in Thailand.

Chapter Three includes a critical analysis of laws in Thailand related to child trafficking and prevention.

Chapter Four includes a critical analysis of laws in India related to child trafficking and prevention.
Chapter Five examines the enforcement gap in India and specific drivers.
Chapter Six examines the enforcement gap in Thailand and significant drivers that are relevant to that nation.
Chapter Seven is the conclusion and provides a series of policy recommendations specific to Thailand and India.

RESEARCH FOCUS

The term human trafficking has been the subject of ambiguity which has complicated a general understanding of the problem and the consistency and effectiveness of enforcement measures. Human trafficking, for example, can be intertwined with migration, immigration, human rights and labor force issues. It is also evident that trafficking for the purposes of sexual exploitation has often been blurred with the issue of prostitution, which is sometimes viewed as a matter of choice. It has been well documented in the case of India and Thailand, that child victims of trafficking, who have been involved in the CSI by coercion, have nonetheless been criminalized for engaging in prostitution.

In November 2000 the United Nations General Assembly adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, referred to as the Trafficking Protocol. The Trafficking Protocol offers the first clear definition of trafficking in persons in international law. Article 3 of the UN Trafficking Protocol states: a) “Trafficking in Persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of
force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments of benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs. The Trafficking Protocol has the important distinction of designating any child who has been recruited and moved away from home for the purpose of exploitation as a legitimate victim of trafficking. Although this definition adds clarity to the issue, on the enforcement side, a considerable barrier remains in terms of the proper identification of the child trafficking victim as a victim, the accurate recording of data for legal and police proceedings, the proper dissemination of child trafficking information for enforcement and prevention and the accurate collection of data for general record keeping to assist governments, NGOs, INGOs and human rights organizations in developing effective policies and programs. The research examines the policy, enforcement and judicial efforts by India and Thailand to uphold anti-child trafficking laws and initiatives and thus

enforce articles 34 and 35 of the 1989 United Nations Convention on the Rights of the Child (CRC) to which both nations are signatories.

The research also addresses the governmental, socio-economic and judicial framework in each country with respect to internal child trafficking and the root causes that preclude each State from establishing an effective enforcement regime. Four central themes that have a profound impact upon internal child trafficking and its continuance at high levels in India and Thailand are examined in detail in the research. These include: 1) police corruption; 2) marginalization; 3) caste systems that perpetuate poverty and other forms of socio-economic deprivation; and 4) gender discrimination against the girl child. Deficiencies in these four areas have had and continue to exert a strong influence upon child trafficking activities in each state and contribute in a substantive manner to the overall enforcement gap.

Under Article 34; “State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, State Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: a) The inducement or coercion of a child to engage in any unlawful sexual activity; b) The exploitive use of children in prostitution or other unlawful sexual practices; c) The exploitive use of children in pornographic performances and materials.” Under Article 35, “State Parties shall take all appropriate national, bilateral and multilateral
measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.” 22

Thailand acceded to the CRC in 1992, India acceded to the CRC in 1995. International human rights observers have raised questions about the weak compliance of both India and Thailand with articles 34 and 35. The 2004 United States Department of State Trafficking in Persons Report, includes the following summary on India and Thailand: “The Government of India does not fully comply with the minimum standards for the elimination of trafficking, however, it is making significant efforts to do so; The Government of Thailand does not fully comply with the minimum standards for the elimination of trafficking; however it is making significant steps to do so.” 23

CHAPTER 1

LITERATURE REVIEW

Introduction

The topic of child trafficking and sexual exploitation in the CSI is complex and this complexity is reflected in the academic literature. In no area of the social sciences has ideology contaminated knowledge more pervasively than in writings on the sex industry, argues Georgetown sociologist Ronald Weitzer (Weitzer 2005). Within the academic literature, numerous gaps exist with respect to the study and understanding of child and adult trafficking in the CSI. Inconsistencies and inaccuracies have been noted in the areas of data collection, research, methodology, interview data, profit projections and numerical estimates on the number of child trafficking victims globally as well as in Thailand and India. There is intense debate over the factors that drive child trafficking and policies to achieve effective prevention and enforcement. As Weitzer and other have noted, the topic is also replete with sharp ideological and political disputes. These disputes make policy formulation and critically, consensus and workable policy solutions, difficult to obtain. Gozdziak asserts that, ‘despite the increased interest in human trafficking, relatively little systematic, empirically grounded and based solid theoretical
underpinnings research has been done on this issue and the development of innovative methodologies to study human trafficking is in its infancy.” 1

**Research Gaps and Critical Debates**

The literature review will be constructed in five sections.

Section One: examines major currents of thought and debate within the child trafficking literature. This section will also note the unique place of the child in the academic literature and the challenges of constructing child focused research.

Section Two looks at theoretical perspectives and ideological debates that impact child trafficking and the application of policy.

Section Three will focus upon the issue of data collection along with a statistical survey of child trafficking numbers to better ascertain the scope of the problem in each State.

Section Four includes a review of critical definitions and profit projections surrounding child trafficking. This is an important step because there has been a lack of clarity over child trafficking terms and data. Distinctions must be drawn, between a child trafficked, for example, for farm labor as opposed to a child trafficked for The purpose of work in the CSI.

Section Five examines child culture, gender and caste in each State.

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Section One: Key Issues and Debates

One of the challenges in conducting a literature review on this topic is that the bulk of the literature on human trafficking is generalized or concerned with the trafficking of women. “Studies and commentators often place women and children in a single group, but in fact, the law against trafficking in women and children had to differentiate the two classes and treat them as two separate categories.” 2 Children have a unique set of circumstances vis a vis human trafficking which must be examined through the literature, and where possible, in isolation. O’Connell-Davidson takes the view that the, “demarcation between adult and child prostitution, a conceptual boundary, does not reflect the realities of sex commerce in the contemporary world. The same structural factors can underpin both adults’ and children’s entry into the sex trade and make them vulnerable. Why limit our concern to persons under the age of 18” 3 While it is true that the experiences of coercion, exploitation, vulnerability and slavery like conditions can equally impact children and adults alike, there is a state sanctioned dividing line between adult and child, legislatively codified in most state jurisdictions, that is based upon age and the concept of coercion. “Although there are arguments both for and against the boundaries of

forced adult prostitution, there are no such arguments that prostitution of a child is not coercive.” Indeed ‘coercion’ is closely linked with the concept of consent. The issue of consent has gained ascendency as a protective measure in child rights legislation, both in India and Thailand. Recent legislative initiatives have emphasized that a child is incapable of giving consent in matters of rape and sexual exploitation. Section 9(1) of the Thai Prevention and Suppression of Prostitution Act B.E. 2539 stipulates, for example, that anyone who brings a person between the ages of 15-18 into prostitution, with or without their consent, is liable to a prison term of between 1 – 10 years. In India, the Immoral Traffic Prevention Act, 1986, defines as rape, punishable by a term up to and including life imprisonment, an act of intercourse with a female under sixteen, whether or not consent was given. Although the special situation and vulnerabilities of children are recognized in the law and in many policy approaches, the task of gaining adequate research on child trafficking issues and substantial interview data is challenging. Moreover, the court process, to be discussed in further detail, has been found to be intimidating and unsafe for children and is a process itself that deters many children and witnesses from testifying or cooperating with law enforcement authorities. This further limits access to solid data. A recent report on child trafficking prevention

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strategies argued that “involving historically marginalized populations and youth in the process of developing policies and programs is critical to ensuring that governments and NGOs develop strategies that have the greatest chance of success.”  

In recent years, the general prostitution debate has been sharply divided between two distinct ideologies on the questions of prostitution and adult consent. “The exchange between groups campaigning for the total abolition of prostitution and those lobbying for the recognition of ‘free choice’ prostitution as a legitimate form of work has become increasingly acrimonious.”  

Feminism and radical feminism have also weighed in heavily on the sex trafficking debate and formulated an extensive array of literature on the topic. Segrave, Milivojevic and Pickering have argued that, “radical and anti-pornography feminists and pro-sex advocates clashed over the idea of consent: whether it is possible to choose prostitution as a profession and consent to sex work or whether prostitution always implies some form of coercion. The debate successfully transferred into the trafficking arena.”  

NGOs and women’s groups have had a prominent voice

in the general discourse on human trafficking. The neo-abolitionist perspective has been criticized for adopting a Western-centered bias and overly judgmental attitude towards victims in the developing world. Accordingly, “from the neo-abolitionist perspective, all women in the sex industry are seen as victims who need to be rescued. The scholarship is accused of denying women’s right to self-determination and agency- to enter prostitution voluntarily and have control over their own bodies.”

In contrast, the pro-sex lobby, represented by well known groups such as the Global Alliance Against Traffic in Women (GAATW) advocate a liberal perspective that gives women more control and self-determination. “This scholarship argues that women, as adult and rational human beings, are capable of making their own choices. Sex work *per se* is not a violation of human rights: it is work, and sex workers do not have to be rescued but enabled to exercise their labor rights.” The idea of criminalizing sex work is therefore strongly opposed by this lobby. In this regard, this perspective may share some ground with a prosecution framework, advocated in this work, that seeks to de-criminalize the victim and focus on the perpetrators and critically, a proper and more accurate application of existing laws.

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On the enforcement side of the child trafficking spectrum, there is often debate between the prosecution or law and order model as opposed to the human rights model which advocates adherence to human rights regimes such as CRC 1989. However, there are areas for convergence between the two models. Indeed, one of the common criticisms of human rights legislation in general is that the enforcement capacity is weak.

A prosecution model, as outlined in this work, seeks to apply and enforce existing laws in Thailand and India with greater effect while simultaneously addressing specific gaps in the investigative, judicial and prosecution process. In so doing, there is consistency in adhering to the principles and obligations of the CRC 1989 and other landmark human rights legislation.

One of the general challenges with respect to research on child trafficking literature is that the narrative is dominated by the ideology, debates, politics and policy related to adult trafficking and primarily female trafficking. An intensive and dominant debate is ongoing within human trafficking scholarship, for instance, over the question of agency yet this particular debate is removed from child trafficking issues. There are no agency or choice issues when it comes to child trafficking victims. Moreover, the legislative apparatus in Thailand and India have settled the matter definitively with the enactment of strict laws that address the issue of consent and coercion involving child trafficking and exploitation. The literature also reflects the difficulty of obtaining the perspectives and
stories of child victims. This is a gap in the literature but also an opening for expanded future research and data collection.

Section Two: Theoretical Issues Surrounding Human Rights and Human Trafficking

Theory is an important tool of analysis for understanding complex issues and systems in international politics and human rights. Theoretical perspectives also provide context to specific dynamics in international politics. Within the academic literature, there has been a noted absence of strong theoretical foundations. “A number of scholars have stated that there is no consistent theoretical framework that structures analysis and empirical research on the question of human trafficking (Okolski, 2000b; Salt and Hogarth, 2000)". Moreover, (Gozdziak, 2008) asserts that research on human trafficking for labor exploitation is not rooted in theory. This work will outline three theoretical perspectives that offer guidance in terms of understanding the general situation of child trafficking. The third perspective in this section, Human Security, it will be argued, is an important paradigm for the understanding and utilization of a stronger prosecution regime to reduce the enforcement gap.

Cosmopolitanism, derived from the philosophical teachings of Immanuel Kant, has had profound implications upon the emergence and evolution of an international human rights regime. Archibugi states that the cosmopolitan system envisages not only the existence of universal human rights protected by states, but also the creation of a mandatory core of rights which individuals may claim, as well as duties vis a vis global institutions. “Modern cosmopolitanism focuses on three distinct themes. “The first is that individual human beings are the ultimate units of moral and political concern. The second premise, whose modern theoretical articulation is known as universalism, is that all human beings possess equal moral status. The third premise is that persons are subjects of concern for everyone, that is, human status has global scope.” In the context of child trafficking, cosmopolitanism has particular resonance and importance. The international community, through the United Nations for example and legal instruments, such as those contained in the CRC 1989, has assumed a leadership role in protecting children from trafficking offences. Moreover the reporting mechanism of CRC 1989 requires that signatories submit reports to the U.N. detailing progress on the obligations incumbent upon state parties. In addition, state representatives are also

required to appear before CRC committee experts. This is a prime example of the influence that cosmopolitanism can exert on important policy and human rights issues, particularly in cases where serious human rights violations are occurring or deemed to be occurring. Human rights integration and observance through global regimes is an important dimension of cosmopolitanism. The question of who is responsible for the child, in the event of family or community breakdown, that may be due to several factors, is an important point that Kent addresses. He asserts that as children mature, the first priority is to help them become responsible for themselves. “So long as they are not mature, however, children ought to get their nurturance from their parents; failing that, they ought to get it from their local communities; failing that they ought to get it from their local governments; failing that, it should come from their national governments; failing that they ought to get it from the international community.”13

The key to an effective enforcement regime is found on the implementation and enforcement side of law and policy along with policies addressing gender, education, poverty reduction, police corruption and training as well as social exclusion. Immanuel Kant was the first political philosopher to posit the notion that human rights are the basis for international law. According to Kantian scholar, Fernando Teson, “despite the recent prominence of the international law of human rights, the

13 Kent 6.
dominant discourse in international law fails to recognize the important normative status of the individual. Traditional international legal theory focuses upon the rights and duties of states and rejects the contention that the rights of states are derivative of the rights and interests of the individuals who reside within them.”\textsuperscript{14} With respect to child trafficking, there is an important legal regime in Thailand and India established through the enactment of domestic laws and the ratification of international legal treaties addressing child rights. However, there needs to be greater focus on a social regime that addresses critical issues, in tandem with law enforcement, such as gender inequality, social exclusion, police corruption and low training on trafficking as well as targeted programs reaching marginalized children who are at high risk of child trafficking to the CSI. According to this work, such an approach would form the foundation of an effective integrated prosecution regime. These approaches are consistent with both Cosmopolitan and Human Security ideals. As the data presented in the Appendix clearly demonstrates, the prosecution and conviction rate for child trafficking offences in both states is extremely low. Law alone is not the solution. Respect for state sovereignty flows from respect for the individual, a cosmopolitan view redefines the notion of sovereignty. The Kantian Theory of International Law, based on the

theories of justice put forth by Kant, argues that “state sovereignty is actually dependent upon the state’s domestic legitimacy and therefore the principles of international justice must be congruent with the principles of internal justice.”¹⁵ Many theorists have expanded upon the initial work of Kant to formulate ideas on the practical infusion of cosmopolitan democracy into the modern international system. Such discussions often rest upon reforms within the international law realm, more active engagement by the international NGO community and a more active presence for the United Nations, which is the prime example of a leading Cosmopolitan democratic institution. Much of the literature on cosmopolitanism rests on a redefinition of the static concept of sovereignty. It is precisely the rigid definition of sovereignty and the reluctance of some states to enforce international law and human right norms that gives credence to the Cosmopolitan view that state power requires outside pressures to be more democratic and just. Global governance, globalization and cosmopolitanism are closely connected themes in both theory and practice. Leading theorists on this issue, Held and Archibugi, posit that, “there are both barriers and opportunities for the extension of liberal democracy inherent in the process of globalization and welcome the erosion of the national states sole perogative over popular sovereignty.

¹⁵ Teson 55.
They advocate the increasing transfer of such sovereignty to various international multi-lateral bodies, principally the United Nations.” 16

The importance of the global governance movement and cosmopolitan democracy is reflected in the Commission on Global Governance Report which noted that, “at the global level, governance has been viewed primarily as intergovernmental relationships but it must now be understood as involving non-governmental organizations (NGOs), citizens movements, multinational corporations, and the global capital markets." 17 Held and McGrew emphasize a paradox between the goals of cosmopolitanism and global governance and the reality of a widening of both global inequities and social exclusion. 18

The stricter enforcement of international human rights law is a theme that has been noted by Hayden, who argues that the establishment of the International Criminal Court satisfies basic cosmopolitan ideals. “Viewed from the perspective of cosmopolitanism as an ethical and political project, not only can the permanent ICC help to protect individuals against gross violations of their human rights, it also can contribute to the development of a humane system of global governance that takes seriously the equal

moral standing of all human beings. The ICC represents the constructive pursuit of a form of cosmopolitan law enforcement.” In sharp contrast to Cosmopolitanism stands the Realist Theory, perhaps best articulated in the political realm by former U.S. Secretary of State, Henry Kissinger and in the academic world by Hans Morgenthau. Whereas cosmopolitanism works from a set of ideals that seek to improve systems for the protection and expansion of human rights and justice, Realism is concerned with two objectives, engaging the world political system as it is and second, exercising power in the most utilitarian fashion to maximize national interest. Realism gained ascendancy after World War 2. In 1948, Hans Morgenthau wrote, Politics Among Nations, which established the main principles of Realism. Realism provides a theoretical backdrop for the aggressive pursuit of national interest by states in the international system. An analysis of realism articulates two key points: “First, States are the principal actors in international relations. The most important fact is that states alone possess the key rights of political sovereignty and territorial integrity. Second, the international system is anarchical. The meaning of ‘anarchy’ in this context is not one of perennial conflict: rather, it is a description of the fact that, unlike in domestic politics, the state is the overarching sovereign in international politics.”

19 Hayden 116-117.
Despite the ratification of human rights treaties, many states encounter difficulties complying with their international legal obligations. A case in point is India and Thailand which have both acceded to the CRC 1989 yet more than twenty years later have achieved little progress enforcing the treaty provisions with respect to the reduction of child trafficking and commercial child sexual exploitation. Prosecutions and convictions of child trafficking offences remain extremely low for both states as noted on the appendix.

A Realist assessment of the general problem of non-compliance with international law is noted by Claire Kelly, “Regimes and institutions form because states cooperate in specific issue areas in part to reduce transaction costs and foster cooperation. Cooperation provided stability and predictability and states derive rationalist benefits from regime functioning. Despite the existence of regimes, nations may find it difficult to follow international rules to which they have acceded. The difficulty stems from states concerns with relative power.”

A major aspect of cosmopolitanism is the extension and influence of international legal and humanitarian norms over the state and its policies, a development generally opposed by realists. An interesting debate emerged in 2001 between Henry Kissinger, former United States Secretary of State,

a classical realist and academic, Bernard Ferencz, representing a cosmopolitan viewpoint, over the concept of extending international law control over political leaders and officials. Writing in Foreign Affairs, Kissinger argued that, “in less that a decade, an unprecedented movement has emerged to submit international politics to judicial procedures. It has spread with extraordinary speed and has not been subjected to systematic debate, partly because of the intimidating passion of its advocates.” 22

“The doctrine of universal jurisdiction asserts that some crimes are so heinous that their perpetrators should not escape justice by invoking doctrines of sovereign immunity or the sacrosanct nature of national frontiers.” 23 Ferencz, in contrast to Kissinger, argues for the extension of universal jurisdiction and a vigorous prosecution of crimes against humanity. He writes, “Dr. Kissinger challenges the basic concept of universal jurisdiction. He fails to recognize that international law is found not only in treaties but also in general principles of justice and in customs which gradually obtain universal recognition. International law is not static but advances to meet the needs of a changing world.” 24

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23 Kissinger 1.
In Thailand, the commercial sex industry is estimated to be a multi-billion dollar industry and a major support or lure for the tourist sector. The commercial sex industry and the tourist industry are inter-connected. Clearly, there is a case to be made that in Thailand, realism or national interest, in this case economic interest from the sex and tourist industries, collide with the protection of human rights for trafficked and exploited children. A study by Thai academic Pasuk Phongpaichit would seem to support this view. Phongpaichit and colleagues estimate the Thai commercial sex industry to be in the 40 billion baht range (approximately $1 billion US) and that enforcement of anti-prostitution law is generally lax, despite periodic crackdowns.  

A frequent criticism of cosmopolitanism is that it operates from an idealistic platform that is unworkable in an international system based upon power relations and competing interests. Hayden evaluates the shortcomings of cosmopolitanism from a realist perspective. “If power ultimately rests in the hands of individual nation-states, how can a supra-state authority be created unless all the states of the international system consent to giving up at least a considerable degree of their sovereignty?”

One of the challenges of implementing cosmopolitanism is the confrontation with realist perspectives on national sovereignty and policy

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26 Hayden 32.
self-determination by host governments. The gulf that divides realism and cosmopolitanism is significant. The former provides a cogent analysis of why states act as they do in the current global system of power and self-interest but offers no direction, as the latter system, cosmopolitanism, does on procedures and systems for creating a broader scope of justice and human rights protection.

A third theoretical perspective that is emerging in the international human rights community is Human Security, a paradigm that was endorsed in 2000 by Lloyd Axworthy, Canadian Minister of External Affairs at the time. Canada formally adopted aspects of a human security framework into its foreign policy in 2000. Human security seeks to address the problems of development and human rights abuse not from a state perspective but from the perspective of the individual. The Commission on Human Security defines human security as follows: “To protect the vital core of all human lives in ways that enhance human freedoms and human fulfillment. Human security means protecting fundamental freedoms- freedoms that are the essence of life.”

There is an interesting convergence between Human Security and Cosmopolitanism in terms of their emphasis upon systems and regimes, at both the international and national level, to advance human rights. Both are vehicles for human rights advancement and protection and therefore have particular validity with reference to child trafficking.

The concept of human security evolved through a series of high level reports and academic discussions that took place from the 1970s onwards, owing in part to the growing importance of the North–South dialogue on global development. Key developments included the Independent Commission on International Development Issues chaired by former German Chancellor, Willy Brandt, which in 1980 issued the North-South Report and the Independent Commission on Disarmament and Security Issues, chaired by Swedish Prime Minister Olaf Palme, which raised important questions about common security. Another evolutionary step forward in the articulation of human security came with the introduction of a landmark United Nations Development Program (UNDP) Report in 1994. The UNDP Report outlined the need for global human rights policies that are ‘people-centered’ and noted seven threats to human security as follows: “threats to economic security; threats to food security; threats to health security; threats to environmental security; threats to personal security (including violence and abuse of women and children); threats to community security and threats to political security.”

The 1995 Commission on Global Governance report, Our Global Neighborhood, furthered understanding on the need for a human rights approach to security. The Report stressed that, “The concept of global

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security must be broadened from the traditional focus on the security of states to include the security of people and the security of the planet.”  

The threats related to economic security, health security, personal security, which referenced violence and abuse against women and children, have a direct bearing upon the child trafficking issue. Human security appears to have particular relevance to the discourse on child protection because of the specific vulnerabilities and lack of agency that children, particularly those in vulnerable and exploitative circumstances, commonly experience. This work takes the position that Human Security represents a valid theoretical framework for the understanding of child trafficking and subsequent policy formulations based on identified security threats and needs of the individual. The placement in international law of trafficking as a form of slavery leads to a natural consideration of human security as an appropriate protective scope for child victims of this crime. The UN Protocol defined exploitation as “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.” The INGO International Service for Human Rights, stated in its 2004 Report of the Working Group on Slavery that, “the predominant issue of discussion was the exploitation of children, particularly in the context of

30 United Nations Trafficking Protocol, 2000
prostitution and domestic servitude, which included reference to the issue of trafficking. Moreover, a review of developments in the field of slavery covered economic and sexual exploitation among other forms of slavery.”31 Legal discussions surrounding the formation of the International Criminal Court specifically link the issue of trafficking and slavery. Article 9 of the Rome Statute states that the “Elements of Crimes shall assist the Court in the interpretation and application” of the articles listing the crimes in the statutes. The drafting of the elements for the crime of sexual slavery led to lengthy discussion on various issues.”32 The connection between trafficking and slavery has also been noted by Van den Anker, “The violence and the mental degradation that come with most forms of slavery are violations of the internationally protected right to be free from torture and inhumane and degrading treatment. Contemporary forms of slavery include bonded labor, trafficking, the worst forms of child labor, forced marriage and the abuse of domestic migrant labor.”33 There is a valid theoretical and policy foundation for linking human security with child trafficking. In essence, a human security framework addresses severe threats to the individual and protection of individual freedoms. As human trafficking has been defined as a form of slavery, constituting

32 Rome Statute, Article 9, 37 I.L.M. at 1009-10
severe threats to safety and the loss of individual freedom, the scope and intent of the human security framework applies directly to issue of child trafficking and exploitation in the CSI. Shue has argued that, “threats to physical security are among the most serious and, in much of the world, the most widespread hindrances to the enjoyment of other rights, it follows that ‘everyone is entitled to the removal of the most serious and general conditions that would prevent or severely interfere with the exercise of whatever rights the person has.” 34 The emphasis on personal safety, put forth by Shue and others human rights observers has a direct link to child trafficking and related theoretical considerations. Child trafficking is a human rights situation involving personal safety, security deprivation and the loss of personal freedom. A policy paper by the Center on Inequality, Human Security and Ethnicity outlines a strong relationship between the capability approach and human security: “First, the capability approach solidifies human security’s central focus on human beings; second, the capability approach raises the question of what people value; third, the capability approach offers a basis for human security and fourth, the capability approach has clear and significant relationships to human development and human rights literature.” 35 Capability deprivation is not

only related to income levels but also to social, gender and economic factors that can expose marginalized and impoverished children to threatened environments where the risk of child trafficking is heightened. As Amartya Sen has argued, “the problem of inequality gets magnified as the attention is shifted from income inequality to the inequality in the distribution of substantive freedoms and capabilities.”

The three theoretical perspectives under review, namely: Cosmopolitanism, Realism and Human Security provide important context for the examination of human rights and shed light on the broader issue of challenges in maintaining an effective enforcement regime. Realist Theory is a useful counterpoint to examine since powerful issues of economic and indeed government self-interest, as noted in the field work interviews, have had and continue to exert an influence on muting enforcement to restrict child trafficking. It can be argued that each theory has had some impact upon the policy level. Cosmopolitan ideas are reflected in the evolution of a global human rights regime and the formation of leading institutions such as the United Nations and the World Court. A convergence of viewpoints and ideals can be found in key principles shared by Cosmopolitanism and Human Security in terms of the use of systems to focus on human rights.

and place higher emphasis upon the protection of the individual within the state and global community.

**Section Three: The Scope of Child Trafficking - India and Thailand.**

In the proceeding section, two themes will be analyzed through the literature; 1) The scope of child trafficking in Thailand and India including a statistical overview and 2) Factors of poverty that drive child trafficking. It is well documented that India is a leading source of internal child trafficking, which takes many forms such as the kidnap and sale of rural children to brothels in urban areas including the notorious Kamathipura red light district in Mumbai. Well known Indian human rights scholar, Asha Bajpai, has written that, “The propelling factor which actualizes commercial sex exploitation of children is the role played by traffickers. The traffickers, through various modus operandi, take the children through unknown and unfamiliar routes to make re-tracing practically impossible, and they cut off the children from their roots and alienate and isolate them.”

37 A 2005 Report by Terre de Hommes, identified the harm inflicted upon trafficked children. “During the transit phase: 1) dangers during illegal frontier crossing; 2) dangers from unsafe crossing; 3) violence from police or other interceptors; 4) loss of identity if trained to claim a false name. During the exploitation phase, harmful factors include: 1) coercion to make the child obey orders: torture/corporal

punishment/trauma/ physical scars or disability; 2) occupational diseases; 3) specific effects commercial sexual exploitation; 4) effects of sexual violence and unprotected sex; 5) programmed to be obedient; 6) programmed to fear police.”

There is wide discrepancy regarding the number of children in India who are involved in the commercial sex trade as a consequence of trafficking. However, the literature does contain some authoritative studies that have brought more clarity to the question. A 1991 study by the Central Social Welfare Board (CSWB) conducted in six Indian cities calculated that 70,000-100,000 women and children were victims of commercial sex exploitation. More disturbing was the finding that 30% of the victims were children, defined as persons under the age of eighteen.

A report commissioned by the National Human Rights Commission (NHRC) in collaboration with the Institute of Social Sciences examined the issue of missing persons. The NHRC examined data on missing persons from all Indian states and six major metropolitan centers: Bangalore, Chennai, Delhi, Hyderabad, Kolkata and Mumbai during a six year period, 1996-2001. The report noted a steady increase in the number of women reported missing in the six year period however the most dramatic finding

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37 Terre des Hommes Foundation, Kids as Commodities? Child Trafficking and What To Do About It, (Lausanne, 2005) 37.
in the Report was the alarming increase in the number of children reported missing.\textsuperscript{39} Increases in the number of missing children have been documented in high numbers in many regions of India. In the territory of Pondicherry, the increase was 400\% while states such as Arunachai Pradesh, Nanagland and Tamil Nadu witnessed increases between 100-211\%. All the metropolitan areas under examination also witnessed rising levels of missing children.\textsuperscript{40} The NHRC report is significant in that it helps to strengthen the linkage between missing children and child trafficking. The report further noted that some of the missing children were later discovered working in brothels or similar exploitive situations.

A link has also been established between child trafficking and the recruitment of younger children for the commercial sex trade. As part of the Commission research project, 4006 persons were interviewed from the following categories: victims of commercial sexual exploitation, brothel owners, survivors, traffickers, clients, trafficked children rescued from brothels, and state and police officers. Some of the findings bolster the movement in child trafficking toward ever younger children.

“Of the 561 survivors of commercial sexual exploitation (CSE) interviewed, 21\% were children below the age of eighteen. Of the 464 victims of CSE, 23\% started working in the brothels when they were

\textsuperscript{39} NHRC  
\textsuperscript{40} NHRC
between the ages of 15 and 18. These findings were confirmed in interviews with 412 brothel owners who admitted that the highest demand was for virgins and that the highest profits came from children in the commercial sex industry.”

From the literature on child prostitution in India, some clear trends emerge. First, there is consensus on a general range in the number of child prostitutes at between 280,000 and 600,000 with a median calculation of about 440,000. Second, there appears to be consensus that the age of children trafficked and sold into prostitution is lowering. Third, there are some trends to suggest that the incidence of child trafficking in India, in aggregate terms, is on the increase which relates to studies showing a demand for younger victims. Fourth, reports seem to suggest a rise in the number of missing children reported in India.

Like India, the literature for Thailand portrays a scenario of extensive child trafficking which creates obstacles on the ability of the Thai government to effectively enforce its international treaty obligations with respect to articles 34 and 35. ‘Child prostitution’ developed as a term in Thailand in 1908 when it became legal for children under ten to enter brothels. Child prostitution is a phenomenon with deep historical roots in Thailand. Organized prostitution has been recorded in the Ayudhaya period in the 14th Century. The prostitution of children remained legal

\[41\] NHRC

under Thai law as late as 1930. As with India, the incidence of Thai children trafficked for sexual exploitation is on the increase.

Indeed, the fourth preamble paragraph of the Draft Optional Protocol to the United Nations Convention on the Rights of the Child Concerning the Elimination of Sexual Exploitation and Trafficking of Children acknowledges that, “the sexual exploitation of children through prostitution, pornography and trafficking has assumed new and alarming dimensions at both national and international levels.”

In Thailand, there are 28.9 million persons under the age of 18 years. Thailand is struggling with a high rate of children involved in the commercial sex industry. The literature suggests that there is some difficulty in establishing accurate data. The International Organization for Migration (IOM) has estimated that Thailand has a child prostitution population of several hundred thousand. A Study by the Thai Public Health Ministry estimated 81,384 commercial sex workers (CSWs) and 6563 brothels. A higher estimate of 500,000 is derived from the Thai Police Department. In contrast, research undertaken by Mahidol University in Bangkok provided a range of 200,000-300,000. Another report estimated a population of 800,000 child prostitutes including children from other countries, such as Burma, working in Thailand.

44 Rennell 2.
Factors of Poverty and Economic Dislocation

It is important to examine the incidence of poverty in both Thailand and India, both as a driver of child trafficking and as an issue that demands greater national effort to combat. India is a developing country with a population hovering just over the 1 billion mark. Approximately 400 million people in India are living below the poverty line and about one-third of them are on the threshold of starvation deaths.\(^{46}\) The recent starvation deaths of farmers families in Andahra Pradesh State, the constant cycle of starvation in the States of Orissa, Bihar and Rajasthan and the sale of children to gain meager income for impoverished families in some parts of India clearly demonstrate the struggle for basic survival that millions of Indians must endure.\(^{47}\) Such conditions of extreme poverty have a direct correlation to the high incidence of girls, particularly rural children, being trafficked into the CSI.

A 1998 report on trafficking in South Asia by the Shastri Indo-Canadian Institute provides a unique perspective on third world prostitution based on socio-economic deprivation. “Changing and intensifying dimensions of the sex industry in most third world countries cannot be understood independently of their rapidly altering socio-economic contours.”\(^{48}\) Research by the Institute also concluded that, “market changes,

\(^{46}\) Rao 103.  
\(^{47}\) Rao 103.  
\(^{48}\) Shastri Indo- Canadian Institute, *Trafficking in Persons in South Asia*, (Calgary, 1998)137.
globalization and technological changes in traditional industries such as farming have displaced and dispossessed masses of rural people who subsisted on traditional agriculture. The effects have been particularly hard on hill tribes, indigenous people and ethnic and regional minorities. Approximately 80% of women in the sex industry come from these impoverished groups. A final issue of importance in the literature on economic deprivation and child trafficking is the inequitable treatment facing the Hill Tribes, impoverished ethnic minorities who live in Northern and Western Thailand. They number between 600,000 and 1 million. Thailand has not extended full citizenship to half of the Hill Tribe population making access to important government services, such as education and the new 30 baht health care plan, started by the Thaksin government, difficult to obtain. Since child trafficking in Thailand has drawn thousands of children from the hill tribes, it is crucial area that needs to be addressed by the government. The NGO Physicians for Human Rights, in examining the human rights situation of the hill tribes, stated that: “Thai women generally have lower status than men and Hill Tribe women and girls face particularly low status among women because of poverty, lack of citizenship and general discrimination against ethnic minorities.”

49 Trafficking in Persons in South Asia, 137.
From 2001-2006, the Thaksin government stalled on its commitment to examine and process citizenship applications by the remaining hill tribes who are without full rights. Subsequent governments have made limited progress on the issue. The link between trafficking and Thai highland girls has also been established in research by Feingold at UNESCO: “We started the Highland Citizenship Program which has been expanded and is now funded by the British Government to look at issues of citizenship and birth registration because if they don’t have a birth certificate, everything else does not matter.”

The U.N. Economic and Social Council, in a report on the prevention of child prostitution, concluded that satisfaction of the basic needs of children, parents and the local community, in conjunction with educational measures, will empower them to make informed choices and so protect them from the cycle of poverty and exploitation. While the literature does suggest multiple causes of child trafficking, poverty is often singled out as a major factor. Further evidence along this line comes from a study on the issue by the International Office of Migration which asserted that although it would be a mistake to conclude that poverty is the only major cause of child trafficking, the fact that many trafficked victims, lured by prosperity

51 David Feingold, Personal Interview, Bangkok, May 1, 2006
and a comfortable life, come from impoverished areas, indicates a strong connection between trafficking and economic development or lack thereof. 53

Section Four: Definitional Issues: Child Trafficking and Profit Projections

More effective enforcement of child trafficking laws requires a better understanding of who the victims are, a clearer international norm of what constitutes child trafficking for the purpose of sexual exploitation and more accurate information on trafficking networks and the profits involved. “Analysts agree on the fact there is no consensual definition of trafficking in human beings (Chew, 1999; Derks,2000; Okolski, 2000b; Oxman-Martinez, Martinez, Hanley, 2001; Salt and Hogarth, 2000; Toupin, 2002). Salt and Hogarth (2000) have identified 22 definitions of the concept of trafficking.” 54 These variances in understanding and definition have a related impact upon the law enforcement process where studies reveal a profound lack of information, training and general understanding of child trafficking and the laws to enforce it. Furthermore, as the literature demonstrates, there is wide variance on profit estimates. More detailed information about profit levels is important for two reasons. First, it will provide government and police with useful information about the level of

53 IOM Background Paper, 11.
criminal activity involved in child trafficking. Second, it may help to focus the cumulative efforts of governments, the NGO community and police upon anti-trafficking initiatives in priority regions where the level of child trafficking is high.

Article 1 of the Convention on the Rights of the Child, 1989, states that ‘a child means every human being below the age of eighteen years unless, under the law, applicable to the child, majority is attained earlier.’ Different interpretations of the law with respect to children and the age of consent for sexual involvement have an impact on the culture of protection surrounding the child. The definition of a ‘child’ may vary from one country to the next. Even within a country, there may be differing interpretations on the definition and what constitutes child rights. In India, there are differing interpretations in law of the word, ‘child’. The Juvenile Justice Act (1986) lists a juvenile as a boy under the age of 16 and a girl under the age of eighteen. The Child Marriage Restraint Act (1926) lists a child as a person below 21 for males and under 18 for females. In the Child Labor Act (1986), child is defined as a person under fourteen years of age. The Orphanage and Other Charitable Homes (Supervision and Control Act, 1960) lists a child, boy or girl, as a person under the age of 18 years. Under Thai law, according to the Prostitution Prevention and Suppression Act, ‘child’ means a person who is not yet over the age of eighteen. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons,
Especially Women and Children defines trafficking as: “The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

The emergence of a more precise definition of trafficking has still left many issues unaddressed. For example, Loff and Sanghera argue that: “despite the definition given to trafficking in international law, the term and issues surrounding it remain confused both conceptually and in government policy and practice for three reasons. First, researchers, law enforcement agencies, and non–governmental organizations usually focus on a sub-set of trafficked people, women and children in sex work. Second, trafficking is rarely discussed without mention of coercion. Third, the definition of trafficking is complicated by a frequent failure to differentiate between women and children.” 56 The need for a more inclusive definition of trafficking has been highlighted by UNIFEM which identified three modes of entry into prostitution: “Voluntary- indicates that the woman,

prostitute-to-be, approaches the owner/manager of a sex establishment herself; Bonded implies the involvement of parents or guardians who receive money from the agency or owner for giving away their daughter; Involuntary-involves the use of deception and coercion of the women by the owner or manager.”

A relevant issue to examine concerns the definition of the word ‘coercion’, which is, in itself, a term open to broad legal and policy interpretation. Lois Chiang asserts that “the definition of what constitutes coercion will determine what activity is covered. How broadly should coercion be defined? Is deception, in fact, meant to be included as a form of coercion?”

Deception needs to be considered as a form of coercion. Anti-Child trafficking groups commonly report that false promises or deception are routinely utilized by traffickers including family members to lure children into the CSI. If the end result of such exploitation is a criminal offence and a violation of the CRC 1989, then avenues that are used, including deception, should be the focus of law and enforcement.

In December 2000, over 80 countries signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Article 3(a) of the Protocol states: “Trafficking in persons shall mean the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion,

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57 UNIFEM, East and Southeast Asia Regional Office, *Fact Sheet on Gender Issues* (2002)3
of abduction, of fraud, of deception, of the abuse of power or of a position
of vulnerability or of the giving or receiving of payments or benefits to
achieve the consent of a person having control over another person, for the
purpose of exploitation.” 59 The terms “traffic” and “trafficking” refer to the
same phenomenon in English. Confusion sometimes arises when these
terms are translated into other languages using several different terms to
denote different degrees of seriousness or enslavement, while in English
only the single term “traffic is employed. The Suppression of Traffic
Convention refers in its English-language title to “the traffic in persons”, in
French to “la traite des Utres humains” and in Spanish to “la trate de
personas”. The terms “traite” and “trata” are the same terms as are used to
refer to the word “trade” in the phrase “slave trade”, as in the title of the
Supplementary Convention, and appear to carry a stronger connotation of
treating human beings as commodities than the term “traffic” conveys in
English. 60

In contrast, however, the terms being used to refer to traffic in persons
in current proposals for the draft Protocol to Prevent, Suppress and Punish
Trafficking in Persons, Especially Women and Children, supplementing the
United Nations Convention against Transnational Organized Crime, are

59 Protocol to Prevent, Suppress, and Punish Trafficking in Persons,
Especially Women and Children, supplementing the UN Convention

60 UN Economic and Social Council, Contemporary Forms of Slavery,
different, and the “trafic de personnes” is used instead of “la traite des Utres humains”, implying that the abuse being described is of a slightly lesser order than that denoted by “la traite”. As the main international convention concerned with traffic in persons deals uniquely with traffic for purposes of prostitution, the issues of traffic or trafficking in persons and prostitution are often dealt with together. Since instruments define traffic or trafficking to cover the movement of people for purposes other than prostitution or sexual exploitation.  

Research by O’Connell-Davidson discerns that defining a workable meaning and definition of trafficking is complex and involves an examination of what factors should be included in the definition. She notes that: “definitions of trafficking invariably rest on and reproduce implicit or explicit assumptions about the relation between: Trafficking and other forms of criminality; Trafficking and other human rights abuses; Trafficking and legally sanctioned systems of labor importation; Trafficking and migration; and Trafficking and prostitution.”  
The lack of clarity about what child trafficking entails may have a contributing effect to the conflicting approaches to the problem and the overall lack of vigor at the enforcement level. If there is difficulty in reaching consensus about the causes and consequences of child trafficking

61 UN Economic and Social Council 7.
and difficulty in defining the problem itself, the danger arises that a certain degree of inertia sets in which ultimately hampers overall progress. The issue of child trafficking is complex and contains numerous factors that combine to make the exercise and application of a workable definition of the crime very difficult to obtain. For example, a child who has been trafficked may be classified by authorities as a runaway or a missing child. In India, as will be noted, many child trafficking victims who are arrested are classified as juvenile delinquents. Moreover, authorities who rescue trafficked children from the commercial sex industry may classify these children as victims of labor violations and not trafficking.

The other important issue that surfaced repeatedly in the research and field work is that the authorities themselves, particularly the police, often have inadequate knowledge or training on child trafficking issues which includes the understanding of legal and human rights definitions of child trafficking. Bangkok based IOM official Bonneau notes that, “a lack of a comprehensive understanding about trafficking means poor enforcement of the crime.”\(^{63}\) In the Indian context, Sarita Sankaran, a director with the Committed Community Development Trust in Mumbai which works directly on issues related to child trafficking, rescue and prevention, has pointed out that with law enforcement, “First of all, understanding of the laws are weak. They just don’t know the law. Only sections are applied.”\(^{64}\)

\(^{63}\) Lance Bonneau, Personal Interview, Bangkok, 3 May 2006.
\(^{64}\) Sarita Sankaran, Personal Interview, Mumbai, 25 April 2006.
Another glaring omission, to be addressed in a subsequent section, is the fact that police in India routinely fail to complete FIRs, First Information Reports, on crimes that affect the lower classes and Dalits, who form a high percentage of child trafficking victims. So combined with the absence of knowledge about child trafficking, its terms and definition, there is the more basic problem of failing to even register the crime. Accordingly, in Thailand, thousands of Northern Hill Tribe persons are denied citizenship by the Thai government. The Hill Tribes are common victims of child trafficking. Their situation is complicated by the fact that they are viewed as outside the bounds of citizenship and thus denied many protective benefits that citizenship often ensures.

**Human Trafficking: Profit Estimates**

The December 2000 Trafficking Protocol represents an international regime to combat trafficking through judicial and law enforcement measures. The 2000 United Nations Convention on Transnational Organized Crime emphasizes the criminalization of traffickers and establishes a tighter system of laws and sanctions to deter organized criminal activity in human trafficking. The complementary nature of the 2000 Protocol and the 2000 Convention leave no doubt that human trafficking has become a major source of national and transnational criminal activity. Though traffickers do operate on an individual basis and there is substantial evidence of family members and friends participating in the coercion and sale of children into the commercial sex industry, it is
clear that organized crime has entered the child trafficking field with significant force. One analysis of child sexual exploitation concludes that, “the industry is quite lucrative because the children, who are treated as commodities, can be sold several times, unlike drugs and arms. Thus younger children are often sought for profit maximization in order to meet customer demand. Experts estimate that the industry generates billions of dollars annually and is operating with impunity.” 65

Professor Louise Shelly of the American University argues that, “Children are being exploited on a multi-dimensional, multi-leveled, multi-faceted, trans-criminal, cross cultural and transnational manner, it is far more profitable than the smuggling of drugs and guns combined. Human trafficking produces the fastest cash with the least risk.” 66 A recent CIA report states that, “Whereas alien smuggling usually involves short-term monetary profit, trafficking usually involves long-term exploitation for economic gain. In some cases, the traffickers may profit even further by using persons as ‘manpower’ for other criminal purposes such as selling drugs.” 67

The figure of $7 billion has frequently been cited in academic studies and is often used by the United Nations. O’Connell-Davidson, in her analysis, asserts that, “figures on the scale of trafficking are therefore necessarily estimates based upon a series of extrapolations and assumptions rather than hard facts, the classic example concerns the claim that trafficking is a US $5-7 billion global business.” This view is supported by a UNESCO trafficking statistics project which states that, “When it comes to statistics, trafficking of girls and women is one of several highly emotive issues which seem to overwhelm critical faculties. Numbers take on a life of their own, gaining acceptance through repetition, often with little enquiry into their derivations.”

A study by Chulalongkorn University Political Economy Centre established that for the period 1993-95, prostitution was the largest of the underground businesses which generated an estimated minimum income of US $33-44 billion a year, representing some 15-18% of the country’s GDP, and that prostitution accounts for about two-thirds of the country’s illegal income. Annual income from prostitution was between 450 and 540 billion baht (US$ 22.5 and 27 billion) or about 10-14 % of the country’s GDP.

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69 Julia O’Connell-Davidson 4.
70 The Lancet 566.
Section Five: Child Caste and Gender in India and Thailand

This is a significant area of discourse since the enforcement of child rights in each state is heavily influenced by these factors. In fact, one could argue, as it is reflected in the literature, that taking a political, judicial or human rights approach to the child trafficking problem is incomplete unless the social and cultural factors of child abuse are addressed. The caste system in India, dating back some 2500 years, is well entrenched in society and culture. It is a system that directly contributes to the alarming incidence of child trafficking and child prostitution in India. According to Dr. I.S Gilada, “The majority of the trafficked girls are from the low caste or the untouchable class.”

Although Thailand does not have a rigid socially and culturally enforced caste system as exists in India, it does have an economic system that creates great discrepancies in income, status and treatment before the law.

Social exclusion, the marginalization of ethnic and impoverished groups, structural discrimination and racism, are ‘caste- like’ features that imperil the lives of millions of Thais. With poverty as a driving factor, a vast majority of the child trafficking and child prostitute victims in Thailand are from the low classes and primarily rural areas. Thus it can be posited that an informal socio-economic caste system exists in Thailand.

72 Dr. I.S. Gilada, Personal Interview, Mumbai, 24 April 2006.
The inequality and poverty experienced by many children, most notably the
girl child, is a significant push factor in the child trafficking literature.
Calhoun, writing about sexual politics, concludes that, “Over the past
several decades feminists have carefully developed the idea that gender
injustice is a matter of oppression not just legal inequities.” Gender
inequality has been defined by the International Labor Organization as,
“the social differences and relations between girls and boys, women and
men that are learned and vary widely within and between cultures and
change over time.” The ILO report further noted that, “gender is an
important variable and classifier in society that is affected by age, class,
caste, race or ethnicity. Gender discrimination is defined as: any
distinction, exclusion, or preference based on sex, gender or other
classifiers in society such as ethnicity, color, religion or political opinion,
which has the effect of nullifying or impairing equality of opportunity and
treatment.  

Gender in India

Laws reflect community and national standards as well as norms of
conduct. Law alone, as Muntarbhorn emphasized, is no guarantee of

73 Cheshire Calhoun, “Sexuality Injustice” Moral Issues in Global
344.
74 Haspels, Nelien and Busakorn Suriyasarn, “Promotion of Gender
Equality in Action Against Child Labor and Trafficking,” International
Labor Organization, May 2003, p. 3
75 Haspels, p. 5.
progress on the challenging issue of child trafficking. Laws have been
enacted in India, for example, to prohibit dowry death, yet the practice
continues in numerous rural communities. Accordingly, laws to prevent
discrimination and exploitation, offer incomplete protection for
marginalized women and girls. A statistical profile of the health and socio-
economic condition of Indian females reveals a blunt picture of hardship
and abuse for millions.

Men outnumber women in India which is counter to the demographic
profile of most nations. In 1991 there were 933 females for every 1000
males. Research by Amartya Sen concludes that, “India, with a population
of 1 billion, must account for thirty-two million missing women. More
than 60% of women are chronically poor, maternal and infant mortality
rates are high: 407 out of every 100,000 women and 70 out of every 1000
infants die during childbirth. Only 42% of births are attended by a medical
professional. Severe anemia is responsible for 9.2% of maternal deaths
while 80% of pregnant women between the ages of 15-48 suffer from
anemia.” In matters of education and safety, women face similar
hardships. “Sixty-one percent of girls are not enrolled in school and the
drop-out rate for those in school is an alarming 59%. Only 54% of women
are literate compared to 76% for men. Violence against women is pervasive
in India society, both within and outside the home. Police records reveal

76 ADB, p. 236.
that a woman is molested somewhere in the country every 26 minutes, a rape occurs every 34 minutes, an incident of sexual harassment occurs every 43 minutes, a woman is killed every 93 minutes.”  

Sen and Dreze, in studying economic development in India, offer the view that it is not female infanticide but the practice of preferential treatment of boys and neglect of female children in intra-household allocation of health care, nutrition and related needs that cause the higher incidence of female infant and juvenile mortality.  

Research on the role and place of the girl child in India by academics Lelamma Devasia and V. Devasia point to entrenched historical and cultural patterns of neglect.“Since birth, the girl child receives different, unequal and discriminatory treatment compared to male children, this is happening in most sectors of their needs: physical, social, cultural and political.” The girl child in India, particularly those from impoverished classes and the Dalit caste, have low status in society and are easily exploited. Research on child labor by Agnivesh points to the fact that, “child labor flourishes in India even though there is a high level of adult unemployment because it is the cheapest labor available. Girl children

77 ADB, p. 239.
constitute about 46% of the labor force and often work in conditions that resemble slavery.\textsuperscript{80}

The literature suggests a link between the low status of the girl child in India and economic exploitation. This notion has been explored by D’Cunha. “Contrasting evaluations of a son’s and daughters role/status in patrilineal family systems, generates a culture of son preference. If an opportunity presents itself, families are willing to trade unwanted women and girls with little thought for their rights. Examples are the sale of women and girls into marriage, willingness to marry women /girls off even to strangers who make no monetary demands, thus predisposing them to trafficking.” \textsuperscript{81}

The perceived burden that the girl child brings to the family is tied to the high incidence of female infanticide and selective female abortion. A survey conducted in Mumbai revealed that: “7999 out of 8000 abortions reported were of female fetuses; additionally, the system of womb tapping, a technological innovation, is used to identify a girl child so that she can be removed.” \textsuperscript{82} The sex determination test has been available in India since 1977. Shri K.P. Srikumar, in analyzing the issue of sex selection and discrimination against the girl child, concluded that, “there is no doubt

\textsuperscript{80} Devasia 22.
that amniocentesis is freely used to determine the sex of the unborn child. The magnitude of the problem can be gauged from the data given by the first state level committee on sex determination. It is estimated that between 1978 - 1982, 78,000 cases of post-amniocentesis female foeticide have occurred.\textsuperscript{83}

On the issue of crime statistics, it is important to emphasize that crimes against women are generally believed to be dramatically under-reported. Females in India have been raised since birth to assume a docile and non-confrontational role in the family and community at large. The subservient role of girls and women in India is affirmed by cultural, religious and social practices. Women and girls are generally reluctant to break from traditional roles and norms to report crimes against them. Family pressure including that from husbands may also serve to keep the crimes committed against them un-reported.

Sarita Shankaran asserts that, “Most minor girls in the CSI are from the backward class, about 60-70%. The general view is that gender is a key issue. The major factors for child trafficking are poverty, caste and gender but the underlying factor is family structure and culture. The family is boxed in by many systems, pressures and social demands. If a rural family sells a daughter they may not truthfully inform the village Panchayat

council but then the Panchayat is indifferent anyway. So the girl is neglected at both ends - this is gender oppression.” \(^\text{84}\)

The preceding review of gender in India reveals some general conclusions. First, long-standing cultural and social beliefs and practices reinforce a perception of the girl child’s lower value relative to male children. This cultural construction begins at birth (and before birth if sex determination testing is used to terminate the pregnancy of a female foetus) and generally continues throughout life. Second, in health, literacy and education levels, girls consistently lag behind boys except in the State of Kerala, which records high development levels for females in a number of important areas such as literacy. Third, the high rate of poverty in India creates a situation of economic stress upon families which frequently results in the early labor force participation of children. Fourth, the girl child commonly experiences nutritional, economic, educational and health care neglect due to the prevailing male preference in Indian society.

**Gender in Thailand**

Under the Thai legal system, there are discrepancies in the boundaries between adulthood and childhood. Voting rights apply at age eighteen while education is compulsory only up to age twelve. Children are not legally allowed to work full time until the age of fourteen but can work part-time from the age of twelve. The 1976 Thai Civil and Commercial

\(^\text{84}\) Sarita Shankaran, Personal Interview, Mumbai, 25 April 2006.
Code stipulates that the legal marriage age is seventeen for boys and girls. According to Piker and Blanc-Szanton, “in many areas of rural Thailand, children are seen as an investment which will quickly pay returns because children can work on a farm from an early age. They can contribute to the household economy when young and support elderly parents later on. It is usually the youngest daughter who looks after her parents in their old age.” 85

Like many states, constitutional guarantees of rights in Thailand are not always effectively translated into action. The Thai constitution guarantees equal rights for men and women including equal right to dignity, health care and freedom from forced labor. Research on the exploitation of women in Thailand by Physicians for Human Rights concludes that, “gender inequality persists in law and as a social and cultural norm in Thailand. For example the Thai government has enacted prohibitions against sexual violence but laws specifically regarding domestic violence have not passed the legislature. Moreover, marital rape is not a crime and enforcement of the rape law is lax.” 86 Concern about the inequitable treatment of women in Thailand was also echoed in a 1999 United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) Report. “The Committee expresses its concern at the lack of

86 Physicians for Human Rights, 11.
effective law enforcement mechanisms and the lack of cases filed by women in the courts on the basis of constitutional guarantees. The Committee urges NCWA to study constitutional developments in other countries and practical ways of strengthening the capacity of women to use the Constitution to ensure gender quality.” 87

Two separate gender ranking indices for Thailand reveal discrepancies in the overall socio-economic well-being of women that reflect class and regional disparities. The Gender-Related Development Index (GDI) ranks Thailand 40 out of 163 countries. The UNDP Gender Empowerment Measure (GEM) ranks the nation 60 out of 102 countries. Although there is sufficient evidence in development studies to show overall improvement in education, labor force participation and health care for Thai women, such improvements may also serve to mask serious inequities and hardships faced by impoverished rural women and those from ethnic minorities. Indeed, similar to the case of women in India, poverty remains a serious challenge to overcome in the effort to bring gender equality and gender justice to more women in Thailand. A country study on human rights and human development in Thailand echoes the disturbing correlation between poverty and gender injustice: “Poverty remains a pervasive concern for many women. While the law guarantees equal access to education, the rate

of illiteracy is higher among women than men. In employment situations, despite laws guaranteeing equal pay between men and women for equal work, the situation is often the contrary. In health services, there are difficulties faced by those of a lower economic stratum in their access to health services.\textsuperscript{88}

An analysis of gender based oppression in Thailand offers the conclusion that, “societal belief systems that underlie the structures and institutions of society in reinforcing male supremacy and patriarchy justify and perpetuate the oppression of women and gender-based violence against women. Examples of common attitudes include: 1) women are weak and cannot take care of themselves; 2) Being born as a woman is bad Karma from a past life; 3) It is the responsibility of the woman to keep the family together; 4) in incidents of gender based violence, such as partner abuse, women are usually to blame.”\textsuperscript{89} The discourse on gender discrimination in Thailand would not be complete without reference to the situation of girls and women from the Northern Hill Tribes who face a particularly difficult set of circumstances. The United Nations Committee on the Elimination of Discrimination Against Women, in observations


about Thailand, expressed, “concern about hill-tribe women and girls whose rights may not be effectively protected by national laws.” 90

The Northern Hill Tribes compose 1% of the Thai population or about 600,000 people and live in Northern Thailand and in areas bordering Burma. “Thailand has recognized nine hill tribes: The Karen (Sgaw and Pwo), the largest single ethno-linguistic group in Northern Thailand; the Hmong, Mien, Lahu, Lisu, Akha, Lawa, Htin and Khamu. Thai authorities believe the hill tribes are involved in guerilla activity, represent a threat to national security, destroy forests and watersheds due to their traditional agricultural practices and are involved in the cultivation of opium poppies.” 91 Accordingly, hill tribes have been subjected to restrictive policies and the denial of full citizenship which serves to limit the accessibility of government services such as education and health care. Thai society is hierarchal and class based and these factors in turn influence discriminatory practices at the state, local and village level. Human rights organizations have reported a consistent pattern of exploitation and discrimination against impoverished ethnic minorities in Thailand. Bangkok based UNESCO official David Feingold argues that northern hill tribe women and girls are affected by high levels of trafficking. The lack of citizenship and lack of legal status are the key factors: “Our research shows

91 Physicians for Human Rights 27.
that for a highland girl, the single greatest risk factor to be trafficked or 
exploited is the lack of citizenship. The girl needs citizenship first, not 
another project. “

Citizenship confers identity and recognition under the constitution. The 
continued denial of citizenship to the Northern Hill Tribes creates serious 
vulnerabilities. Moreover, the act of denying citizenship to the Hill Tribes 
serves to legitimize and structuralize their inferior position within Thai 
society. Moreover, state sponsored discriminatory practices that are 
institutionalized, may in turn legitimize public discrimination against an 
aggrieved group. Research by Matsuda on the links between hate speech 
and hate action suggest that: “Critical race theory uses the experience of 
subordination to offer a phenomenology of race and law. The victims’ 
experience reminds us that the harm of racist hate messages is a real harm 
to real people. When the legal system offers no redress for that harm, it 
perpetuates racism.”

The literature on gender in Thailand exposes on-going problems of 
discrimination and oppression that are largely based upon class, poverty 
and ethnicity. Moreover, it is clear from the literature that a large 
proportion of the girls trafficked into the CSI are from impoverished rural 
backgrounds and a disproportionate number come from ethnic minority 
groups including the Northern hill tribes.

92 David Feingold, Personal Interview, Bangkok, 2 May 2006.
93 Mari Matsuda, “Pornography and Hate Speech” Moral Issues in Global 
The Caste System in India

The Hindu caste system in India, dating before the time of Buddha, who is recorded as having condemned its’ injustice, represents a rigid social structure of hierarchal power and social standing within society. The caste group that the person is born into remains in effect for life. The roots of condemnation against the caste system, from international and domestic human rights groups, is based upon opposition to marginalization and abject discrimination and violence against millions of Indians who find themselves, through birth, in the bottom strata of Indian society. There are four main groupings within the overall caste system. In order of social standing these include the Brahmins (priests and teachers); the Ksyatriyas (rulers and soldiers) the Vaisyas (merchants and traders) the Shudras (laborers and artisans). A fifth category which falls outside the traditional caste system is known as the untouchables or Dalits who are considered unclean and impure. They perform the lowest forms of work in Indian society. Within the upper echelons of caste, there may be some crossover in traditional societal functions and roles. For example, Prime Minister Nehru, the first post independence prime minister in India, was a member of the Brahmin caste. According to a study on caste violence in India, “within the four principal castes, there are thousands of sub-castes, also called jatis, endogamous groups that are further divided along occupational, sectarian, regional and linguistic lines. Collectively all of them are sometimes
referred to as ‘caste Hindus’ or those falling within the caste system. The Dalits are described as varna-sankar: they are outside the system, so inferior to other castes that they are deemed polluting and therefore ‘untouchable’ ‘”94

Untouchables are also referred to as Dalits and Scheduled Castes. It is instructive to note the racial bias that is inherent in the caste system. Much like the discrimination faced by Blacks in Brazil and the United States solely due to their color, the Dalits are also the victims of entrenched discrimination due to color.

The term ‘varna’ denoted color in early Indo-Aryan culture and was used as a marker to distinguish certain groups from others. The Indian Constitution Act of 1949 specifically address the inherent oppression within Indian society against the untouchables. According to Article 17 of the Act: “Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.’ 95 The number of untouchables in India is estimated to be 160 million. A Study on poverty in India by the Asian Development Bank notes that India has the highest concentration of poverty of any nation. “More than 360 million people, about 36 % of the population, live below the official poverty line, seventy-

95 Constitution Act of India, 1949, Article 17.
five per cent are living in rural areas. It is estimated that women and children account for 73% of those living below the poverty line.”  

An overview of discriminatory practices against Dalits includes the following: “Scheduled castes did not have access to temples and other places of public worship to a large extent in Uttar Pradesh (UP), Tamil Nadu, Kerala, Rajasthan and Karnataka; A sizable section of Scheduled Castes in Tamil Nadu, UP, Rajasthan and Kerala did not have access to drinking water resources; Scheduled castes were discriminated against in the use of public cremation / burial grounds, public passages etc. in Tamil Nadu, UP, and Maharashtra; Barber services were not available to a section of Scheduled Castes in Tamil Nadu, UP, Rajasthan, Maharashtra, Karnataka and Kerala.” Moreover, there is a high incidence of murder, violence, theft and false imprisonment committed against Dalits. Data from the Census (1981) reveal that: “only 32.21 per cent of Dalit children (aged 5-14 years) actually attend schools. School participation data from (1987-88) shows that the proportion of ‘out of school’ Dalit children is far greater than those in the ‘Other’ (non-Scheduled Caste/Scheduled Tribe) population in both urban and rural areas. What is also striking is the abysmal participation of rural girls in schools. Only 3.1 per cent of Dalit

girl children aged 5-14 years living in rural areas participated in schooling in 1987-88.”

Another serious issue confronting the Dalits is caste violence. Violence against Dalits takes many forms and may be instigated by higher caste citizens as well as the police and military. The acceptance by mainstream society that Dalits are inferior and impure leads to social and cultural legitimacy that violence and abuse against them is acceptable.

The National Commissioner for Scheduled Castes and Scheduled Tribes in April 1990 conducted a comprehensive study of atrocities such as murder, injury, rape, arson and crimes involving substantial loss of property against Dalits in five states, Bihar, Rajasthan, Madhya Pradesh and Tamil Nadu, during the 1983-1987 period. The Commission found, “an alarming increase in crimes against SCs (an 8 percent rise between 1981 and 1986), especially murder and rape. There was an apparent link between atrocities, both of caste prejudice and untouchability, and political and economic issues regarding land, wages, indebtedness, bondage, etc.”

Caste Features in Thailand

Although Thailand does not have an entrenched and readily identifiable caste system as exists in India, there are social and economic elements that lead to caste-like similarities in Thailand. The United Nations Committee

98 Dalits and the State 97.
99 Dalits and The State 153.
for the Elimination of all Forms of Racial Discrimination, identifies caste injustice as a form of racial discrimination on the basis of descent and occupation. As the literature will demonstrate, these features are evident in Thailand where there is a well-documented pattern of discrimination against the Northern Hill Tribes, for instance, and other ethnic minority groups, to the point of denying them citizenship. In terms of occupation, millions of Thais, living in extreme poverty, and confined to low-skilled occupations such as farm work, have also been systematically discriminated against. A study on the relationship between caste and inequality observed that, “Caste can be accurately defined in broader terms. For purposes of cross-cultural comparison this is necessary: for the study of social process, and with the aim of deriving generalizations, caste is a concept which might well be applied cross-culturally. A caste system may be defined as a hierarchy of endogamous divisions in which membership is hereditary and permanent. Here hierarchy includes inequality both in status and in access to goods and services.”\(^{100}\)

Thailand is not a party to the International Labor Organization Convention Concerning Indigenous and Tribal People in Independent Countries. This treaty states among other guarantees that indigenous and tribal people benefit on an equal basis with the rights which national laws granted to other members of the population. A recent study on the

\(^{100}\) Gerald Berreman, *Caste and Other Inequalities*, (Folklore Institute (1979) 2.
Northern Hill Tribes of Thailand reported that, “hill tribes in the north of Thailand are not represented politically, suffer traditional discrimination, and are at the mercy of central government control and sometimes corrupt and/or neglectful local authorities. Families are often unable to sustain a viable livelihood and the cultural traditions of their communities are imperiled.” 101

Traditional Thai society had a strong hierarchial character with the King at the top, followed by the royal family, the aristocracy, commoners (phrai) and slaves (thaat). Writing on patterns of slavery in Thailand, Thanet Aphornsuvan observed that: “The dominant form of pre-modern Siam government and rule was codified into a system of social relations known as ‘sakdina’ which divided society into various categories and social statuses. The majority of the population was the peasantry or (phrai). The Phrai could be called upon to perform involuntary labor for fixed periods of time. Being at the bottom of a strictly hierarchial structure made one’s life unworthy in the eyes of others.” 102 Historically, Thailand had a well developed system of slavery and a stratified society that included an impoverished peasant class. In fact, for the lowest class of Thai peasants, living in caste -like systems of exploitation and social exclusion, progress on many fronts has been minimal. “The paradox of the Thai

101 Physicians for Human Rights 2.
abolition of slavery is that the poor families themselves complained about a loss of income and increased poverty and starvation without the protection of the master. After years of third world industrialization, the use of oneself or children, in addition to their labor, as a basis for money income has not yet been totally extinguished. Child slavery and involuntary labor have in modified forms survived from the abolition of slavery right up to the 1990s.”

It is instructive to draw a parallel between the earlier more formalized system of slavery in Thailand and the situation today with respect to the marginalized poor. Approximately 80% of Thai farmers earn less than $350 per year.

Among other factors, a clear link has been established between poverty, particularly rural poverty, and child trafficking. Laura Brace, in examining the politics of property, has observed that, “we need to pay attention to the complex relationship between slavery and property, to recognize the connections between freedom and belonging rather than setting them up against each other.” Both India and Thailand have high incidents of poverty that are associated with subsistence farming. Children from poor, land dependent families do face vulnerabilities that expose them to both deprivation and exploitation. Continuing with this train of analysis, within

103 Aphornsuvan 176.
the Indian context, Amartya Sen has argued that, “when upper caste landowners in Bihar, one of the poorest states, are terrorizing through selective murder and rape, the families of laborers ‘tied’ to their lands, there is the issue of criminality, but underlying the criminal activities, the basic economic situation involves a battle for freedom of employment as well as the ownership of land on which the ‘tied’ laborers are forced to work.” 105

In sum, there is a well documented history of caste oppression and violence in India. Caste-like oppression and violence does exist in Thailand albeit to a lesser extent. What does emerge though, is clear evidence of social exclusion and economic exploitation of marginalized classes in both nations. This reality in turns leads to the increased exposure of vulnerable children to trafficking and severe forms of exploitation.

CHAPTER 2

Caste Oppression and Gender Discrimination: The Linkages to Child Trafficking

Introduction

This chapter explores the perspective that caste oppression and gender discrimination contribute to child trafficking and the attendant enforcement gap. The caste system in India and the corresponding exploitation and marginalization experienced by an estimated Dalit population of 160 million and Scheduled Tribe population of 82 million has been well documented in the literature. Exploitation and violence against these groups is a systemic and historic phenomenon rooted in culture, religion, economics and politics. Thailand does not have a rigid caste system as one finds in India, however there is evidence to suggest that an ‘unofficial’ caste system does exist which affects the ethnic hill tribes in Northern Thailand and to a lesser degree, millions of landless, rural, impoverished peasants, particularly in Northeast Thailand. Aspects of social and economic exclusion are common to these marginalized groups.

In India, the Indian Human Rights Commission, Dalit human rights groups, United Nations observers and other groups have raised repeated concerns over the frequent failure of police officials across India to report and register complaints by Dalits who have been victimized by violence, theft and other crimes. In India, when a crime has been committed, the first step in the judicial process is for the victim to report the crime to the local police detachment. The police file a First Information Report (FIR) which
forms the basis for a criminal investigation. Police across India routinely refuse to file FIRs on behalf of Dalit complainants. Failure by the police to complete FIRs, due to caste discrimination or other reasons, has a profound and negative effect upon the administration of justice. Simply stated, without an FIR registered, an investigation and case cannot proceed.

Moreover, the literature on Dalit human rights is replete with examples of Dalits who have been harassed, beaten and even killed in retaliation for their efforts to seek justice. In most cases, the crimes against Dalits are committed by persons belonging to a caste and therefore deemed to be of higher social and economic standing.

In Thailand, the government of Thaksin Shinawatra, (Thai Rak Thai political party) continued a policy of denying citizenship to several hundred thousand persons belonging to ethnic northern hill tribes. With the military overthrow of Thaksin in 2006, there has been no change to this policy. Denied the basic right of citizenship, these tribal groups encounter legal, social and economic marginalization which dramatically impacts health, income, community development and living standards. A striking similarity related to the caste systems in India and Thailand is the fact that the majority of children in India trafficked into the commercial sex industry (CSI) are Dalits while a large number of children in Thailand’s CSI originate with the northern hill tribes. The incidence of caste oppression and gender discrimination in Thailand and India was discussed in the literature review. In chapter two and three, the focus will be upon
establishing a correlation between; a) gender discrimination and caste
oppression (including poverty) and; b) the prevalence of child trafficking to
the CSI in each state.

India: Caste Oppression, Gender Discrimination and Poverty:
Linkages to Child Trafficking

A study analyzing caste violence by the Center for Development Studies
in India, provides a grim catalogue of the crimes suffered by Dalits
including well documented cases of gender discrimination and violence.
The study provides a useful starting point to the chapter for two reasons.
First, it highlights the deep rooted nature of Dalit oppression in Indian
society and second, it provides a clear picture of the extensive
discrimination and violence which women and girls from this group face on
a daily basis. Commenting on the situation in the state of Andhra Pradesh,
the report cites the following examples: “murder, rape, naked parading of
Dalit women, social boycott, grievous beating, attacking of Dalit bastis,
destruction of properties, harassment due to a love relationship with a
caste Hindu, beating up for riding a cycle or wearing nice clothes, death in
police custody, forceful eviction from house-sites. Attempts by Dalits to
assert their self-respect and to break the taboos imposed by the high castes
are viewed with hostile suspicion and met with violence of various types.”

1 S. Venkatesan, Caste Violence and Dalit Deprivation in India: A
Capability Approach, Centre for Development Studies, New Delhi
Despite the criminalization of discrimination in the 1949 Indian Constitution and the introduction of the Scheduled Castes and Tribes (Prevention of Atrocities) Act in 1989, designed to curtail abuses against Dalits, recent conditions have shown marginal improvement. Particularly in rural India, centuries of traditions involving exploitive relationships have proved difficult to overcome. According to Indian social scientist, Venkatesan, “It is very clear from field results that the atrocities committed on Dalits presents a pattern, which is reflective of continuing influence of the customary rules and norms on the behavior of the Hindu toward the Dalit. The magnitude of various crimes committed against Dalits certainly reflect the incivility and violence character of the caste system.”

Violence and oppression against Dalits and Schedules Tribes is well entrenched in Indian society. Moreover, India has a well established patriarchal society and social, religious and economic practices that often pose obstacles to female development and protection within society. Such a social milieu, therefore, is hostile to the rights of the girl child and women and a major push factor driving child trafficking. It is evident that three major factors: 1) caste oppression; 2) gender discrimination including abuses against the girl child; and 3) poverty, which is a function of caste oppression, intersect as causal factors driving child trafficking in India. As noted by Dr. I.S. Gilada, the majority of trafficked children in India come from the Dalits and from impoverished rural tribal groups.

Venkatesan 4.
This view is reinforced by researchers with UNICEF who indicate that, “rural prostitution in India is rooted in the continued exploitation of the scheduled castes and tribes and the particularly low status of girls within these historically oppressed groups. Some of these forms of prostitution contain the trappings of Hinduism while others emerged from discrete tribal cultures, often grouped today with the scheduled castes.” 3

The practices of the rural, impoverished Rajnat tribe in Rajasthan State, is indicative of the commercial exploitation of girls for financial gain. According to Young and Chernikoff, “the Rajnat tribe inhabits villages scattered along the highways of Alwar district and is economically organized around child prostitution. Other tribes in Rajasthan are similarly organized. Data concerning the number of prostitutes operating in the state are unreliable but key informants estimate that over 30 percent of the total are girls between the ages of 11 and 16.”4 Yet poverty is a crucial factor that contributes to child labor, bonded labor and sexual exploitation.

Studies that have been conducted in various countries, particularly those that are underdeveloped such as India, conclusively show that poverty and child labor are inextricably linked.5 Article 23 of the Indian Constitution specifically prohibits the traffic of human beings and other forms of forced labor. Bonded labor in the CSI is a common form of exploitation for

4 Young and Chernikoff 50.
5 Bajpai 154.
thousands of impoverished girls in India. The intersection of poverty, gender and commercial sexual exploitation does appear to fall hardest upon the girl child.

An analysis of child rights in India observes that: “the plight of the girl child laborer is the worst. She is a child, a girl and a laborer and she faces discrimination on all counts in almost all areas, rural and urban. The significant aspects of girl child labor are, work that does not come under the purview of the law; no identifiable employer; long hours under poor conditions; no skill formation; low pay and low status; physical abuse; sexual harassment and abuse.” 6 Figures on the number of child labors in India vary widely. Tracking is difficult, particularly in impoverished areas and among the Dalits. Moreover, conditions of employment are not easily determined. A recent ILO study placed the number of working children at 23.17 million. 7 Studies addressing women and poverty reflect on the fact that, “the freedom to work outside the home is denied in many third world countries and is itself a major violation of women’s rights and gender equity. This absence of freedom mitigates against the economic empowerment of women and has other serious consequences.” 8 Given the enormous poverty level in India with hundreds of millions of citizens living at subsistence levels, it is clear that the care and feeding of children is a

6 Bajpai 155-156.
8 Sen 115.
burden for millions of impoverished families. This reality exposes children, particularly the girl child, given the culture of gender bias, to economic pressures to assist the family through labor, trafficking or the direction to work where sexual exploitation is likely to occur. The situation facing the girl child from the Rajnat tribe provides a classic example of the connection between poverty and child prostitution. There are also powerful social and cultural factors arising from this practice. For example, there is an expectation, not only among the Rajnats but generally across India, that children are necessary units of labor who must work and contribute to family income. Second, there is a historical religious tradition in India whereby girls are sacrificed for work in prostitution. A case in point is the Devadasi system, where young girls are sacrificed in a religious context to serve as prostitutes for higher caste patrons.

The Devadasi System

The Devadasi system in India dates back to approximately 1000 AD. Devadasi is a Sanskrit word meaning, maidservant to God. Over the centuries, Devadasi has become a ritualized and accepted system for dedicating young girls to an idol, deity or temple.

Once ‘dedicated’, the girls live in the temple under the sponsorship of a patron. Although the system appears religious in nature, to many observers, and viewing the practice from a human rights perspective, it is merely corruption and exploitation perpetrated by the higher castes. The dedicated girls usually have not reached the age of puberty and often range
in age from five to ten years. The first legal instrument to abolish the Devadasi system was the 1934 Bombay Devadasi Protection Act. The Act pertained to what was then the state of Bombay, then under British colonial rule. Today, Bombay (Mumbai) is the largest city in the State of Maharashtra and a leading business center in India. The Act made it illegal to dedicate a girl/women to the temple whether consensual or not. A provision was also designed to override the practice whereby a girl, once dedicated, was forbidden from marrying and effectively tied to her patron until she was released or sold to a brothel. The Act also laid down punitive action against persons found to be involved in the dedication of a girl, no penalty was prescribed against the girl being dedicated. In 1947, the Madras Devadasi Prevention of Dedication Act was enacted. Seven decades after the introduction of the Bombay Devadasi Protection Act, Maharashtra state records confirm, as previously noted, 8793 applications for income support from Devadasis. Other states have higher recorded Devadasi populations. The continuance of the Devadasi system and the attendant problem of child exploitation, trafficking and prostitution expose the weakness of the law enforcement regime in India.

An analysis of the Devadasi system states that, “the Bombay Devadasi Protection Act, the Madras Devadasi, Protection Act and other related legal instruments to protect children from sexual exploitation are not adequate
measures to tackle the problem of innocent female child victims of rape, incest, prostitution, and some lesser types of sex offences.”

Factors that drive child trafficking, such as poverty, gender discrimination and caste oppression are well documented. Legislation without corresponding action and enforcement remains a constant refrain in the experience of the UN and numerous human rights groups in their battle to influence government compliance with international treaty obligations, domestic law and human rights norms. It is well known that the majority of Devadasis come from the Dalit community. “A profile of the district of Kolhapur in Maharashtra state found the following concentrations of Dalits in the Devadasi system: Mahar- 53%; Maratha- 30% ;Matang- 10%; Gurav- 2%; Sutar- 1%. In places where worship of Yallama is in vogue by other castes, the devadasis are all Dalits.”

After the dedication, the patron has the opportunity to sleep with the girl and may choose to maintain a long-term relationship. The sociology surrounding child trafficking in India is a fusion of cultural, economic, religious and social influences. A study on the societal aspects of child trafficking observed that, “The Devadasi system is in reality sacred prostitution where girls are attached to temples for pleasure of the Gods and the privileged class. Although the system is illegal by Indian law, still,

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9 L. Devasia, L and V.V. Devasia 129.
10 Dr. K. Jamanadas, Decline and Fall of Buddhism, (Jabalpur: Ambedkar Library, August 2000) 3.
young girls are seemingly married to the Gods but are actually sold off to the brothels. After its prohibition was passed by the Karnataka government, the number of dedications in the state dropped to 30% even as those in Maharashtra rose by 70%. Again the Indian government has done little to curb such practices and violations.” 11 One of the factors that propel child trafficking in India is the fact that it is a practice with strong religious as well as economic overtones. There are financial rewards for the chain of accomplices engaged in the illicit activity including family members. "There are evident forms of child trafficking in India with religious and community allowance- these include the Bassanis, Joginis, Bhogam Vandhis, Venkatesinis in Andhra Pradesh; the Muralis, Aradhinis and Tamasha girls in Maharashtra; the Thevadiyars in Tamil Nadu; the Bedia, Bachhda and Sansi communities in Madhya Pradesh; and the Nat community in Uttar Pradesh. The community justifies and legitimizes the practice and ultimately many of the victims get trafficked into prostitution.”12

Studies conducted by the National Commission of Women (NCW) and the Joint Women’s Program in the year 2000-2001, calculated the numbers of children involved in the Devadasi system in selected states. In Andhra Pradesh, Maharashtra and Karnataka, the Department of Social Welfare

12 Bajpai 252.
and Department of Women and Child Welfare of the respective states, under the auspices of the NCW, conducted surveys to identify and enumerate Devadasis. According to the data collected, “Andhra Pradesh has a population of 16,624 Devadasis; Karnataka has a population of 22,941 Devadasis. The Maharashtra Government did not provide the information as sought by the Commission. However, it provided statistical data regarding the number receiving the State ‘Devadasi Maintenance Allowance’. A total of 8793 applications were received. In Andhra Pradesh, Devadasi is prevalent in fourteen districts. In Karnataka, the practice has been found to exists in six districts. In Maharashtra, Devadasi is practiced in ten districts.”

Although definitive numbers on child participation in the Devadasi system are not available through government and state records, a strong linkage appears to exist between the Devadasi system and child trafficking and prostitution. In one report, “one-third of the prostitutes in the brothels of Bombay were Devadasis and almost 75% of them were fourteen and under when they entered commercial sex work.” It is estimated that, “500,000 girl children under the age of eighteen are victims of child trafficking in India and approximately 61% of the commercial sex workers belong to the Scheduled Castes, under privileged classes and Scheduled

13 National Commission for Women and Joint Women’s Programme, An Exploratory Study on Devadasi Rehabilitation Programme, (New Delhi, 2002) 5.
14 Defining and Agenda for Poverty Reduction, Vol. 1, 250.
Tribes. Key target groups include women and girls who are unmarried, ethnic minorities, and girls and women from communities where commercial sex work is legitimized.”¹⁵ From a human security perspective, this represents a dramatic absence of basic security and protection which poses serious dangers to life itself.

The Cosmopolitan response of securing and sustaining an international legal regime to enhance protection for children exposed to gross human rights violations is necessary though heavily dependant upon greater influence at the enforcement level and with key state and community actors that can effectuate the implementation of legal safeguards. A dominant theme in the literature is that human rights are essentially guaranteed by the state. This certainly fits with a realist perspective and the notion of state sovereignty over all matters pertaining to the state and its functions both internally and externally. In many respects, the state does operate in the role of *parens patriae*.

It is important to distinguish between child labor and child work. Certainly in the developing world, child work is a function of family survival and difficult to restrain even through legislation. Working children are often a necessary by-product of poverty. What needs to be examined are the terms and environment of that work. Legislating against child work in states like India or regions of Thailand may be laudable yet difficult to

¹⁵ L. Devasia and V.V Devasia 129.
ensure on a practical level. Fyfe, for instance, argues that: “Clearly not all work for children is bad. There is little doubt that many children welcome the opportunity to work seeing in it the rite of passage to adulthood. Light work, properly structured, is not child labor. Child labor is work which impairs the health and development of the child.” ¹⁶

However, the line between child work and child labor is often blurred and where poverty and deprivation are common features of the family environment, exploitation is often evident in harsh forms.

In India, for instance, 132 million children under the age of 14 do not attend school, despite a constitutional requirement to do so. One presumes that many of these children are engaged in the workforce with varying levels of employment, intensity and exploitation. Regulating such children, particularly the most impoverished and those in rural areas, is difficult. A study on the matter notes that, “the majority of child workers are to be found in the rural sector away from official regulation and often working with other members of the family. In part, controls are evaded because there are widespread social and economic interests in so doing. From the perspective of the poor families, the harm that child labor may do to an individual child has to be weighed against the survival of the household.” ¹⁷

Millions of children in both India and Thailand are forced to work

¹⁷ Theorizing Childhood 109.
due to economic necessity. Despite child labor laws in both states, enforcement is sporadic and difficult to monitor. Consequently, these factors expose children to trafficking.

**Child Marriage**

The incidence of child marriage, child dedication through the Devadasi system, child labor at an early age to support impoverished families and other aspects of child exploitation are reflections of social and economic realities in India that persist. The issue of child marriage raises an interesting and valid discussion which bears upon the sexual exploitation of children. The culture of child trafficking and sexual exploitation in India is related in some aspects to the societal custom of permitting children to marry.

Cultural norms that permit females to marry before they reach adulthood may be seen as contributing factors in the commercial sexual exploitation of children. The Child Marriage Restraint Act (CMRA) was enacted in 1929. It is applicable to all Indians and all religions. Under the CMRA, the legal age for marriage for a girl was listed as fifteen and for boys, 18. The Hindu Marriage Act of 1955 maintained the same age restrictions. An unfortunate legal loophole relates to the fact that although the Act declared the solemnization of child marriages illegal but it did not declare the marriages void once they occurred. In 1978, the Child Marriage Restraint (Amendment) Act was passed which raised the minimum age for marriage to 18 for girls and 21 for boys. Since religious custom or ritual, in the case
of the Devadasi system, was historically used as a pretext and justification for child marriage, the amended law effectively criminalized this practice. The fact remains that, “the CMRA is openly flouted with thousands of child marriages being performed. The provision of appointing child marriage prevention officers is not being implemented. For example, in 1999, of 244 cases for trial related to child marriage violations, only sixteen ended in convictions.” 18

The Indian Census of 1991 recorded that, “the percentage of married females in the total number of females in the age group 10-14 was 13.2% in Rajasthan; the highest in the country. In second place was Madhya Pradesh, at 8.5%; followed by Uttar Pradesh at 7.1% ; for the country, the percentage of married women under the age of 18 stood at 53.3%. The situation did not change substantially in the following decade. Census 2001 has revealed nearly three lakh girls under fifteen who have given birth to at least one child; overall 4.9 million females are married underage.” 19

Data collected in the National Family Health Survey in India notes that: “the median age of first cohabitation with the husband is as low as 16 in some states. The percentage of girls getting married by thirteen years is 15.4 %; and by fifteen years - 33.3%” 20

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18 Bajpai 224.
There are differences in the age of marriage from state to state. “Approximately half the women aged 25-49 married before the age of fifteen in Madhya Pradesh (52.6 %), Bihar (51.0 %), Uttar Pradesh (49.7 %), Andhra Pradesh (48.9 %), Rajasthan (47.8 %). About four-fifths of the women of these states - Madhya Pradesh (78.5 %), Bihar (83.9 %), Uttar Pradesh (79.6 %), Andhra Pradesh (79.8 %) and Rajasthan (81.5 %) were married before reaching the legal minimum age of eighteen years.  

The overall concern about child marriage relates to the exploitation of females before they reach the age of adulthood and the aspect of coercion that is evident in these marriages. Moreover, in a broader perspective, this entrenched custom perpetuates the cultural and social view of children as sexual objects. A related issue concerns the pressure upon child brides to become mothers before they leave childhood. The CRC 1989 does not address the topic of child marriage.

Child Abuse and Rape

Many observers of child rights in India report the alarming incidence of child sexual exploitation that exists apart from the well documented commercial sex industry, (CSI). Child sexual abuse and exploitation take many forms. In 1988, the National Institute of Public Cooperation and Child Development, developed a new definition covering child abuse:

“Child Abuse and Neglect (CAN) is the intentional, non-accidental injury, maltreatment of children by parents, caretakers, employers, or others including those individuals representing government / non-government bodies which may lead to temporary or permanent impairment of their physical, mental, psycho-social development, disability or death.” 22

Common forms of child sexual abuse include: “child laborers and young domestic workers used for the sexual gratification of the employer and other adults; children sexually abused within the family, rape within the family, children abused within the context of cultural or traditional practices such as child marriage; children used as attractions in sex tourism, children victimized by the global sex trade.” 23

Studies report similar conclusions that patterns of child rape and abuse are occurring with greater frequency. A study of 245 alleged rape cases referred to the M. P. Forensic Laboratory noted that mostly young women were victimized and the proportion of the aged victims was quite low.“The proportion of the victims of rape is the highest (54.29%) in the age group 7-16 years, while victims below 7 years account for 3.27 per cent. Official data reveal that about one -fourth of the victims of rape were below sixteen years of age.” 24

24 L. Devasia and V.V. Devasia 125.
The link between sexual-physical abuse in the home and child prostitution is an important area for examination. “There are occurrences of sexual abuse and exploitation of children within the family and home though the law in India generally presumes that the guardians of the child are innocent and it takes allot of professional commitment to establish an offence against such guardians. Very often the child is blamed for being sexually exploited, for affecting the honor of the family”  

In India, open discussion of sexual matters is taboo. Moreover, there is a strong culture of shame and humiliation associated with rape. Victims, in the male dominated society, are reluctant to come forward and report the crime. Family pressure may also contribute to the silence of many victims. Children are powerless within the family and easily intimidated. Within India, as in most countries, it is generally assumed by experts that the number of child sexual abuse cases is far greater than the actual number of reported cases. “The study ‘Recovery and Healing from Incest’, reports that, “71 per cent of cases of sexual exploitation and rape occur within the family. In 42 percent of cases, perpetrators are uncles and cousins, while 4 percent are abused by their fathers. The study also revealed that 52 per cent of females fell victim to rape more than once. In 50 per cent of cases, the victim was less than twelve years of age.”  

25 Bajpai 210-211.
A common view in the literature is that the girl child is perceived to be a greater burden to the family than a male child. “Lack of education condemns girls and women to low-skilled labor, and limits options for alternative income generating opportunities. Lack of status, within the family and community, coupled with little or no education, means that women are generally unaware of their rights or entitlements to protection from the law, even when threatened by traffickers.”

Many factors merge to influence child trafficking. Clearly, there are specific variables that have a preponderant influence. The vulnerability of the impoverished female child and a culture that does not fully address issues of sexual abuse combine to victimize millions of children. A noticeable example is found in records on victims of rape by age compiled by the Indian National Crime Records Bureau. Figures from 1990-1998 demonstrate that the crime of rape against children is on a steady upward trajectory. “Rape crimes against children aged 10-16 increased approximately 60% between 1990 and 1998. Rape crimes against children below the age of ten increased by nearly 80% in the same period. Overall, crimes of rape committed against all women as registered in Crime Records Bureau data increased by 50%.”

Despite tougher domestic laws on rape and exploitation and greater international pressures on India from numerous INGOs, the

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27 Combating Trafficking of Women and Children in South Asia 56.
sexual exploitation of minors and adult women is increasing. Gender discrimination is often coupled with economic necessity to drive child trafficking. “The interplay of economic and cultural forces that bear down harshly on the poor and particularly poor girls, render them vulnerable for this type of exploitation. The sexual exploitation of children does not happen in a vacuum but involves a more widespread exploitation of children, sexual and otherwise. 30

A class based system where millions exist at the bottom of the socio-economic ladder fuels acceptance of the exploitation that Dalit and Tribal children routinely face. Due to the caste system, discrimination has been institutionalized within Indian society. This reality has combined with a deeply rooted patriarchal culture to create difficult living conditions and vulnerabilities for the girl child living with poverty and low caste status. Female child abuse is closely linked to gender discrimination which is prevalent in India. This problem is perhaps more acute where poverty is present and there is an element of exploitation for economic gain. The trafficking of girls to the CSI is perhaps the most extreme form of child abuse. Moreover, statistics on child trafficking prosecutions and convictions reveal the low priority this crime has in society and the legal structure.

30 Bajpai 212.
Child abuse and rape is deemed by experts to be vastly under-reported, both in the home and in society at large. “Within the present Indian legal regime, there is no comprehensive law addressing child abuse.” As noted by I.S. Gilada and other experts, the majority of child victims of commercial sexual exploitation and trafficking are Dalits and Scheduled Tribes. They are people who are commonly perceived as marginal in society. Child trafficking and exploitation in the CSI is an extension of child abuse and garners the same low level of concern and preventative action. The absence of strong sanctions against child abuse occurs against a backdrop of serious crime against children as noted in government crime statistics for the year 1999. “This data reveals that children comprise a staggering 20.4 % of all rape victims in the nation. The cases of rape of children below the age of ten years were more than those of 1992 for every succeeding year thereafter.”

“Under the Immoral Traffic Prevention Act of 1986, 75 % of those arrested are females. Victims are clearly being harassed. Under the Prevention of Immoral Traffic Act, 1986, the customer is not an offender. For a fixed sum of money a man can obtain a woman or girl with or without her consent. So what constitutes rape outside the brothel is converted to prostitution inside the brothel and children are deprived of their rights. With reference to child abuse, the law in India generally takes

31 Bajpai 212.
the view that the guardian of the child is innocent and it takes professional commitment to establish such an offence against the guardians.”

There is a growing consensus in the literature on child trafficking enforcement that the criminalization of the victim is a severe hindrance upon curtailing child trafficking and creating a broader victim centered approach. The pattern of criminalizing the victim, usually a female, is perhaps due to both gender discrimination and a patriarchal notion that prostitution does not truly constitute a crime. As we have seen in previous court cases, there is also a prevailing attitude that crimes against Dalits and other low caste members are often not viewed seriously by law enforcement officials, for example the low rate of FIR reports completed by police for Dalits filing criminal complaints. Overall, child abuse, whether in the home or in a more organized setting such as the CSI is symptomatic of gender discrimination, exploitation and weak law enforcement on child protection.

**Poverty and Child Trafficking**

In India, caste and poverty are interrelated. It is also evident that the abject poverty confronting millions of citizens in India, particularly the Dalits, tribal groups and other impoverished low caste persons are significant factors in the trafficking matrix. “Of the 150 million women living at or below the poverty line, about 90% are found in the informal

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33 Bajpai 262.
sector. Sixty million children under six years of age belong to the group where mothers have to work for their survival. “Poverty breeds exploitation. The exploitation may come from within the family or from external sources. Social scientist Narayan Mishra argues that the family is the first agent responsible for the exploitation of children. “It is true that a majority of Dalit families are poor. They subsist on the basis of their labor. They want to earn more to maintain the family. In maintaining the family, they utilize the services of children also for their selfish purpose and do not send them to school. Rather, they are kept engaged in household work and work as labor in the houses of others.”

Dr. Neela Dabir of the Tata Institute of Social Sciences in Mumbai asserts that, “trafficking falls out of poverty. The grass roots reality remains the same. Someone gives a father a small amount of money and he sells the girl. Poverty, corruption and indifference are the key drivers of child trafficking.”

The Indian NGO, SUNLAAP, has done extensive research on patterns of child trafficking and prostitution. Their findings support other research which establishes that children are routinely sold by family members. The findings of SUNLAAP are based upon research conducted in the red light districts of Calcutta. “SUNLAAP has found children from the age of eight

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36 Dr. Neela Dabir, Personal Interview, Mumbai, 26 April 2006.
working as child prostitutes in brothels of particular areas of Calcutta. We have witnessed that several of these children coming from the Murshidabad district of West Bengal have poverty stricken families to look after and the mother or brother from the family generally comes to take the monthly contribution from the madam who looks after the day to day needs of the girl. Young girls are brought and bought by old prostitutes who stop earning and use their rooms to run independent businesses. Established prostitutes bring their sisters, nieces, and village girls into the area, luring them to start earning through the trade.”37

Whether the child is trafficked into the commercial sex industry with the full complicity of family members or lured away under false premises, an underlying factor which drives child trafficking is poverty. The parents and family will often sell a child due to economic hardship. A factor that must also be considered is the reality that many rural poor are uneducated and illiterate. Ignorance is a factor which traffickers exploit with impunity.

In the final analysis, there are key identifiable influences that contribute to child trafficking in India. Strong linkages are evident between; a) caste oppression particularly among the Dalits and Tribal Groups; b) gender discrimination including sexual abuse, child marriage and the Devadasi system; c) the culture of the girl child which is characterized by

exploitation and patriarchal control; d) poverty; and the incidence of child trafficking into the commercial sex industry, (CSI).

Grinding poverty at the village level is powerful factor in the child trafficking matrix. Of a total Dalit population of 160 million, approximately 138 million live in rural areas. Sen presents the position that “real poverty in terms of capability deprivation may be, in a significant sense, more intense than what appears in the income space. This can be a crucial concern in assessing public action to assist the elderly and other groups with conversion difficulties in addition to lowness of income.”

Economically, the Dalits experience the dual disadvantage of severe poverty (life below or at the poverty line) and capability deprivation.

The sustained discrimination and exploitation that Dalits experience is another contributing factor to the conversion difficulties of which Sen speaks. Hence the poverty scenario confronting the Dalits may in fact be more severe than social and economic indicators suggest. Dalit girls form a high percentage of child trafficking victims. This is why the issue of rural Dalit poverty, social and educational development of the girl child and human rights protection at the village level must be the focus of greater attention. The urgency of greater enforcement and prevention vis a vis child trafficking in rural areas and at the village level has been emphasized in a number of interviews conducted in Mumbai. Prerana founder Pravin

38 Sen 88.
Patkar has concluded that, “The enforcement and conviction rate against child trafficking is not relevant because there is not a culture of concern and prosecution. Children and young women are easily available for exploitation. All sensible people want to see progress at the village level. Women and girls have no hope unless corrective action is taken at the village level.”

This is certainly an area where the village councils, Panchayats, which do compose members from the Dalit community, can exert some authority and protective action to protect the girl child from exposure to commercial sexual exploitation and trafficking, CSE&T.

THAILAND

Compelling data exists to suggest that Thai society contains significant barriers for specific groups. Relevant social and economic data includes the following: 1) 80% of farmers earn less than $350 per year; 2) one million Thais fell below the poverty line after the momentous Asian financial crisis and recession began in 1987 according to World Bank estimates; 3) since the formal abolition of slavery in Thailand, modern forms of child slavery still exist today; 4) approximately half of the Northern Hill Tribe population, estimated at 600,000 to 1 million, are denied citizenship in the year 2009, despite promises by the former Thaksin government and subsequent military regime to address the problem; 5) the denial of citizenship to the Northern Hill Tribes profoundly affects mobility rights, employment, health care, human rights protection and legal safeguards.

Approximately 69% of the Thai population are rural and 30% live at or below the poverty line, earning less than 1600 baht per month. The critical question under examination in this chapter is the extent to which caste-like structures and oppression, gender discrimination and poverty facilitate child trafficking into the CSI in Thailand. This is an important exploration to undertake since the linkages may offer instructive guidance on approaches for combating child trafficking.

A report by Terre des Hommes reflects on other contributing issues:

"In addition to the demand for cheap labor created by economic forces, the reduction of infant mortality in various developing countries has increased the number of poor families with large numbers of children. Unable to create new economic opportunities at home, whether in rural Benin, Northern Thailand or elsewhere, sending one or more of the children away often seems a reasonable option."\(^4\) The poorest sectors of Thai society tend to have higher rates of child labor and child sexual exploitation. This reality is certainly evident among the Hill Tribes of Northern Thailand who constitute a significant source of children in the CSI. The places of origin from which girls move into the CSI include rural villages in Northern Thailand and border areas of Thailand with Myanmar, Southern China, Laos and Cambodia. The existence of caste-like features in Thailand is supported by key economic and social indicators. Rising disparities in

\(^4\) Terre des Hommes 28.
income, socio-economic opportunity and education deepen class division in Thai society. “In 1996, the population was approximately 60.5 million. The top 20 per cent of the people in the income pyramid possessed almost 60 per cent of the country’s wealth, whereas the bottom 20 per cent, approximately 12 million people, owned only 3.5 per cent.”

There is also concern that government development projects benefit rural elites and large landowners. An example is the government’s Paddy Price Support Program, which was designed to allow farmers, with the aid of low interest loans, to refrain from selling rice when prices were too low. A reserve fund of 200 million USD was established for the program. In practical terms, the program had limited viability and access for the rural poor. “Few farmers qualify for the low interest loans. After periods of severe drought, most of Thailand’s small farmers particularly those in the Northeast, do not have any rice Paddy to pawn or mortgage. In other words, the loans are contingent on the availability of rice for sale. Consequently, only well-to-do farmers and middlemen, including millers, stand to benefit from the government’s program.”

As defined by the United Nations Committee on the Elimination of All Forms of Racial Discrimination, caste oppression is a form of racial discrimination on the basis of descent and occupation. Such a definition of

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caste oppression applies to the Northern Hill Tribes of Thailand and other marginalized ethnic groups. The denial of voting rights, mobility rights and basic government health care, education and other important services are extreme forms of discrimination, perpetrated by the Thai Government.

**Northern Hill Tribe Oppression and Child Trafficking**

In Thailand, the Hill Tribes refer to a subset of the country’s ethnic minorities who mostly live in the remote northern highland areas of the country. They comprise approximately 1% of the Thai population of 63 million. According to the Asian Center for Human Rights, “The hill tribes who are subjects of Thailand are deprived of birth registration. These children remain most vulnerable to trafficking. The government of Thailand has expressed reservations to Article 7 and 22 of the Convention on the Rights of the Child by stating that “The application of articles 7, 22 of the Convention on the Rights of the Child shall be subject to the national laws, regulations and prevailing practices in Thailand.”\(^3\) The denial of birth registrations has long been an issue of dispute between Thailand and international agencies who regard this policy as a violation of Thailand’s obligations under international law. On August 4\(^{th}\), 2004, key UN agencies based in Bangkok including the Office of the High Commissioner for Human Rights, United Nations High Commissioner for Refugees, UNESCO and UNDP protested this policy to the government of Thailand.

\(^3\)Asian Center for Human Rights, “Trafficking: Beyond Gender” New Delhi, India,(September, 2005) 3.
Isabel Lloyd, an official with UNIFEM in Bangkok, notes that, “on the issue of child trafficking, the difficulty continues to lie with the poor, uneducated and the unregistered. Having no registration can be a life long problem. In 1988, we ran a project on prostitution prevention. We were trying to work with vulnerable families in Chiang Rai where kids are vulnerable to prostitution. Many girls need to help their families. There is a strong economic issue of children being sold by their own families.”

Approximately 377,677 indigenous hill tribe persons have not been granted citizenship in Thailand and are issued different color coded identity cards. Each color signifies the extent of the restrictions on freedom of movement.

“Blue identity cards are used for highland people who were registered in 1993 after a surveying of highland persons was completed in 1991. This card lists where the individual is currently residing in Thailand and restricts all movement outside the surrounding province. To travel out of the province or district, permission must be sought from the district head. Offenders of this restriction face a heavy fine and a jail term. Holders of this card have no right to employment in urban areas, education, the right to buy land or purchase a car. Green cards with a red border further restrict the rights and freedom of movement. Holders of this card are restricted to movement only within their immediate district and offenders are once again subject to heavy fines and jail terms. This card is given to those who

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44 Isabel Lloyd, Personal Interview, Bangkok, 2 May 2006.
were not registered in the first round in 1993.” Persons holding Pink cards, “must seek permission from the district chief if they travel out of the village of sub-district. To travel out of the district, they must seek permission from the governor. To travel out of the province, permission must be sought from the Permanent Secretary of the Ministry of the Interior. Where the hill tribes live, police officers regularly check the transports and demand to check the identification cards of all passengers. The passengers belonging to the hill tribes are addressed as *Khon Tang Dao*, alien people.” Hill Tribe women who do not have citizenship cannot register births or marriages. They are also denied opportunities for education and work and cannot access public health care services, for example the popular 30 baht per visit health care plan that was instituted by the Shinawatra government in 2002 and which has proven popular in rural, impoverished areas. Indigenous girls, especially those with no citizenship and with parents denied citizenship are at a tremendous disadvantage socially and economically and vulnerable to labor exploitation. Many are coerced or pushed into prostitution to earn income. There are strong cultural traditions in Thailand whereby girls are expected to support their family members. Being illegal in the eyes of the government and socially excluded by society at large brings forth conditions for hill tribe girls

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45 Asian Center for Human Rights 3.
46 Asian Center for Human Rights 3.
that heighten exposure to CSE & T. One of the distinct features of caste based systems is that the victims face discrimination within general society and at the institutional level. The discrimination becomes a structural reality. The denial of citizenship, voting rights, mobility rights, health care and other restrictions against hill tribes are perpetrated at the institutional (government) level.

If the government deems a class of people unworthy of the full rights and benefits of citizenship, then mainstream society will be influenced in the way they treat these minority groups. Discrimination that is sanctioned at the state level becomes legitimized. A major argument in this analysis is that features of caste–like oppression and discrimination exist in Thailand, affecting Northern Hill Tribe girls and other impoverished, marginalized groups. These conditions moreover are a key driver of both child trafficking and the enforcement gap.

Experts in the area of child trafficking and human rights, concur that caste-like conditions pertain to Thai society. IOM official Lance Bonneau argues that in Thailand there is an informal caste system, “Thailand is very hierarchical and clearly people from Issan and these poorer areas and Hill Tribes would be viewed as lower class citizens, as it were. So there is a part of that. They would be vulnerable to being exploited. If you are talking
about a possible similarity to the caste system, it would be that they see
themselves as a rung below.”

According to former UN ambassador Vitit Muntarbhorn, “there remain
various issues pertaining to Hill Tribes which still undermine their status.
Number one is birth registration and number 2 is access to Thai nationality
and we have cases where Thai Hill Tribes have their nationality taken away
from them. Now these situations are not conducive to child protection in
general and likewise affect the human security of families and children
might end up in situations of exploitation.” The social exclusion faced by
the hill tribes renders them vulnerable and isolated. They live within Thai
society but exist in a parallel system that does not recognize or protect their
rights.

A survey on trafficking patterns among 225 hill tribe villages reported
that: “ more than one out of three women seeking economic opportunities
away from the village were lured or trafficked or sold by parents for
‘employment’ and ended up in various occupations as prostitutes. Of the
total of 1683 women covered by the survey, 62.5% were 18-25 years of age
and with another 24.4% being 17 years of age or less. The tribes with the
highest concentrations were Lahu (36.6%), Mien (18.7%), Akha
(16.4%), and Lisu (9.8%).

47 Lance Bonneau, Personal Interview, Bangkok, 3 May 2006.
48 Vitit Muntarbhorn, Personal Interview, Bangkok, 6 May 2006.
Research by the Health Project for Tribal People provides some answers on why so many tribal girls and women gravitate by force or otherwise towards prostitution. “Some of the identifiable factors include: 1) lack of agricultural land and the right to farm it; 2) Tribal people have new needs and new desires which cannot be met with traditional ways; 3) Work outside the village including prostitution is economically enticing; 4) Lack of Thai language skills and formal education make it much easier to trick tribal girls and women; 5) Socio-economic changes that surround the highlands have influences as greater dependence on the cash economy has become a reality.”\textsuperscript{50} The survey of five hundred villages provides a clear indication of leading triggers that influence the flow of tribal girls into the CSI. Among the rural poor in Thailand, farming is the dominant industry and employer yet often cannot provide an adequate income for basic needs. The Asian Center for Human Rights reports that, “In July and August 2004, the government embarked on a “New Model Forested Villages” project covering approximately 10,866 villages in 70 provinces. Under this project land that tribal villages had cultivated for more than one hundred years was declared state land and the indigenous hill tribes became illegal trespassers and faced forcible eviction and other penalties.”\textsuperscript{51}

Members of indigenous hill tribes continue to face forced eviction and relocation. Since the rural poor are often heavily dependent upon land and a

\textsuperscript{50} Kirjavainen 12.
farming income, displacement becomes a burden and the demand for new sources of income a potential trigger for child trafficking. The Northern Thai economy is heavily affected by the drug trade and this factor has had an influence upon poor communities such as the Hill Tribes. “Land degradation, lowland incursion, and the loss of opium production in Thailand have led to economic and social breakdown in many minority communities.”\textsuperscript{52} According to research conducted by the UNHCR, “The Northern drug economy has been accompanied by the spread of prostitution as addiction coupled with poverty has led many family members to sell young boys and girls to child traffickers.”\textsuperscript{53} The Thai government has had some success in limiting drug production and trafficking in the Northern regions thus limiting this income source. However, the reduction of drug income, a worthy goal, does create income gaps that may be filled through child exploitation.

Having no citizenship and often without legal land title documents, the affected villagers are easily exploited. The immediate impact of the eviction is loss of work and income aside from the relocation and health challenges suddenly confronting the ‘internal’ refugees. There are other forms of discrimination that are pervasive yet more difficult to substantiate.

\textsuperscript{53} Minorities at Risk Project, Assessment for Northern Hill Tribes in Thailand, UNHCR, (December 2003).
These forms of discrimination may involve education, access to adequate health care, bias in hiring, the deliberate hiring of persons who do not have citizenship, sexual harassment, failure to meet salary obligations and intimidation. Minority and persecuted groups within society face a myriad of obstacles. The connection between child trafficking and lack of citizenship among the hill tribes has been identified by the U.N. Economic and Social Council: “Although hill tribe members were not a large percentage of trafficking victims, they were found in disproportionately large numbers in situations entailing severe forms of trafficking.”

Remnants of Slavery in Modern Thailand – Linkages to Child Trafficking

In Thailand, specific factors contributing to child prostitution differ between regions and often depend on ethnic origin such as originating from Bangkok or northern tribal communities. Poverty and the profitability of prostitution are the main factors that sustain the industry according to an analysis of the global health burden of child prostitution published in The Lancet. “In some communities, prostitution is widely accepted, laws against child prostitution are not enforced, or both. Prostituted children are often responsible for providing financial support (income remittances) to their families.” Accordingly, the reality facing female children in

Thailand who come from impoverished backgrounds, be it Hill Tribe or not, is that they are vulnerable to prostitution merely for economic reasons. In some respects, the practice of child slavery that existed in the Kingdom until 1905 has been adjusted to include a modern underground system of child sexual slavery in the CSI.

The process of abolishing slavery in Thailand included several legislative steps undertaken between 1874 and 1905. King Chulalongkorn, a reformer, found that the notorious Three Seals Law set the value of the slave so high that emancipation was unlikely to happen. The King repealed this law. The next step toward slave emancipation occurred in 1874 with the enactment of the ‘Laws Concerning the Limits of the Age of Servitude and Freedom’.

The law was designed to abolish the legal personal value of the children of slaves. In effect, the new law asserted that a child had no money value until the age of twenty-one. In 1905, the King proclaimed the ‘Abolition of Slavery Law’ thus officially and legally ending slavery in the Kingdom. Thai historian Thanet Aphornsuvan asserts that abolishing slavery did not bring comfort to the peasants. It had the opposite effect for economic reasons. “For them, the end of freedom to sell children or wives spelt poverty and starvation for the family as a whole. They lamented that children of the poor would always be poor all their lives because nobody
would trust and lend money to them in lieu of a personal mortgage.”

One hundred years after the formal abolition of slavery in Thailand, one could argue that modified forms of slavery still exist.

**Village Poverty – Linkages to Child Trafficking**

Lin Lean Lim, Deputy Director of the Bangkok Office of the International Labor Organization, asserts that, “although absolute poverty has declined, social safety nets are still largely absent and income inequalities remain wide. Rural families remain larger than urban ones, with more mouths to feed. Since social welfare programs are generally rudimentary, or inaccessible to rural families, these families still rely on survival strategies that can include selling children into prostitution.”

There appears to be three major groupings of girls trafficked into the CSI. The first includes those from the historically impoverished Northeast, the second includes the Northern Hill Tribes, an ethnic minority group within Thailand and the third group includes impoverished children from other rural/urban regions in Thailand. Data suggests that the majority of girls trafficked are Hill Tribe and children from the northeast. Methods of trafficking into the CSI are varied and complex but can be divided into five main categories: 1) children lured away with false employment offers; 2) children sold by parents for work in what is believed to be legitimate

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56 Aphornsuvan 176.
employment 3) children knowingly sold/trafficked by parents or relatives into the commercial sex industry; 4) children who leave the village/urban home seeking a better quality of life and income and gravitate into the CSI; 5) children kidnapped and trafficked into the CSI. Research on child trafficking reveals definite patterns of family and community complicity in cases of trafficking.

A survey undertaken on rural high school children about the dangers of child trafficking is illustrative. “According to many of the students and adults, the agent today is likely to be an ex or current sex worker and someone known to the girl. A quarter of the student essays mentioned relatives or friends who are sex workers trying to persuade children to enter this work.”

Further evidence of rural family/community acquiescence in child trafficking is provided through research conducted by the Bureau of Democracy, Human Rights and Labor. “Sometimes villagers saw the local trafficker as friends offering a way out of poverty. Typically, local traffickers fed persons into larger networks, after which they exercised no further control heard no more of them.”

There are clear links between poverty and child exposure to trafficking whether it be from family members or agents. Children in Issan and the Northern Hill Tribe region

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are extremely vulnerable to this form of exploitation. Issan is notable for severe poverty and is a source region for child trafficking victims. “The average income of a household in Issan, the most poverty-stricken area in northeast Thailand, is one-tenth of that in Bangkok. Seventy per cent of Issan farmers have incurred debts which they seek to repay by selling their daughters to brothels. Hill Tribe people in Northern Thailand who have been left out of Thai economic development, are driven to escape their extreme poverty by sending their daughters to brothels.” Further examination of the issue leads to a consideration of two salient points. First, that family complicity is evident in many cases of child trafficking or involvement in the CSI. Second, enforcement against child exploitation takes on a more complex nature when authorities have to address the issue of family influence and coercion over the child. Was the child pushed into the CSI or did they enter willingly after running away from home - these are valid questions which bear upon the enforcement gap.

It may be difficult, for instance, for a daughter who has been trafficked to testify or file a complaint against a family member who was responsible for her entry into commercial sex work. Family loyalties may be difficult to break even in cases of abuse and exploitation. This is a routine problem that law enforcement officials encounter.

Lance Bonneau has addressed this very point, “the biggest challenge that I hear from law enforcement officers when they talk about trafficking is that they never see results because trafficking is a very difficult case to prosecute. Allot of it hinges on victim testimony and you can’t get them. It is so hard to get any clarity from the victims.”

**Gender Discrimination in Thailand – Linkages to Child Trafficking**

Although Thailand has made significant progress in reducing gender discrimination among the middle and upper classes, among the poor and largely rural population, female children face a variety of obstacles which directly expose them to sexual exploitation. The girl child in Thailand is governed by a strong sense of duty to family and community and a feeling of subservience that is inculcated through societal norms that reinforce patriarchal values. A study by the Gender and Development Research Institute in Thailand suggests that, “powerful social values that undermine females have an impact on sexual exploitation and sexual trafficking in the country. The rigid division of labor has placed women as homemakers whose boundary is within the household rather than the public arena. In the existing value of patriarchal domination, women are portrayed as sex objects. This leads to prostitution, trafficking and sexual violence.”

If a family is poor and cannot afford to educate the child, the boy can gain an education through the temple (Wat). Among impoverished families,

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61 Lance Bonneau, Personal Interview, Bangkok, 3 May 2006.
62 Bhongsvej 33.
whether rural or urban, financial resources are meager and usually preclude the education of more than one child. In such cases, education is usually reserved for the male child. In Thailand, girls do not have access to religious training and will receive minimal or no education if the family is poor but are expected to support and care for aging parents and often other family members. “Due to the effects of globalization and rapid industrialization, the traditional routes for women to earn money within the villages or to contribute to the welfare of the family by working the rice fields, are shrinking. Especially if poverty is an issue, girls and women often find themselves lured or sold into prostitution or some other exploitive income generation activities such as sweatshops, in order to fulfill their familial obligations and to ‘make merit’ for themselves and their families by providing for aging parents.”

If a girl is poor and largely uneducated, the financial obligation to support the family is difficult to achieve. The commercial sex industry in Thailand, centered in larger towns, cities and resort areas, provides an outlet for girls to gain higher levels of income. A joint study on children in prostitution by ILO-IPEC, concluded that, “daughters are brought up to believe that they must earn income to support their families by any means available to them. This social value is so ingrained in Thai society that it has created a concept of obligation to support the family economically,

63 Norsworthy 149.
*todtan bunkhun*, or repaying the breast milk. Combined with increased consumerism and materialism, this has created an atmosphere in certain parts of Thai society where prostitution is considered acceptable."^{64}

In Thailand, there are indications that ‘*tok khiew*’ has been on the rise in poor villages. “This is a common agricultural term that refers to a deposit for cash loans. Increasingly the same term is used when transacting loans for children. When an agent shows interest in a girl of about 9 or 10 years old, he or she will place a down payment with the girls’ parents. When the girl reaches 12 or 13, the rest of the agreed upon loan is paid to the parents. Since their parents or relatives receive advance payments, the children are held in debt bondage by the brothel owners, agents or pimps.”^{65}

In Thailand, as in many countries, child abuse appears to be a deep rooted problem and often hidden from public view. Thai law provides for the protection of children from abuse. The laws on rape and abandonment, as noted in chapter one, carry harsher penalties if the victim is a child. However strict the laws may be, the difficulty lies in the enforcement. The Thailand Human Rights Report stated that, “During 2005, police were reluctant to investigate abuse cases and rules of evidence made prosecution of child abuse difficult.”^{66} A major study on prostitution in five countries

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^{65} The Sex Sector 181.

including Thailand revealed that a high percentage of prostitutes had suffered physical or sexual abuse or both as children. Of the Thai female respondents sampled: “56% had experienced current or past homelessness; 40% as a child had been hit or beaten by a care giver until injured or bruised and 48% experienced sexual abuse as a child.” A link is evident between sexual and/or physical abuse at home and involvement in the CSI.

Recent studies by the United Nations also draw a parallel between child abuse in the home and the subsequent entry of the child into the CSI. According to Mr. Kim Hak-Su, Executive Secretary of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), “Sexual abuse is one of the most hidden and under reported forms of sexual violence in Asia. Sexual abuse occurs predominantly at the hands of a family member or an acquaintance whom the children know and trust. And while the majority of victims of sexual abuse were girls aged 6-12 in the Greater Mekong Sub-Region and 10-15 in South Asia, we found cases of sexual abuse of girls as young as four years old. These children often run away from home and enter prostitution or are sold by their families.”

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Data compiled by the Royal Thai Police for the year 2544-2545,(2001-2002) indicate that 0.6% of reported rape suspects were arrested. This data reinforces two key points: first, sexual crimes are rarely reported and second, that when reported and acted upon by police, the arrest and conviction rates are extremely low. The preceding discussion has examined the linkages between 1) caste-type oppression; 2) poverty; 3) gender discrimination in Thailand and child trafficking into the commercial sex industry. Child trafficking in Thailand is recognized as a serious problem with a complex array of forces that drive it. The recognition of these linkages is a vital step forward in the process of analyzing the enforcement regime in Thailand, its weaknesses and subsequent areas where reform is necessary.

In conclusion, there are powerful social and economic pressures that enforce caste discrimination in India. These pressures do exist in Thailand though at a lower level and in less structured patterns. These conclusions relate to the important functional reality concerning the place of a citizen or person (thousands of Northern Hill Tribes are denied the elementary right of citizenship in Thailand) who comes from a marginalized group, within the wider context of public citizenship and societal participation. Citizenship implies rights, associations, obligations, participation and protection. There are standards to which a citizen in a democracy has some entitlement to claim. This is not the case with respect to specific groups, as

noted, within Thai and Indian society. Historically, under Roman law, a
citizen could expect protection from the state and the freedom to participate
freely in many aspects of societal life. Walzer argues that this legal status
signified a special attachment or bond between the individual and the
political community. In general, it entitled the citizen to “whatever
prerogatives and whatever responsibilities that [we]re attached to
membership.” In practice, particularly with respect to marginalized
groups within underdeveloped civil and democratic societies, citizenship
rights are layered and though constitutionally articulated, unevenly applied.
With reference to the Northern Hill Tribes and impoverished citizens in the
Northeast of Thailand, as well as the Dalits and Scheduled Tribes in India,
there is both severe economic deprivation and the reinforcement of ethnic
and cultural discrimination by the dominant classes.

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70 Michael Walzer, “Citizenship,” Political Innovation and Conceptual
Change, eds. Terrence Ball, James Farr and Russell L. Hanson (Cambridge:
Cambridge University Press, 1989) 211.
CHAPTER 3

THAILAND: LAWS RELATED TO CHILD TRAFFICKING AND PREVENTION

Introduction

The creation of a legal regime to codify child trafficking offences and apply judicial punishment against offenders is a complex process. In legal theory, the term ‘legal moralism’ refers to the establishment and enforcement of community standards that are subsumed into law. Thus varying approaches to child rights, in both Thailand and India, are reflected in the laws, which are enacted, and the effectiveness of the enforcement regime. Accordingly, the judicial process of law making and enforcement does not and cannot operate in isolation from other powerful societal influences such as culture, caste discrimination, gender beliefs, religious practices which have a bearing upon the context and utility of varying child protection laws and government initiatives.

In chapter three, an examination will be undertaken of Thai laws which focus upon child trafficking issues, the sexual exploitation of children and the punishment of offenders. The chapter will also examine subsidiary laws, which relate to offences not directly linked to child trafficking but which may still have a deterrent effect on the problem.

Prostitution in Thailand, is a conflicted socio-economic reality. It is morally condemned by many yet tolerated and encouraged by powerful sectors in society for financial reasons. Indeed, if one examines the Entertainment Places Act of 1966, it provides a clear example of
complicit government involvement in and support of the commercial sex industry. The Act was designed to open the door for brothels to be legalized in the form of massage parlors, bars, nightclubs, tea houses and related venues. It was enacted at a time when the Thai government was seeking to capitalize on the rest and recreation activities of American soldiers on leave from the Vietnam War. The Act defined the various types of “entertainment places” and allows such places to operate only under a license administered by local police stations. Although the Act stipulates that women must be at least 18 years of age to work in these establishments, the penalty for employing underage girls was set at the nominal amount of 2000 baht.

The 1966 Act was significant for three reasons. “First, it established an informal link between the commercial sex industry and the government, who were intent on encouraging the commercial sex industry to support significant revenue generation and the associated interests of varying business classes. Second, the Act furthered the involvement of the Thai police in the regulation and administration of prostitution, through the granting of licenses. Third, The Act in some respects encouraged child prostitution. Police and policy makers were no doubt aware that underage females were employed in large numbers in entertainment establishments. The Act, by setting the penalty for employing underage girls at such a low
amount, encouraged this type of practice to continue.” The complicity of
the police in the operation of the commercial sex industry and the high
incidence of corruption has been well documented in the literature on
corruption and the CSI in Thailand. There have been numerous incidents
where police have themselves been involved in child trafficking or
involved in the protection of child traffickers.

Article 53 of the Constitution of the Kingdom of Thailand promotes
action to combat violence affecting children. Translating national
objectives into effective law and policy has posed a challenge, particularly
with respect to the protection of children from exploitation. In recent years,
the Thai government has demonstrated an increased public commitment to
addressing the issue of child trafficking. There are several major
government initiatives designed to combat child trafficking as set forth in
this section.

The National Policy and Plan of Action for the Prevention and
Eradication of the Commercial Sexual Exploitation of Children

This was implemented in 1996. The Plan was implemented in large part
as a response to the adoption of the 1989 CRC by the Thai Government.
The Plan was designed to address prevention, suppression, protection and

1 UNIFEM Gender Fact Sheet No. 2, Trafficking in Women and
rehabilitation issues and to establish administrative structures to effectively achieve these goals. The Ministry of Justice established the **Plan for the Protection of the Rights of Children, Youth and Family for 1997-2006**. Under the Plan, three categories are children are targeted for assistance; children at risk of breaking the law; child offenders and Children who are victims of abuse, child labor and sexual exploitation. In March of 2005, the Thai Government established the **National Commission on the Suppression of Human Trafficking**. Also in 2005, Thai Prime Minister Taksin Shinawatra launched a 500 million baht fund to assist with the rehabilitation of victims of trafficking.

**The National Plan on the Prevention and Solution of Children in Especially Difficult Circumstances, 2002-2006.**

This Plan is targeted towards improving the quality of life of CEDC and to prevent children at risk from falling into especially difficult circumstances. The plan contains several broadly based preventive and protection measures, which are designed to: 1) Strengthen families and communities; 2) Develop systems to rescue, protect, rehabilitate and reintegrate child victims; 3) Develop the quality of social services 4) Develop management and administrative mechanisms; 5) Improve legal measures.

**The National Plan and Policy on Prevention and Resolution of Domestic and Cross- Border Trafficking in Children and Women.**

This initiative was launched in 2002 and is designed to replace the National Policy and Plan of 1996.
A significant piece of legislation in Thailand is The Child Protection Act B.E. 2546 (2003) which became law on March 30th 2004. The Act contains a number of provisions designed to advance the rights, welfare and protection of children. Under the Act, a child is defined as a person under the age of eighteen and eligible for protection and welfare assistance in compliance with the principles of non-discrimination and the best interests of the child. The Child Protection Committee, created by the Act, is designed to monitor and evaluate the implementation and effectiveness of the Act. “Under the Act, the following conduct is forbidden; Acts which result in torturing a child’s body or mind; Force or induce or allow a child to adopt behaviors and manners which are inappropriate or likely to be the cause of wrongdoing; Force, threaten or induce actions that allow a child to become a beggar, live on the streets, or become exploited; Use or employ a child in any way that may physically or mentally harm the child; Sell, exchange or give away liquor or cigarettes to a child.”2

Children in need of physical protection, specifically related to the children that are trafficked, are defined under the Act as “tortured children, children vulnerable to wrongdoing. A child at risk of ‘wrongdoing’ means a child who behaves inappropriately who is engaged in occupational activities or in the company of persons that appear likely to induce such

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child into committing unlawful or immoral acts.”

According to the Thai National Council for Child and Youth Development (NCYD) and the Center for the Protection of Children’s Rights (CPCR), “the Act has the potential to be one of the most effective legal tools to raise awareness to the general public to submit complaints on cases of violence against children. Moreover, under the Act, persons acting in good faith and reporting abuses against children will not be held liable for any civil, criminal or administrative action.” Through legislation and government policy and programs the Thai government has displayed a growing sensitivity to the problems faced by marginalized children. A specific category of children, referred to as ‘children in difficult circumstances’ was identified in the draft report on the situation of children which was prepared by the Ministry of Social Development and Human Security in July 2004. The draft report identifies sixteen categories of children in difficult circumstances. These categories include:1) Orphaned children, particularly those orphaned due to HIV/ AIDS; 2) Abandoned children due to teenage pregnancy or unprepared mothers; 3) Abused children, by family members or relatives; 4) Sexually abused children, with the numbers rising among young children; 5) Children addicted to drugs, alcohol and cigarettes; 6) Street children; 7)

3 Anti-child Trafficking Legislation in Asia 113.
7) Trafficked children both Thai and non-Thai from neighboring countries; 8) Children with disabilities; 9) Child labor; 10) Children in the juvenile justice system, mostly aged 15-18; 11) Displaced children, 0-12 years, numbering about 40,000 as of 2003, in nine refugee centers around Thailand; 12) Children of hill tribe ethnic minorities, many of whom have no citizenship or birth registration; 13) Children in slums estimated at 2 million in 2003 from the total slum population of 5.13 million; 14) Children without nationality of the hill tribe and ethnic groups, of refugees and nomadic Thai people; 15) Children of construction workers which is on the increase; 16) Children stricken by poverty due to the uneven distribution of wealth, increase in household debts and financial crisis; 5 Under section 7 of the Child Protection Act, a National Child Protection Committee was established composed of the Minister of Social Development and Human Security as Chairperson of the Committee. The Act also established the Bangkok Metropolis Child Protection Committee and the Provincial Child Protection Committee with high-level representation. “Under article 8 of the Child Protection Act, a child development fund has been established with the sum of 30 million THB. The government also allocated a budget of 250 million THB for the 2005-2007 period as part of the integrated plan on human trafficking.” 6

The Prevention and Suppression of Prostitution Act B.E. 2539

Adopted in 1996. In the Act, ‘prostitution’ means the: ‘The Acceptance of sexual intercourse, the acceptance of any other act, or the commission of any act for sexual gratification of another person in a promiscuous manner, in order to gain financial or other benefit, no matter whether the person who accepts such act and the person who commits such act are of the same or opposite sex.’

Key portions of the Act center on the protection of children from commercial sexual exploitation. Moreover, the Act states that children require greater protection from both strangers and family members who may be in a position to exploit them. Notable sections include:

“Section 8: Any person who in order to gratify his or her sexual desire or that of another person, has sexual intercourse or acts otherwise against a person over fifteen but not over eighteen years of age in a prostitution establishment, with or without his or her consent, shall be liable to imprisonment for a term of one to three years; Section 9(1): Any person who procures, seduces or takes away any person for the prostitution of such person, even with her or his consent, shall be liable to imprisonment for a term of one to ten years; Section 9(2): If the offence is committed in relation to a child not over fifteen years of age, the offender shall be liable to imprisonment for a term of ten to twenty years. Section 10: Whoever is the father, mother, or guardian of a person not yet over eighteen (18) years

of age, with the knowledge that there is the commission of the offence as specified in the second third, or fourth paragraph of Section 9 against the person within his or her guardianship, colludes with another offender in the commission of that offence, shall be punished with imprisonment of four to twenty years, and a fine of eighty thousand to four hundred thousand baht.

Section 11: Whoever is the owner, supervisor, or manager of a prostitution business of a place for prostitution, or controller of a prostitute in the place of prostitution, shall be punished with imprisonment of three to fifteen years, and a fine of sixty thousand to three hundred thousand baht.

If the prostitution business or place for prostitution as specified, has a person not yet over eighteen (18) years of age performing the act of prostitution in such place the offender shall be punished with imprisonment of five to fifteen years, and a fine of one hundred thousand to three hundred thousand baht. If the prostitution business or place for prostitution as specified, has a child not yet over fifteen (15) years of age performing the act of prostitution in such place, the offender shall be punished with imprisonment of ten to twenty years, and a fine of two hundred thousand to four hundred thousand baht.”

Section 12 of the ‘Prostitution Prevention and Suppression Act’ states: “Whoever detains or confines the other person, commits any other act that deprives the liberty of the other person, assaults the other person, or

threatens with any other means to use physical force to commit a violent act against the other person, in order to force the other person to perform the prostitution activity, shall be punished with imprisonment of ten to twenty years, and a fine of two hundred to four hundred thousand baht. If the commission of the offence as specified in the first paragraph causes to the other person: 1) serious bodily injury, the offender shall be punished with life imprisonment. 2) death, the offender shall be punished with the death penalty or life imprisonment.” ⁹

The term “with or without his or her consent” in the Act is a key legal provision providing protection for the child. A child is not in a position to consent to any form of sexual exploitation and thus the clause serves to criminalize the conduct of those who coerce children into prostitution. Moreover, in the literature on child trafficking in Thailand, there is ample evidence, that family members or relatives have sometimes been complicit in the trafficking and exploitation of children. This practice is usually symptomatic of poverty and the need to support the family unit through whatever means are available. Section 10 of the Act places severe penalties upon family members who knowingly coerce the child into prostitution and sends forth a powerful message, at the village level and beyond, that such practices are not only illegal but risk prohibitive financial penalties.

Although the Act stipulates that prostitution is illegal, the penalties for

the prostitute have been reduced. An important step is the recognition that if a person is forced into prostitution, they are deemed to have committed no offence. The Act is also important for its expression of support for the rehabilitative process vis a vis prostitution victims. All prostitutes under the age of 18 receive protection and vocational development for a period of up to two years. The recognition of child prostitutes as victims and the provision of rehabilitation services signals a more progressive and rights-based approach to the issue of child prostitution. Section 11 of the Act specifically targets the owners and managers of prostitution establishments. In former times, the employment of minors in prostitution may have been prosecuted, if at all, on the basis of under-age labor code violations.

Article 12 of the Act targets the involvement of corrupt government officials and police in the commercial sex industry. Many observers of the commercial sex industry in Thailand point to police corruption and the complicity of public officials as barriers to effective enforcement. According to the Act, if an offender who involves someone in prostitution, “is an administrative or police official or a competent official or an official of a Primary Admittance Center or an official of a Protection and Occupational Development Center under this Act, such person shall be liable to imprisonment for a term of fifteen to twenty years and to a fine of three hundred thousand to four hundred thousand baht.”

One of the

overriding features of the Act is that it represents a more concerted effort to combat the perpetrators of human trafficking and prostitution. Thai lawmakers, through the Act, have adopted a trilateral approach that specifically targets: parents and family members; owners, operators and managers of prostitution establishments and: police and government officials who are involved in the commercial sexual exploitation of children. An important element of the 1996 Act is the focus on the organizers and profiteers of human trafficking rather than on the prostitutes, who are increasingly identified as victims in the prostitution matrix. A review of new legislation and initiatives would suggest that the Government of Thailand is increasingly adopting this view. Following the 1996 Act, there were two additional legal developments that provided weight to law enforcement efforts against child trafficking.

**The Prevention and Suppression of Trafficking in Women and Children Act, B.E. 2540 (1997)**

This Act was designed to replace the Trafficking in Women and Girls Act of 1928. Under the Act officials have more power to search and inspect establishments suspected of CSI involvement or activity. “The Act criminalizes the acts of trafficking, the buying or selling, vending, bringing from or sending to, receiving, detaining, or confining any women or child to act or receive any act, for sexual gratification of the third person, for an indecent sexual purpose or for gaining any illegal benefit for him/herself or
another person, with or without the consent of the women or girl.”

The Act provides clear sanctions against buying and selling of persons and links such acts to only one end product of trafficking, namely, sexual exploitation. While this, in itself, is a positive development, there are still weaknesses inherent in the Act. The Act does not criminalize the other end products of trafficking such as bonded labor. Moreover, the bonded or exploitive labor of children is often a transition step into commercial sexual exploitation. Furthermore, the Act states that committing any one of these acts for the purpose of “gaining any illegal benefit for him/herself or another person” is also identified as an end purpose. According to the ILO, “this provision will actually make prosecution harder as proof of benefit would have to be presented. Rather, if the Act had merely stipulated the Commission of certain acts as attracting penal sanctions there would be no need to prove the offender obtained benefit, only that the acts took place.” The concerns expressed by the ILO raise a valid point that the burden of proof may have been raised unnecessarily high thus making the prosecution and eventual conviction of traffickers more difficult to obtain.

Under Section 10 of the Act, an official, “defined in the Act as “a government official not lower than the third level, or the superior

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administrative or police official appointed by the Minister for the execution of this Act”, to detain a child for the “benefit of prevention and suppression of the offence” or for “rescuing a child who may be a victim of such offence” for not more than half an hour. Authority may be granted to detain the child for not more than 24 hours.”

One of the problems inherent in this section of the Act is that the definition of a government official is too broad thus granting a broad range of persons the power to detain a child. Without judicial and close administrative oversight of these officials there is the potential for abuse of power to the detriment of the children they are designated to assist and protect. In many jurisdictions, courts have had to rule on the issue of administrative abuse of power by government officials. In the Thai Act, the definition governing who has the authority to detain a child and who is qualified to render such determinations is too general. The International Labor Organization has raised concerns about police and official complicity in child trafficking. “Regardless of the fact that numerous NGOs have cited the corruption of officials as the prime reason behind the prevalence of the trafficking problem, this Act continues to grant substantial power to the officials with no regard for oversight.”

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13 Anti-child Trafficking Legislation in Asia 101.
14 Anti-child Trafficking Legislation in Asia 102.
Another key piece of legislation addressing human trafficking is the **Prevention and Suppression of Human Trafficking Bill of 2003**. The Bill was approved by the Thai Cabinet in 2005 and referred to the Council of State. The Bill was designed to amend the Prevention and Suppression of Trafficking in Women and Children Act of 1997. One of the complaints against the 1997 Act was that it focused primarily upon trafficking for sexual purposes to the exclusion of other forms of trafficking, such as bonded labor. Under the amended legislation, the terms of reference for human trafficking have been expanded. The new definition of human trafficking is: “the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability of the giving or receiving payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. The consent of a victim of trafficking in children and women to the intended exploitation shall be irrelevant where any of the means aforementioned have been used.”

Another important feature of the new Bill is that it is designed to afford greater protection for victims and their right to privacy, thus addressing the concerns of many child rights advocates. The Bill enforces a publication ban on the names and pictures of victims. Many victims of trafficking

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15 Anti-child Trafficking Legislation in Asia 103.
are reluctant to cooperate with the authorities due to fear of reprisals. Since the vast majority of victims are poor and marginalized, often from the villages in the Northeast or from the Hill Tribes where citizenship itself is denied to many, the concept of having rights and seeking redress through the legal system when human rights violations have occurred is alien. An open court proceeding that involves family members brings added stress and shame to the victim.

According to Bonneau, “an issue which is a big hindrance to law enforcement, is cooperation of the victim, who do not see themselves as victims of trafficking. We come across cases where people feel, yes, I know I was exploited and I know bad things were done to me, but I just want to get out of this situation and hopefully the next time won’t be so bad. So if you are in law enforcement and trying to pursue a case, and you have that type of attitude, it is obviously going to be very difficult to put a case together.”

The point is reinforced by Melinda Macdonald, program director with SEARCH in Bangkok who observed that: “Shame is an issue. There is a reluctance to push therapeutic models. Families want to push away the problem of child trafficking. We work in an individualistic culture. Human rights, individual viewpoints, the self, are western ideas. In Thailand, self is family.”

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16 Lance Bonneau, Personal Interview, Bangkok, 3 May 2006.
17 Melinda Macdonald, Personal Interview, Bangkok, 4 May 2006.
There are number of additional legal initiatives designed to curtail human trafficking. The Penal Code Amendment Act (No.14) B.E. 2540 (1997) provides for revisions to the Penal Code to cover violations connected to human trafficking and to set appropriate penalties for those offences. The Penal Code Amendment Act decrees that: committing a sexual offence covers those who procure, lure or traffic either boys or girls for gratification of another person; -children under the age of 18 are protected, with heavy punishment including imprisonment, and a fine, for offenders; - those who gain benefits from sexual offences are subjected to imprisonment, a fine or both; Thailand can prosecute every offender, no matter where the offence is committed, or what the nationality of the offender. Section 277 of the Penal Code (criminal code) of 1956 stipulates that sexual intercourse with a girl below 15 years of age is regarded as statutory rape, regardless of her consent.\(^{18}\)

The Penal Code Amendment Act contains a highly questionable provision relating to child rape, which calls into question the full protection of the girl child under Thai law. As noted in the previous section, and discussed at length in the literature review, Thailand has a predominantly patriarchal culture, which has tended to reinforce discrimination against the girl child. Of particular concern is the extent of exploitation, which many impoverished and rural female children are exposed to. Under section 277

of the Act addressing statutory rape: “If the offence is committed to a girl of 13 to 15 years of age, and the court later allows the offender to marry the victim, (with parental consent), the offender is not punished.”

Section 277 is problematic for three reasons. First, it would seem to violate a number of articles under the Convention on the Rights of the Child, namely Articles 2 and 30: addressing non-discrimination; Articles 19: addressing protection from abuse and neglect; Articles 34: addressing sexual exploitation; and article 40: addressing the right of a child to dignity and worth. There may even be compelling legal reasons to judge this provision of the Act as representing a violation of Article 21 of the Convention, which relates to illegal adoption. Second, section 277 does not take into account the wishes of the child and the conditions, which have brought her into a position of ‘forced marriage.’ It would therefore appear to be a set back for child rights. Family obligation is a very powerful influence in Thai culture. The girl, who has been assaulted and then pressured into a marriage, perhaps owing to a financial settlement between the victims’ parents and the abuser, will likely feel compelled to follow family wishes. Third, section 277 may have a tendency to corrupt the administration of justice owing to the fact that the abuser can offer financial inducements to the family to drop the suit and accept a marriage proposal instead. Moreover, from a police viewpoint, the case could be expeditiously closed.

Fourth, the rights of the child are in danger of being diluted by the courts in favor of an agreement between the parents and the abuser. Instead of judging the case of child rape on the basis of its own merits and the evidence thereby presented, the courts are setting an unfortunate precedent of subjugating the child’s rights to accommodate a settlement between adult parties. Even if the child is opposed to the marriage, family and societal pressure may induce the girl to accept the marriage.

The Criminal Procedure Amendment Act of 1999 and the Criminal Procedure Code

Many provisions of the Criminal Procedure Code have been amended to include procedures that would assist in the reduction of trafficking as well as the protection of victims. The Code provides that: “The statement of trafficked women and children shall be promptly taken upon rescue; The victims shall be sent to a primary shelter after the statements are taken; If the victims are foreign women or children, the police inquiry official shall make a proposal to the immigration officials to grant leniency to the woman or child; The trafficked victims may be detained for factual clarification for a maximum of half an hour. If necessary, the detention may be extended to 10 days provided that the permission of the Director General of the Police Department is obtained; During the initial inquiry, investigation and trial, the police inquiry official shall inform the Public Welfare Department or a non-governmental organization to provide or arrange to have an official experienced in working with women and
children such as a social worker or psychologist participate in such proceedings. In addition, the use of an interpreter is permitted, if they cannot speak the national language; The Trial can be conducted behind closed doors if it is “in the interest of public order or good morals.” In an effort to protect the privacy of the child and reduce the threat of intimidation, the law allows for the statement of the child to be taken in privacy and with the assistance of a psychologist or social worker and a person, usually a family member, who the child has requested to be present. In recent years, through various laws and initiatives, the Thai government has shown sensitivity to the psychosocial aspects of child rehabilitation from sexual exploitation. The judicial process can be an intimidating and frightening experience for a child. In order to minimize such trauma on the child, provision has been made for the child to avoid appearing in person in court, and having statements recorded for use in court through video and audio recording. Since children induced into exploitive labor situations can be coerced into the commercial sex industry, it is instructive to examine key provisions in Thai labor law that attempt to protect children from labor exploitation.


20 Criminal Procedure Code and Section 5-10 / Criminal Procedure Amendment Act of 1999, Section 13
Youth Development (NCYD) and the Thai Center for the Protection of Children’s Rights (CPCR) draws a parallel between child labor exploitation and child trafficking.

The Report offers a blunt assessment of the progress Thailand has achieved in combating these pervasive problems. “The economic exploitation of children remains a problem. Children continue to be at-risk by exploitive labor. Profits from human trafficking are enormous. But its penalty for human trafficking is light compared with trafficking of drugs. The sale and trafficking of children including adolescents and women for commercial sex and forced labor, both domestically and cross borders are extensive. Law enforcement to criminalize and penalize criminals is inadequate. Coupled with corrupt practices by the authority concerned and the vulnerability and ignorance on the victims’ part, the trafficking situation is a great challenge.”

Child trafficking infractions are often intertwined with labor law violations. This factor often complicates the prosecution process. Trafficking offences tried according to labor law violations often result in lower sentences compared with child trafficking offences which, upon conviction, usually bring a higher sanction in terms of fines and/or jail time. It is therefore instructive to examine some of the significant pieces of labor law legislation in Thailand and their intended effect.

21 Thailand NGO Report 3.
The Labor Protection Act B.E. 2541 (1998)

Under Article 44, it is unlawful to employ a child under the age of fifteen. Under Article 45, children between 15 and 18 (the legal age of adulthood in Thailand) may be employed provided that the employer notifies a government labor inspector. The generality of Article 45 is such that the employer may delay for weeks or months the report requirement to a labor inspector or make no submission at all. If the child is from the Northern Hill Tribes, (377,000 out of a total population of between 600,000 - 800,000 have no citizenship) there may be no accurate records from which to judge the child’s age, a situation which employers can exploit. Moreover, minors, who are desperate to work or have been sold by impoverished parents or relatives to generate family income, may induce the employer not to report them to the authorities.

In an effort to bring Thai labor law into conformity with broader efforts to restrict child sexual exploitation, Article 50 (4) provides for the prohibition of children under 18 from working in establishments where food, liquor, tea or other beverages are served and where services of prostitutes, sleeping facilities or massage are offered.

The Labor Protection Act of 1998 also sets forth penalties for the violation of child labor standards. Some of these penalties include: Sexual harassment of a child worker below 15 years carries a maximum penalty of a 20,000 baht fine; Employment of a child below 15 years carries a penalty of up to one year in jail or a fine of up to 20,000 baht; Failure to notify a
labor inspector of the employment of a child under 18 years carries a penalty of a fine of up to 20,000 baht; Forcing a child to work during prohibited hours that leads to harm to the child’s physical or mental health or the child’s death carries a prison term of up to one year or a fine of up to 200,000 baht.\textsuperscript{22}

According to the International Labor Organization, the Thai Labor Protection Act is, “highly problematic because the scope of the Act does not extend to certain sectors and industries, such as agricultural work, domestic labor, and work by self-employed persons. Also, the provisions of the Act, concerning general labor, female labor, child labor, wage and overtime, welfare, safety and severance pay do not apply to employers who hire employees for work relating to housework which does not involve the operation of a business.”\textsuperscript{23} Moreover, the ILO raises serious concerns about loopholes in the Act that appear to expose child domestic workers to exploitation. “Child domestic workers are particularly vulnerable to the worst forms of exploitation because their work is hidden and house owners have the full right not to grant permission to individuals to enter and inspect their households. Children from rural areas are pushed into the urban labor market despite their age and lack of preparedness. The situation of child domestic laborers is likely to encompass aspects of the Worst

\textsuperscript{22} Labor Protection Act of 1998.
\textsuperscript{23} Anti-child Trafficking Legislation in Asia 112.
Forms of Child Labor as defined in the International Labor Organization Worst Forms of Child Labor Convention of 1999.”

There are a number of additional international laws which have a significant bearing upon the protection of children and indirectly contribute to the curtailment of child trafficking. Thailand has ratified fourteen International Labor Organization conventions including The Employment Policy Convention and the Abolition of Forced Labor Convention yet has not ratified to date ILO Convention 111 which addresses sexual harassment and racial discrimination. The failure thus far to accept and ratify ILO Convention 111 relates to the delicate political and social situation the government faces with respect to full citizenship for the Northern Hill Tribes, a denial for which Thailand has been heavily criticized at home and abroad by leading human rights groups.

Moreover, a large number of ethnic minority groups in Thailand, who would be covered under the protective designs of ILO Convention 111, may pose legal, economic and administrative challenges that are too cumbersome for the Thai government to address. Although the administration of Thaksin Shinawatra promised to examine the citizenship issue, with the view to providing citizenship to the remaining Hill Tribe persons excluded from Thai citizenship, progress has been slow. The new military regime, which seized power in 2006, did not proceed with tangible

24 Anti-Child Trafficking Legislation in Asia 112.
reforms and political instability in the 2007-2010 period further stalled initiatives on many social and economic fronts.

In 2001, Thailand ratified ILO Convention # 182 on the “Worst Forms of Child Labor” which was adopted in 1999. This is an important document for Thailand to ratify since child trafficking is clearly viewed as a problem falling under the scope of the Convention. The Convention defines the “worst forms of child labor” as: slavery, the sale and trafficking of children, debt bondage, forced or compulsory labor, and the use of children for prostitution and pornography. The Convention makes it incumbent upon states to implement programs to eliminate as a priority the worst forms of child labor and to give special attention to the “special situation of girls.”

Other ILO Conventions, which Thailand has ratified, include: ILO Forced Labor Convention (No. 29); ILO Abolition of Forced Labor Convention (No.105); ILO Minimum Age Convention (No. 138)

Due to the sensitive and complicated issue regarding citizenship for the Northern Hill Tribes, the Thai government has not ratified the ILO Convention Concerning Indigenous and Tribal Peoples.

Thailand acceded to the International Convention on the Elimination of Race Discrimination (CERD) in 2003. The Convention defines racial discrimination as: Any distinction, exclusion, restriction, or preference based on race, color, descent, or national or ethnic origin which has the

25 ILO Convention No. 182, Worst Forms of Child Labor Convention, 1999, Article 3, Article 7(e)
purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.  

The Thai government issued a general interpretive declaration that stated it has no obligation to apply provisions of the Convention beyond the limits of the constitution and the laws of Thailand. This declaration serves as a form of “notwithstanding clause” to exempt Thailand from aspects of the Convention deemed problematic to implement or enforce.

“General Recommendation XXV of the Convention on the Elimination of Racial Discrimination, which focuses on the gender-related dimensions of CERD, states that race discrimination may have consequences that only or predominantly affect woman.”

In sum, since the ratification of the CRC 1989 by Thailand in 1992, a plethora of new legislation and government initiatives have been launched with the aim of tackling child trafficking and imposing greater restrictions on the ability of traffickers to operate. Moreover, penalties have become more severe for trafficking and child exploitation offences. While these and other measures are encouraging sign posts in the battle to contain child trafficking in Thailand and successfully prosecute offenders, child trafficking remains a pervasive problem in Thailand and one which

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requires greater resources and more comprehensive preventative and enforcement strategies.

**The Draft Anti-Human Trafficking Act, 2006**

The Draft Anti-Human Trafficking Act was passed by the Thai Parliament in 2006 and awaits formal adoption by the Government of Thailand. Key features of the Draft Anti-Human Trafficking Act include the protection of the human rights of victims and heavier penalties for offenders. There are also efforts to ensure that the new Act is enforced not only in Thailand but also in destination countries where Thai citizens may be trafficked. The Act also calls for the creation of a special fund, derived from recovered monies and profits from captured traffickers. The fund would be used to assist with a variety of victim services such as rehabilitation and for the protection of human trafficking victims and their families. The protection of victims and their families is a key point to focus upon since numerous NGOs and human rights observers, including Bonneau, have noted that the reluctance of victims to cooperate with law enforcement officials is due in part to the fear of retaliation by traffickers and their associates.

Muntarbhorn assisted with the drafting of the Anti-Trafficking Law and offers a unique inside perspective on the challenges of transforming law into workable policy. “The definition of trafficking under the draft law will follow the definition contained in the UN Convention on Transnational and Organized Crime, and that definition is too long and not easy to integrate
into national law. We felt it was a very difficult definition, basically a governmental compromise, and my reduction of it to a simple understanding is that trafficking is really about a transfer of people into a situation of exploitation, irrespective of the person’s consent.”28

A main contention of this thesis is that the pronounced enforcement gap must be addressed by a mixture of both legal (a heightened prosecution regime) and social approaches. Gender bias, social exclusion, police/judicial corruption and inadequate police training as well as extreme poverty are key contributing factors. This view is reflected by Muntarbhorn who noted that with trafficking, “you get to a question of law enforcement and what type of quality law enforcement do you have and what about the root causes, what are measures to attenuate the impact of root causes in terms of prevention. And some courts are in the same boat as some of the law enforcement, which is not very transparent.”29

The general challenge with respect to enforcing articles 34 and 35 in Thailand as well as India is to adopt not solely a legal regime approach but to incorporate a broader social development regime that is inclusive of progress in the areas noted. This is also quite consistent with a human security paradigm which seeks to focus on the important issues of human rights and human development not from a model that begins with the state

28 Vitit Muntarbhorn, Personal Interview, Bangkok, 6 May 2006.
29 Vitit Muntarbhorn, Personal Interview, Bangkok, 6 May 2006.
but rather by focusing first on the individual and the security of their immediate environment. As articulated by Lloyd Axworthy, an architect of human security policy while serving as the Canadian Minister of External Affairs, “The human security approach represents an important shift in the way to view global politics. It endeavors to modify the lens through which security is viewed- from the level of the state to the level of the individual. Human security is much more than the absence of a military threat, it includes the security against economic privation, an acceptable quality of life, and a guarantee of fundamental human rights.”

CHAPTER 4

INDIA: LAWS RELATED TO CHILD TRAFFICKING AND PREVENTION

Introduction

This chapter examines laws related to child trafficking and prevention and associated issues that impact enforcement. India represents a classic case of the gap between law and effective implementation. Like Thailand, a minimal prosecution regime is in place in India which compromises basic progress on the battle to contain and punish child trafficking offences. Child trafficking laws and measures against child exploitation in the CSI are poorly enforced with the attendant result that child victims of trafficking and exploitation in the CSI continue to endure irreparable harm. The leading causes behind the legal enforcement gap will be examined in detail. Moreover, despite a well codified legal system, there are gaps in the law, similar to Thailand, where specific child trafficking offences are not addressed or prosecuted indirectly, if at all, under other offences, such as child labor exploitation. Such instances will also be examined.

The Indian legal system evolved under British Colonial rule. The India Evidence Act, for instance, was adopted in 1872, and the Child Marriage Restraint Act, in 1926. In 1947, India gained its independence and a new Constitution came into effect on January 26th 1950. The Constitution has numerous provisions to protect the rights of the child. Some of these provisions include: The right to equality, Art. 14; The right to freedom including freedom of speech, Art. 19(1) (a); The right to be free from
exploitation and trafficking, Art. 23; Religious, cultural and education rights, Art. 29.

Legal safeguards for children and their right to full and healthy development are implicitly recognized under the Indian Constitution. Such guarantees include: Article 15 prohibits discrimination on the basis of religion, race, caste, sex or place of birth. Subsection 3 of Article 15 empowers the state to create laws for the special protection of women and children; Article 39(9) (e) makes it incumbent upon the government to protect children from abuse and to protect them from situations that exploit their dignity and development; Article 39(f) recommends the protection of children from exploitation and moral and material abandonment.

In India, the problem of combating child trafficking relates not so much to the absence of protective laws as to weaknesses in the enforcement regime. These weaknesses arise to a great extent from systemic problems of caste, social exclusion, police and judicial corruption, poor training and gender discrimination that have been addressed thus far. Justice V.R. Krishna, while commenting on the inadequate enforcement of the 1986 Immoral Traffic in Persons (Prevention) Act and related sections of the Indian Penal Code, to protect victimized females, observed: “The police officer cannot be the moral guardian of the Indian citizen and judges trying this class of cases, unless specifically trained or put through courses, prove to be judicial obstacles rather than social justice vehicles. The masculine lethargy at every stage is writ large. Active participation of social welfare
organizations in the very legal process will go a long way in socializing the legislation so it is not isolated as a purely police-magistrate esoterica.”

The Immoral Traffic Prevention Act, 1986 (ITP) Act

For the purposes of the Act, a ‘child’ is defined as a person under the age of sixteen. A ‘minor’ means a person who has completed sixteen years of age but not reached the age of eighteen. The Act is designed to deter child prostitution and punish those who keep children and or minors in a brothel for the purpose of prostitution. Under section 6 (2) of the Act: Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under subsection (1). Section 6 (2A) states: Where a child or minor found in a brothel, is on medical examination, detected to have been sexually assaulted, it shall be presumed, unless the contrary is proved, that the child or minor has been detained for the purpose of prostitution or, as the case may be, has been sexually exploited for commercial purposes. The 1986 Act was designed to address the shortcomings of the 1956 Suppression of Immoral Traffic in Women and Girls Act (SITA) which was seen as ineffective in deterring the traffic of girls and women for commercial sexual exploitation. Although prostitution is still illegal under the 1986 Act, the activities of offenders are targeted. Moreover, the 1986 Act specifically

addresses the exploitation of children and minors and sets forth severe penalties for persons who involve them in the commercial sex industry. Contrary to SITA, the 1986 Act provides formal legal recognition of the problem of child prostitution in India and the need to curtail it through strict penalties.

A noteworthy element of the 1986 Act is the provision that sexual intercourse with a woman, with or without her consent, if she is under 16 years of age, amounts to rape and is thereby punishable for a period of up to life imprisonment. An important distinction has been drawn in the 1986 Act, similar to Thai law, that a child has not reached the age of reason to be able to consent to any form of sexual activity thereby criminalizing the behavior of those who entice children into prostitution. “The Act has introduced the concept of child victims into the prostitution debate in India and imposes higher degrees of criminality to sexual exploiters of children. There are certain presumptions under the Act in favor of the child victims which include: 1) If a child is found in a brothel or under suspicious circumstances in the custody of a person, other than the parent or lawful guardian, the person shall be presumed to have procured the child for the purpose of prostitution; 2) A report in a newspaper on the use of certain premises as a brothel is deemed sufficient proof of the landlord, occupier, or tenant knowingly allowing such use.”

In an effort to crack down on the activities of brothel owners or landlords, who operate or own establishments where prostitution occurs, the 1986 Act seeks to plug a well worn loophole that was a weakness of SITA. Accordingly, “under SITA the landlords/owners avert prosecution under the cover of lack of knowledge, but ITPPA states that it will be presumed until the contrary is proved, that a landlord knowingly allows or has knowledge that his premises are being used as a brothel.”

This is an important area to focus upon because child trafficking and exploitation in the CSI is a crime with multiple links of complicity. The child trafficker, brothel owner, manager, worker and perhaps some local police all have a stake in the crime and the profit. Closing the so-called ignorance loophole is a good step but only one part of the enforcement chain. There is a lengthy process involved in the investigation and prosecution of crimes involving the commercial sexual exploitation of children. The process involves several steps: 1) “When a complaint is received, the police are required by law, (sec.154 of the Penal Code) to make a First Information Report; 2) information is gathered to be used later, should court proceedings arise; 3) police make a physical verification and arrest persons suspected of being involved; 4) Section 156 of the Penal Code authorizes police to conduct an enquiry in cases involving sexual crimes against children without requiring permission from a Magistrate; 5) when

\[4\] Bajpai 254-255.
completed, the report is sent to the Magistrate who can then proceed to investigate the facts; 6) The police continue their investigation by recording the statements of prospective witnesses; 7) The child victim is given a medical examination, the report of the physician, entitled: Medico-Legal Certificate (MLC) has important evidentiary value, moreover doctors may be required to appear as witnesses in court proceedings; 8) Throughout the police investigation, all steps taken by the police are recorded in a case diary; 9) During a court proceeding, the prosecutor presents the evidence and witnesses, such as child victims. Prosecution witnesses are cross examined by the counsel for the alleged offender; 10) Child victims of sexual crimes do not have the right to private legal counsel, but may apply to the judge to obtain such right; 11) After presentation of the evidence and final arguments, a final judgment is rendered. Prosecution and Defense have a right to appeal a trial court judgment but normally, appeals against acquittals are not easily allowed.”

On the surface, the process appears systematic and thorough. A closer examination reveals problems during the collection of evidentiary information and in the treatment of child victims. As noted in the previous chapter on caste discrimination in India, persons belonging to the Unscheduled Castes frequently encounter resistance from police, who come

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from higher castes, in registering an FIR. Entrenched and centuries old discrimination against the Unscheduled Castes, despite prohibitions under the Constitution and the Atrocities Act, are difficult to overcome.

A joint survey by the Indian Human Rights Commission and the TATA Institute of Social Sciences on the matter is illustrative. “Out of 952 police officers interviewed, it was revealed that they register F.I.R.s in about 40% of the cases. In one case there was a fourteen year old girl who had 23 customers on one night and had been suffering for four and half months. If action had to be taken against customers, and if justice had to be delivered to the girl, then all those customers should have been booked under the law of rape. Trafficking is seen as a simple offence, which does not get the necessary priority.”

The inadequate recovery of information through FIRs in numerous rape and commercial exploitation complaints renders the legal process incomplete. Without a detailed FIR, a case cannot proceed to trial. Even with a trial, the FIR must be detailed and stand up to rigorous examination in court, as a document of evidence. For child trafficking victims, a police investigation without a properly completed FIR, compromises the judicial process. The rendering of justice to the victim is thus obviated before the

process has begun. Moreover, a bias against victims, due to gender or caste
discrimination, undermines the integrity of the legal system. The oppressed
become more oppressed and view their place in society as one of
exploitation. The alarming abuse of FIR reporting by police officials is
symptomatic of gender and caste which is rooted in the judicial system and
society at large. According to Dr. Neela Dabir, an expert on child
trafficking law and policy, “There is no mandatory reporting that a child
has been trafficked. Poverty, corruption and indifference are the key drivers
of child trafficking. Even if these problems did not exist, the numbers
would still be too high. Law enforcement agencies have other priorities
than child trafficking, such as political unrest and every day issues. Child
trafficking enforcement is a low priority and the reporting is low.”

Questions should also be raised in the prosecution process about the
difficulty of child victims in obtaining legal counsel. The court process
itself is a traumatic experience for the child and rendered more difficult by
the absence of a legal advocate to explain the proceedings. When a child,
who is already in a position of vulnerability due to age, educational
deficiency and perhaps caste status, is asked to participate in a complex
legal proceeding and hindered from obtaining legal counsel, the process
itself becomes weighted toward the accused. Such a standard of justice is
not permitted in courtrooms dedicated to the integrity of human rights and
civil rights protection for all citizens. Without the benefit of legal counsel,

7 Dr. Neela Dabir, Personal Interview, Mumbai, 26 April 2006.
the child is easily vulnerable to manipulation by counsel for the accused. These issues were raised in the Supreme Court of India in *Delhi Domestic Workers Union vs. Union of India and others.* “In that case involving victim rights in situations of rape, the court ruled that a victim has the right to legal assistance starting from the police station.” 8 When interviewed by a police officer, a suspected child trafficking victim provides a statement that is considered an evidentiary declaration and can be used in legal proceedings. However, as noted, the child is not provided with legal representation.

“During a trial, the child will be asked to explain what happened and then be cross-examined by opposing counsel on any inconsistencies between the child’s statement at the time of the incident and years later, at trial. The Criminal Procedure Code does not allow for children in these circumstances to have legal counsel, and while the Supreme Court has passed judgments providing rape victim’s access to legal counsel, this ruling has not been extended to child victims.” 9 An observer of such proceedings will determine an immediate disadvantage for the child who is already in a position of vulnerability. One of the realities that human rights advocates routinely face in addressing child trafficking issues is the

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8 195 1995 1 SCC 14, par.15.
9 Bhat Aparna 40-41.
pronounced vulnerability of the child. Children as a collective group are deemed to have little power and voice in society. When the child is marginalized and impoverished to begin with, and then suffers the added burden of low caste status as is often the case in India, or non-citizenship due to Hill Tribe status, as is the case with thousands of children and trafficking victims in Thailand, the vulnerability of the child is substantially increased. A report by the Tata Institute and the National Human Rights Commission states that, “the basic issue is that of vulnerability of the trafficked victim. Trafficking itself is discrimination in a social context. Most often, the family is in a difficult situation which exaggerates the vulnerability and eventually could lead to trafficking.”\textsuperscript{10}

The court process, as noted, can be a frightening and intimidating experience for a child. Moreover, the child, who has been rescued from an exploitive situation, will also have been traumatized. In both India and Thai legal and social work perspectives vis a vis trafficked children, there has been an increasing recognition of the importance of psycho-social counseling in the rehabilitative process. It is therefore difficult to provide a rationale for the Indian court decision and administrative practice of withholding legal representation to a child involved in legal proceedings against an offender and/or trafficker. Moreover, it is evident that this practice may have a direct bearing upon the low conviction rate against

\textsuperscript{10} Report of the National Workshop 34.
traffickers and other exploiters of children in the commercial sex industry. According to Prerana founder Previn Patkar, “the conviction rate is not relevant because in India there is no culture of concern for the child. There is no scope for prosecuting these crimes. In India, we have Constitutional provisions against child exploitation but they are not enforced.” 11

This assessment is shared by many legal and human rights experts among them Bajpai who asserts that, “Of all the demographic groups, the girl child is probably the most socially disadvantaged. At every stage of her life cycle- from conception to adulthood-she is especially vulnerable to human rights abuses. A child – focused culture has to be developed. There has to be a child-centered focus in legal proceedings.” 12

A report by Prerana on the situation of rescued minor victims of trafficking and commercial sexual exploitation in the city of Mumbai paints a grim picture of the law enforcement regime surrounding the child victim. “In India, the law against commercial sexual exploitation and trafficking has just not been implemented except to further victimize the victim. It is strongly believed that in India the long history of institutionalized slavery, the extreme socio-economic inequalities, the low status of women and the girl child, the lucrative offers and the lack of accountability all together

12 Bajpai 31.
have ensured an active partnership of the police and the prosecution is sustaining the crime.”

The issue of the criminalization of victims in child prostitution and trafficking cases is paramount to an understanding if the enforcement gap. It is rooted in gender inequality, social exclusion and the improper application of existing laws. By criminalizing the victims in child prostitution cases and charging them under the ITPA, instead of charging their abusers, the true statistical dimension of the crime is never reported. It is essential that the police and prosecutors distinguish between the prostitute and the victim of prostitution. If the arrested prostitute is a minor, the likelihood is high that the child was trafficked. One of the key issues that arises with respect to the treatment and rehabilitation of child victims is the accessibility of marginalized children to the legal system. The equitable and transparent operation of the judiciary cannot be separated from the daunting issue of caste discrimination. It is important to recognize the historic and systemic barriers that the Dalits and other marginalized groups have faced and continue to endure in accessing justice.

Accordingly, since the vast majority of child victims of trafficking are Dalits or members of other excluded, low status groups, their standing before the law and treatment before the courts must be deemed inadequate.

An estimate by the Peoples Health Organization in India states that, “90% of the girls involved in the commercial sex industry are Dalits.”

The Juvenile Justice (Care and Protection of Children) Act of 2000

The Juvenile Justice Act represents an amendment of laws relating to; a) juveniles in conflict with the law and; b) children in need of care and protection. The Act also offers a broader developmental approach to the needs of children. Under the Act, a ‘juvenile’ or ‘child’ means a person who has not completed 18 years of age [section 2(k)] whereas the ‘juvenile in conflict with the law’ means a person who is alleged to have committed an offence [section 2(I)]. Thus there are two distinct categories of children under this Act: ‘Juvenile’ for children in conflict with the law and ‘child’ for children in need of care and protection [section 2(d)].

The Act directly addresses the situation of child victims of commercial sexual exploitation and trafficking. Under section 2(d)(v) of the Act, a child deemed to be in need of care and protection, is one: “who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts.”

The Act establishes a Child Welfare Committee that has final authority in matters pertaining to the care, protection and rehabilitation of children.

14 Dr. I.S. Gilada, Personal Interview, Mumbai, 24 April 2006.
15 Bajpai 299.
16 Juvenile Justice (Care and Protection of Children) Act 2000 section 2(d)(v)
designated to be in need of care and protection. The Act authorizes every
police station to have at least one officer who can act as a child welfare
officer.

The Act also provides for the establishment of children’s homes and
shelters. Children deemed to be in conflict with the law, a different
category from those who are in need of ‘care and protection’, can be
referred by a magistrate to the Juvenile Justice Board, under the Act.
Provisions of the Act referring to children in need of care and protection
were the source of a landmark Supreme Court case brought forth by the
Indian NGO Prerana. In Prerana versus Maharashtra and others, the
Mumbai High Court determined that if a child ‘consented’ to prostitution,
s/he must be treated as a child in conflict with the law. The view of the
Court in this case was problematic for the rights of the child and displayed
a lack of understanding toward the coercive factors that drive children into
the CSI and keep them employed in that sector.

Moreover, there has been a growing recognition in various jurisdictions
of the extremely exploitive nature of child trafficking and the need to
decriminalize the actions of children who are caught in the CSW. Indeed, a
major step forward in Thai legislation toward achieving this end is found in
The Prevention and Suppression of Prostitution Act, 1996.

Thai legislators included the term, ‘with or without his or her consent’
as a key legal provision providing protection for the child. Clearly, due to
poverty, vulnerability and intimidation, many children submit and
acquiesce to the exploitation committed against them. This pertinent section of the Act legally obviates the responsibility of the child for involvement in the CSI and places the onus for exploitation squarely upon the adult abuser and trafficker, where it belongs.

The Indian Immoral Traffic Prevention Act, 1986, has a provision that sexual intercourse with a women, with or without her consent, if she is under sixteen years of age, amounts to rape and is punishable for a period of up to life imprisonment. There is an implicit recognition, in the Thai and Indian legislation, that a minor is not in a position to give consent to his or her own exploitation. This is an important legal safeguard that is designed to protect the child victim. The more appropriate and humane course of action for Indian authorities to follow is to treat all children and minors, found to be involved in the commercial sex industry, as victims of exploitation and in need of care and protection as defined under the Juvenile Justice Act, 2000. Moreover, such children should then be referred to the Child Welfare Committee to receive the appropriate level of care and rehabilitation.

A significant issue of concern vis a vis the protection of child victims of sexual exploitation is the practice of the Child Welfare Committee in returning some children to their alleged abusers or maintaining them in government homes where the alleged abuser may reach them. A report on laws and legal procedures in India concerning sexually exploited children raised three main concerns. “First, in some cases, the
Committee finds that the parents of the child are responsible for sending the child into prostitution. In those cases, the Juvenile Justice Act allows the CWC to ensure that the parents have no access to the child. Second, the police simply have little regard for victimized children involved in sexual exploitation. Consequently, police neglect to properly interview children. Third, homes under the Juvenile Justice Act are more open so it is important to ensure that rescued children are not accessible to the alleged exploiters.”

The issues addressed by the Report lend credence to the view, expressed by Prerana co-founder, Previn Patkar, that India lacks a ‘culture of concern’ when it comes to the rights and rehabilitation of trafficked children. Moreover, a troubling aspect of the procedures followed by the CWC is the determination, in certain cases, to return children to parents/relatives who have been implicated in their exploitation. Such an outcome dramatically raises the possibility of re-trafficking. “Re-trafficking of rescued minor girls in the same trade is not an exception but a rule in most metropolitan areas let alone small towns and rural areas. Professional post-rescue operations is a distant dream.”

17 Bhat Aparna 42.
18 Post- Rescue Operations 44.
Questions should be raised about the integrity and transparency of the determination process in these cases. There needs to be further investigation that factors such as expediency, financial inducements or overcrowding in existing homes, are not influencing the CWC to return the child to family members or those claiming to be family members and a situation where further abuse may occur. Moreover, as noted earlier, the crucial step of gathering evidence for a potential court proceeding is seriously undermined if the police fail to properly record information and victim/witness statements or maintain contact with the child trafficking victim. A child who has been re-trafficked and moved to a new brothel establishment or to a new city or town is unlikely to be found for the pursuit of legal proceedings should they emerge. This is one of the main reasons why those implicit in the crime of child trafficking go to extensive lengths to contact the girls, even in the remand homes and shelters, and apply pressure or deceit to remove them.

A positive outcome flowing from *Prerana versus State of Maharashtra and others*, relates to the Supreme Court ruling that the determination process for handling minors rescued from the brothels was inconsistent with basic principles of justice and violated provisions of the Juvenile Justice Act, 2000. The details of the case started with a May 16, 2002 raid on a brothel at Santa Cruz. Four persons were arrested and twenty-four women were rescued. “They were taken into custody under Section 15 and 17 of ITPA. The following day, four of the accused were
sent to judicial custody. The police and prosecution sought detention of the girls for age and home verification, required under law (ITPA Section 15). Ossification tests were done which showed that fourteen of them were adults and the remaining ten were juveniles.”19

All four accused were bailed out and the adult ‘rescued’ women were released by the Court. By the magistrate’s order, the juveniles were ordered to appear before the Juvenile Justice Board, which is for juveniles in conflict with law, and not the Child Welfare Committee, which deals with children in need of care and protection. “An advocate appeared on behalf of the juveniles and asked for another age verification test, contesting the results of the earlier test. He claimed in court that the girls had committed no offence and they have already been in detention for more than a month and that they should be forthwith released. Mumbai Police along with the NGO objected to this plea, on the grounds that the home verification report was pending. But the presiding Judge issued a release order and passed expulsion orders on the girls, so that they stood expelled from Mumbai city, in spite of the fact that they were victims.”20

When the issue went to an appeal before the Mumbai High Court, the Court was critical of the manner in which the Juvenile Justice Board handled the case. The Court further stated that the minor girls had committed no offence and were thus in need of care and protection.

20 Report of the National Workshop 37.
Accordingly, the Court noted that the minors should have been referred to the CWC. The High Court was also critical of the Board for ordering that the girls be barred from entering the City of Mumbai, even though they had committed no crime. The Indian judiciary and police have often been criticized by human rights groups and child welfare advocates, such as Prerana, for denying children fundamental justice. The case at hand provides a stark example of this reality. The J.J. Board’s lawyer represented both the accused as well as the minors, which the High Court ruled improper. This issue was referred to the Bar Council for corrective action and new guidelines were introduced which are now in effect in Bombay and Goa.

Some important legal aspects that arise from the case include:

“Accountability of the police, who arrested the girls; Accountability of the judicial magistrate who referred the case of rescued minors to the J.J. Board, instead of the CWC, in violation of the provisions of the J.J. Act, 2000; Accountability of the judicial magistrate, who released the minors, without waiting for the home enquiry report of the Probation Officer, and passed externment orders on them; Accountability of the advocate, who appeared both on behalf of the accused and the victims, obviously at the behest of the traffickers; Inaction of the High Court in respect of giving suitable directions to the police to locate and produce the girls.”

The outcome in *Prerana versus State of Maharashtra and Others* had some positive effects upon the judicial treatment of children rescued from brothels and other situations of commercial sexual exploitation. The underlying implications of the case are still troubling. It took the intervention and considerable dedication of a highly respected NGO to act as a watchdog over a judicial and child protection system that knowingly abused the rights of children under their protection.

**The Child Marriage Restraint (Amendment) Act 1978.**

The practice of female children being married at an early age has been an entrenched social custom in India for centuries. Legislation aside, these practices are difficult to deter, particularly in rural India. Under British colonial rule, the Child Marriage Restraint Act was adopted in 1929. The law applies to all Indians, irrespective of religion or caste. Under the Act, the legal age for marriage of a child is set at 15 for girls and eighteen for boys. The 1929 Act was not an effective deterrent to child marriage thus increasing social pressure, fueled in part by the emergence of a women’s rights movement in India, that led to the adoption of an amended Act in 1978. The amended Act of 1978 raises the minimum age of marriage to eighteen for girls and 21 for boys and defines child marriage as a marriage in which either the boy or the girl is a child. Studies on child marriage in India suggest two trends. First, the average age of first marriages has steadily risen. Second, females are still being married in large numbers before the legal age of 18.
The 2003 Report of the Indian Government to the Committee of the United Nations Convention on the Rights of the Child, noted that: “The average age at marriage of females in India was too low at 12.5 years during 1921-1931. After the enactment of the CMRA 1929, there was a slow upward shift in the female age at marriage. By 1951 the marriage age of females was reported to be about 15.6. As per the census information, the two decades 1961-1971 and 1971 –1981 recorded larger increases in female age at marriage at the national level as compared to earlier decades. Despite the evidence of a rising age at marriage, the majority of women age 20-49 in India married before they reached the legal minimum marriage age of 18 as set by the Child Marriage Restraint Act, 1978. Specifically, 61% of all women, 69% of rural women and 41% of urban women age 20-49 married before age 18.”

Efforts to constrain child marriage through the Amended Act of 1978 fell short of anticipated outcomes. Thus, a new legislative initiative, The Prevention of Child Marriage Bill, was introduced in the Indian Parliament (Rajya Sabha) in December 2004. Key provisions of the proposed Bill include: “Making a provision to declare child marriage as voidable at the option of the contracting party to the marriage, who was a child; Providing a provision requiring the husband or, if he is a minor at the material time,

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his guardian to pay maintenance to the minor girl until her remarriage;
Making a provision for declaring the child marriage as void in certain circumstances; Providing for appointment of Child Marriage Prevention Officers by the State Governments; Empowering the State Governments to make rules for effective administration of the legislation.”

The attempt to seek a legislative solution to the enduring problem of child marriage, though laudable and clearly necessary, will inevitably fall short without a sustained campaign of public social education by the government, at the national and state levels, to combat prevailing customs and attitudes that allow child marriage to persist at high levels. One of the problems that lawmakers must address is the social dimension of the law. Enforceability is a key issue that has a bearing upon the efficacy of legislation. A prime example is The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, designed to curtail and punish abuses against the Dalits and other marginalized groups in India who have endured harsh discrimination and violence for centuries. Despite this legislation, Dalit directed violence and oppression is widespread.

On the matter of child marriage, The Indian Parliamentary Committee studying child marriage has observed the following: “The Committee notes that according to one study made by UNICEF there has not been more than 89 cases of prosecutions in any year under the Act, which in itself shows

the deplorable state of implementation of the Act, besides its glaring inadequacies. The entire society has to bear the brunt of half-hearted follow up of the present Act and the gravity of the problem of child marriage can be measured by the fact presented by the representatives of the Department of Women and Child Development Ministry of Human Resource Development (HRD) according to which child marriages constitute 60% of the total marriages performed in the country.”

This evidence underscores the twin problem of enforcement and cultural practices, though injurious to child welfare, that are difficult to restrict, particularly in rural areas.

To many human rights and child welfare observers, child marriage is a form of child exploitation. Indeed, article 16 of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, states that child marriage is illegal. A report by End Child Prostitution and Trafficking International (ECPAT) and the Indian Human Rights Law Network has observed a link between child marriage and child prostitution: “The institution of marriage, is unfortunately becoming a façade for criminal activity. Child marriages make children vulnerable to commercial sexual exploitation by depriving children of opportunities for further education, and ultimately, limiting opportunities for employment.”

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25 Bhat Aparna 12.
The Indian Penal Code: There are several sections of the Indian Penal Code (IPC) designed to counter the activities of traffickers, brothel keepers and others who exploit children for sexual purposes including organized prostitution. These sections include:

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In India, the vast majority of girls trafficked into the CSI are from within the country. As noted in the previous chapter, the incidence of child rape in India has risen in recent years to the point where children today account for approximately 20% of all rape cases.

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This tragic reality underscores the particular relevance of sections 365, 366, 366A, 366B, 367, 372, 373, 375 and 376 of the Indian Penal Code. The issue of sexual assault and rape has been the source of considerable controversy in Indian criminal proceedings due to varying interpretations over the definition of rape and over the question of consent. Pressure has been brought to bear upon the Government to reform the laws relating to rape. “In March 2000, in its 172nd report submitted to the Government of India, the Law Commission of India recommended, inter alia, that the laws relating to rape be made gender neutral, wider and more comprehensive to bring it in tune with the current thinking. The Law Commission accordingly recommended that an incestuous ‘sexual assault’ on a victim by her ‘near relative’ [such as father, grandfather, brother] be brought within the ambit of penal law and such an incestuous man be met with a severe minimum mandatory punishment.” 27

The literature on child abuse suggests that the majority of prostitutes had prior experiences, often in childhood, with sexual abuse and assault. The exploitation of the child is a societal problem that also needs to be addressed in the home where many violations occur. By broadening the definition of rape to include sexual assault, many forms of exploitation and abuse against children would be covered under the Indian Penal Code. The

conviction rate in rape cases in Indian courts has been traditionally low. This fact relates to the high standard of proof to obtain a conviction for rape. The broader and more inclusive definition of rape may provide a standard of proof that is not so onerous to establish in a court of law.

Closely tied to the low conviction rate for rape in Indian courts is the issue of consent. Defendants in Indian courts have routinely avoided conviction on the basis of doubts that were established about whether the victim truly withheld her consent. This tradition in Indian courts also reflects the reality of entrenched gender discrimination and the marginalization of rape victims that women’s groups frequently refer to.

A study on the legal ramifications of the harassment of women and the issue of consent in rape cases concluded that, “many cases end in acquittal due to mishandling of the crime by police and the invocational theory of ‘consent’ by the courts. To overcome this difficulty, the legislature introduced section 114-A in the Indian Evidence Act, 1872. This section enables the court to operate on the assumption that the woman, the victim of rape, had not consented. However, the situation has not improved. Conviction rates for rape are still lower than any other major crime.” 28

Under Section 375 of the Indian Penal Code (IPC) the alleged attacker would be absolved of criminal charges if the alleged victim had given consent freely, without any coercion or intimidation. However, it is clear

that the Courts have set a more liberal interpretation of consent, perhaps a gray area in the law, and given the accused in rape cases the benefit of the doubt, as the data on convictions suggests. An important ruling on the issue of consent, that sheds light on the influence of gender discrimination in the determination of rape cases, is found in *Tukaram & Another versus The State of Maharashtra*. The case involved a fourteen year old girl, Mathura, who was raped by two policemen while waiting in a police station at night with others to file a complaint on an unrelated matter. In the Sessions Court, the accused policemen were acquitted on the basis of the view that the girl had surrendered herself willingly to the policemen. In the High Court, on appeal, the accused were convicted. The High Court directly addressed the issue of consent, and in rendering judgment, noted correctly that: “Mere passive or helpless surrender of the body and its resignation to the other’s lust induced by threats or fear cannot be equated with the desire or will, nor can it furnish an answer by the mere fact that the sexual act was not in opposition to such desire or violation.”

“In a final appeal before the Supreme Court, the consent issue became the main point used to undermine the credibility of the complainant. The Supreme Court set aside this conviction on the grounds that sexual intercourse did not necessarily amount to rape in the case and that no offense had occurred. The court further held that there were no

29 Bajpai 230.
circumstances from which to deduce that the ‘victim’ had fear of injury or death. The Court ruled that Section 375(3) of the Indian Penal Code did not apply in the case.”

Section 375 of the Indian Penal Code addresses the crime of rape. Section 375(3) refers to rape that is committed in circumstances whereby the victim has been threatened with injury or death. One of the issues noted by the Court was that the fourteen year old alleged victim had no visible signs of bruising or injury that would indicate a struggle and thus her denial of consent to sexual intercourse. The unfortunate ruling in this case underscores the oppressive culture of discrimination and abuse against women. It is difficult to conceive of a greater degree of vulnerability than a young woman of fourteen in a police station at night and subsequently overpowered and raped by two policemen. Yet the Mathura case is a prime example of the further victimization of rape victims in the judicial system. Moreover, the case dramatically highlights the reason why thousands of female victims of sexual assault in India are reluctant to press charges against their attackers.

**International Safeguards Against Child Exploitation**

The extent of child exploitation in India is well documented. In a nation of 1.2 billion people with a high poverty rate and child labor population

30 Bajpai 230.
estimated to be approximately 100 million, the reality of child exploitation
and abuse in the labor force is unavoidable. Through a series of domestic
programs, laws and cooperation with the International Labor Organization,
India has taken some steps to attenuate the worst effects of child labor.
India is a founding member of the ILO, established in 1919. There are eight
core Conventions of the International Labor Organization. These
Conventions include: Forced Labor, (No. 29); Abolition of Forced Labor
Convention, (No.105); Equal Remuneration Convention, (No.100);
Discrimination Convention, (No.111); Freedom of Association and
Protection of the Right to be Organized Convention, (No. 87); Right to
Organize and Collective Bargaining Convention, (No.98); Minimum Age
Convention, (No. 138); Worst Forms of Child Labor Convention, (No.182)
India has ratified Conventions 29; 105; 100; and 111. The latter four
including the important Convention on the Worst Forms of Child Labor,
No.182, have not been ratified by India. ILO Convention 182 has had the
fastest ratification process of any International treaty. As of July 2006, 160
nations have ratified the Convention. In contrast, Pakistan, with a large
child labor population, ratified the Convention in 2001. Clearly, child labor
is an issue of under-development. Impoverished families, in order to meet
basic daily needs, often have no choice but to put children to work.
Poverty, therefore, is the driving force behind child labor and exploitation.
Public Interest Litigation and Judicial Activism

Judicial activism is a tradition in Indian law that emerged from the adoption of Public Interest Litigation. Judicial activism can be described as an approach to the law whereby judges, in relevant cases, may be moved to consider the wider implications of social and economic welfare for traditionally exploited groups. The reason and rational for the use of PIL by the courts was clarified in the case of *Bihar Legal Support Society vs. The Chief Justice of India and others*, when the court noted: “the weaker section of Indian humanity have been deprived of justice for long, long years: they had no access to justice on account of their poverty, ignorance and illiteracy. The strategy of public interest litigation has been evolved by this court with a view to bringing justice within easy reach of the poor and disadvantaged sections of the community.” 31

As a signatory to the 1989 United Nations Convention on the Rights of the Child, India is obliged under international law to uphold the respective articles of the Convention. Article 39(f) of the Constitution of India, one of the Directive Principles of State policy, “requires the State to direct its policy, inter alia, toward securing that childhood and youth are protected against exploitation, and against moral and material abandonment. There is, therefore, great need for tightening the existing provisions relating to child sexual abuse and assault.” 32

31 AIR 1986, SC 1773.
Legal safeguards to protect children from trafficking and forced labor are specifically addressed under Article 23 of the Constitution of India. Article 23 states: Art.23(1) Traffic in human beings and beggar and other similar forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Art.23(2) Nothing in this article shall prevent the State from imposing service for public purposes, and in imposing such compulsory service The State shall not make any discrimination on grounds only of religion, race, caste or class or any of them. \(^{33}\)

Moreover, article 23 falls under the purview of a Directive Principle of the State, or guiding principle, to be enforced through legislation and policy.

The Supreme Court, in *Bandhua Mukti Morcha vs. Union of India* cogently expressed the profound importance of Article 23 to the life and livelihood of the Indian nation and emphasized the need to address the practice of forced labor: “Now there was one feature of our national life, which was ugly and shameful, and which cried for urgent attention and that was the existence of bonded or forced labor in large parts of the country. The constitution-makers, therefore, decided to give teeth to their resolve to obliter ate and wipe out this evil practice by enacting constitutional prohibition against it in the chapter on Fundamental Rights, so that the abolition of such practice may become enforceable and effective in

\(^{33}\) Art. 23 of the Indian Constitution.
Article 23 and was included in the chapter of fundamental rights and beggar and other similar forms of forced labor.” 34

The Indian Constitution guarantees equality before the law for all citizens under article 14. Article 15 prohibits discrimination on the basis of race, religion, caste, sex and place of birth. The directive principle of state policy imposes a duty upon the government of India to ensure that all citizens enjoy a minimum standard of living. Yet the vast majority of Indians endure extreme poverty and lack primary needs such as housing, a basic diet, adequate medical care, clean water and education. Public Interest litigation can be a vehicle for addressing social and economic inequities.

In Indian law, individuals or groups, such as NGOs, can file Public Interest Litigation (PIL) before the courts. Public Interest Litigation may also include litigation introduced by the court itself to address a situation that is deemed injurious to the public interest. PIL is not defined by any statute or act. A case may be brought before the court by a third party, a party not even directly affected by the action, such as an NGO, concerned about a specific danger to the public interest. Public Interest Litigation could, for example, be instigated by individuals concerned that industrial actions are causing severe pollution thus endangering the health of the

34 Bandhua Mukhi Morcha vs. Union of India; AIR 1984; SC.802.
public in a specific locale. The key factor in assessing the validity of a PIL action is the court determination that the public interest is being harmed by the alleged actions.

Many areas are conceivably covered under PIL such as: Acts of pollution; Violation of human rights; Government corruption or malfeasance; Environmental damage; Religious persecution; Child labor violations; Municipal services that are unsafely maintained. In the area of human rights, the Courts have generally shown a willingness to embrace Public Interest Litigation, thus extending much needed protection to traditionally oppressed groups and persons in Indian society.

In India, the Scheduled Castes, Scheduled Tribes and other marginalized groups, who suffer the twin tragedies of extreme poverty and systemic discrimination, have been unable to exercise their full civil and political rights. These realities are accepted generally by the judiciary and leading proponents of human rights in India. In 1982, in a landmark decision that has had positive repercussions on the human rights landscape of the country, the Supreme Court accepted the notion that additional steps were necessary in order for the marginalized and poverty stricken to exercise their full legal rights under the constitution. In this historic case, Peoples Union for Democratic Rights (PUDR) vs. Union of India, the Court affirmed that a third party could petition the court and request its intervention in a matter where another party’s fundamental rights were being violated. In this case, PUDR cited constitutional guarantees under
Article 23 of the Constitution, prohibiting forced labor and trafficking in persons. They submitted that workers contracted to build the huge sports complex for the Asian Games Village in New Delhi were being exploited. They alleged that children under the age of 14 were employed in the construction project and that sections of the Employment of Children Act, 1938 were being violated. It was further held by PUDR that the workers were being reduced to beggar status and working under exploitive conditions without minimum wage guarantees, which constituted a violation of their fundamental rights.

In rendering judgment, the Supreme Court observed: “The rule of law does not mean that the protection of the law must be available to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the rule of law is meant for them also though today it exists only on paper and not in reality.”

The Supreme Court decision implied tacit recognition that civil society in India had failed to protect the rights of large segments of the society and that extra judicial intervention was warranted. Thus the practice of Public Interest Litigation was introduced by the court to enhance the protection of the public welfare on a wide range of concerns including child trafficking.

35 PUDR vs. Union of India [1982 (2) S.C.C.]
and exploitation. In this regard, the more activist stance of the Courts vis a vis human rights protection for the oppressed has been succinctly reflected in the case of, *Bihar Legal Support Society vs. Chief Justice of India and others*.

In reference to vulnerable members of society, the Court stated:

“On account of their socially and economically disadvantaged position they lack the capacity to assess their rights and they do not have the material resources with which to enforce their social and economic entitlements and combat exploitation and injustice. This court has always, therefore, regarded it as its duty to come to the rescue of those deprived or vulnerable sections of Indian humanity in order to help them realize their economic and social entitlements and to bring to an end their oppression and exploitation.”

There are many instances where Public Interest Litigation has been used and supported by the Courts to protect the rights of children who have been trafficked and victimized in the CSI. In 1992 an NGO filed a Public Interest Litigation to address the appalling conditions facing a girl who had been illegally confined and torturing in a New Delhi brothel. When the girl was brought before the court, she testified about the conditions she faced and named the man who caused her confinement and sexual exploitation. Shri Awasthi, an advocate in the New Delhi High Court, was appointed an Officer of the Court to assist with the case.

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36 Rao 203.
“Shri Awasthi appeared before the Court several times that these girls should be rescued and that minors were being kept in very deplorable conditions. The court passed appropriate orders and around 500 girls were rescued. During the process of rescue, the police complained of financial constraint. But the court passed suitable orders to create a separate budget head under the control of the Commissioner of Police, Delhi, which had a contingency fund of 2 lakhs annually to be exclusively used for purpose of rescue operations.”

Judicial activism in this case extended to new procedures being used that would allow for the timely recording of victim statements well in advance of a trial so as to refrain from having the witnesses called back at a later date or confined until a trial date was set. The issue emerged during a case involving child trafficking. “For the first time, the video conferencing method was adopted to record the statements of victim’s. The defense lawyers opposed the measures but the trial continued and the victims’ statements were recorded in the Court. Ultimately, the traffickers were convicted and sentenced for a period of seven years.”

In another successful case of Public Interest Litigation, a Central Intelligence Cell was established within the CBI, the main department responsible for investigating kidnapping cases across India. This provision has a major impact on child trafficking since the literature in this

37 Report of the National Workshop 22.
38 Report of the National Workshop 22.
field has established the fact that a substantial portion of missing children are trafficked into situations of labor or sexual exploitation. *Vishal Jeet vs. Union of India*, stands as a further example of a successful Public Interest Litigation case. “The Supreme Court ordered all State governments to direct their law-enforcement authorities to take appropriate steps against trafficking and to establish advisory committees to address steps for eradicating child prostitution, for care and rehabilitation of rescued girls, for setting up rehabilitation homes, and for a survey of the *Devadasi* and *Jogin* traditions.”

Although the increased sensitivity of the Courts to the plight of the oppressed is a positive sign, it is an uneven occurrence as the *Mathura* case ably demonstrates. Despite the introduction of Public Interest Litigation and legal guarantees under the Constitution, such as Article 23, the human rights of marginalized groups and individuals are poorly protected. India is a nation with 300 million children under the age of 14, an estimated child labor population of 100 million, and a population of Scheduled Castes including the Dalits and Scheduled Tribes, two of the most economically disadvantaged groups in the nation, that numbers approximately 24 per cent of the total population of 1.1 billion persons. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was designed to protect these groups from oppression and violence. States are obliged to abolish ‘untouchability’ in accordance with Article 17 of the Constitution.

*39 Bajpai 256.*
CHAPTER 5

THE ENFORCEMENT GAP IN INDIA: CHALLENGES IN THE PREVENTION AND PROSECUTION OF CHILD TRAFFICKING

A major contention of this work is that a broader perspective on child trafficking and law enforcement is called for that involves a deeper examination of key drivers such as marginalization, gender bias, police corruption which constitutes State corruption and extreme poverty.

This chapter is structured in five sections:

Section One provides an overview of findings related to corruption at the state level and the impact upon child trafficking and human rights.

Section Two examines corruption within the police services.

Section Three addresses weaknesses inherent in the enforcement systems including the judiciary.

Section Four addresses the issue of marginalization and child trafficking.

Section Five provides an analysis of the weakness of the Panchayat system, operating at the village level, to properly safeguard and protect village girls from child trafficking.

**Section One: Corruption at the State Level and the Attendant Impact upon Child Trafficking and Human Rights.**

The Indian Constitution codifies fundamental rights for every citizen. Primary rights that are addressed in the Constitution, which touch at the core of citizenship and human rights issues include: the Right of Equality; Right of Freedom; Right against Exploitation; Right to Freedom of Religion and Cultural and Educational Rights. In India, as noted by the
experience of the Dalits, Scheduled Tribes and other marginalized groups, degrees of socio-economic exclusion are evident and persistent. Such exclusion also has an impact upon the legal and enforcement regime. Thus the concept of citizenship brings forth important questions of access, class and influence.

The Atrocities Act, designed to curb and contain offences and violence against Dalits and other marginalized groups, is applauded in the West and supported by a broad section of the Indian human rights and legal communities yet the Act has little effect due to entrenched, historic patterns of cultural and social bias. State policy and the complex fusion of social-cultural practices are a clear reflection of dominant interests and power relations within society. Commenting on the theoretical foundations of human rights, Falk rightly observes that: “human rights in the present world system are overwhelmingly dependent on the normative orientation of the governing process at the state level. The governing orientation of states is primarily shaped by internal factors, especially by attitudes of domestic leaders relating to the retention of power and maintenance of domestic order, what has been called - the rulers imperative.”

A salient example of the notion of ‘rulers imperative can be found in the example of Dalit discrimination with respect to land use and ownership.

There are chronic examples of Dalit victimization, injury and murder by higher caste members over land disputes. Many of these infractions are not investigated by the authorities who themselves normally hail from different classes and higher castes. A study on poverty and development has observed that, “human achievement is influenced by economic opportunities, political liberties, social powers, and the enabling conditions of good health and basic education. As it happens, the rejection of the freedom to participate in the labor market is one of the ways of keeping people in bondage and captivity. Economic unfreedom can breed social unfreedom just as social or political unfreedom can also foster economic unfreedom.\(^2\) This is a relevant point to consider within the Indian dynamic of child trafficking since a preponderant proportion of children affected by trafficking may be described as victims of both social and economic ‘unfreedom’.

In India, corruption is highly prevalent at the state level and has a direct influence upon marginalized classes who themselves constitute a high proportion of child trafficking victims. The literature on corruption and human trafficking is evolving but is limited by many research challenges. These challenges include the difficulty of obtaining solid information, the underground nature of the crime, the difficulty of finding victims to come forward and relate their experiences, including with corrupt officials,

\(^2\) Sen 7-9.
the near impossibility of getting corrupt officials including the police to talk about their activities and the frequent reluctance of researchers themselves to include questions about the involvement of corrupt officials when surveying trafficking victims.” ³ Moreover, a comprehensive study of children trafficked in South Eastern Europe included no questions directly related to corruption and few references to the involvement of corrupt officials. ⁴ A recent OSCE report however notes that “there is a very strong correlation between trafficking and corruption and the trafficking of persons flourishes in part through the corruption of public officials.” ⁵ A 2007 International Conference on human trafficking involving women and girls reported that, “the impact of corruption of public officials, especially law enforcers was highlighted. In a number of countries it was determined that law enforcement were involved in human trafficking or became complicit and tolerant of certain activities that led to human trafficking.” ⁶

Commentators on good governance point to dominant features within a society that must be established. Prominent among these features are transparency and accountability of government functions, an independent judiciary, the observance of human rights standards, equality before the law and efforts to mitigate extremes of wealth and poverty. India is ranked among the top ten corrupt nations in the world.

B. Venugopal, in a study on Indian governance, reports that, “the minimum requirements for achieving good governance include rule of law, decentralization of governing authority, governmental accountability and responsiveness and transparent administration. Unfortunately, none of these has been satisfactorily established so far.” An empirical study on corruption in India by Transparency International noted that India has become more corrupt in recent years and has the dubious distinction of belonging to the category of the most corrupt nations in the world.

All of these factors figure prominently in the failure of the Indian State to maintain a higher level of transparency in the judicial system and to consistently and effectively safeguard the rights of marginalized people.


Section Two: Corruption in the Police Services

There appears to be a strong correlation between corruption and the exploitation and marginalization of the poorest segments of Indian society. This link has been noted by many analysts. An analysis of discrimination against untouchables by Dr. B.R. Ambedkar, one of the architects of the Indian constitution concluded that, “The administration in India is completely in the hands of the Hindus. It is their monopoly. They dominate the police, the magistracy, and the revenue services, indeed any and every branch of the administration. Their one aim is to discriminate against the untouchables and to deny and deprive them not only of the benefits of law but also of the protection of the law against tyranny and oppression.”

Police Corruption and Child Trafficking

Any discussion of corruption in India must include an examination of the role of the police who wield enormous investigative power and who represent the first line of investigation in the recording and documentation of child trafficking offences. Moreover, as documented through interviews and additional sources, since police receive approximately 40% of a livable wage, corruption is a frequent option for officers to supplement their incomes. The police services are one of the major tenets of enforcement and prevention in the child trafficking matrix. Due to their important role in the investigation, documentation and prosecution of crime, the police can

exercise crucial authority in the prevention and prosecution of child trafficking.

There are many instances where the police, at various levels, are involved in child trafficking and/or receive bribes in order to ignore child trafficking crimes occurring within their areas of jurisdictional control. A Report by the Anti-Trafficking Center of the Mumbai based NGO, Prerana, argues that the organized crime of commercial sexual exploitation and the human trafficking carried out for organized crime is a lucrative illicit business. “Members of the law enforcement community derive huge economic interest in serving the world of crime. In a nation known for extensive corruption in government, this is all the more true.”

Report co-author Pravin Patkar has stated that, “Police in India live on a 40% salary. They need the extra 60% to live. So you get corruption.” The police salary—corruption link has also been noted by an official with the Indian Administrative Service: “Throughout the country, police are paid deplorably low salaries. No wonder then that they use their power under law to secure a supplementary income.” Dr. Asha Mukundan, Director of the Center for Criminology and Justice in Mumbai offers the perspective that: “Corruption is rampant. That one sentence can answer the

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12 C.P. Srivastava, Corruption: India’ Enemy Within (New Delhi: Macmillan, 2001)74-76.
question of how significant police and government corruption in rural India is vis a vis child trafficking.”

Among the complaints that have been registered against the police and senior members of the police services are: widespread violations of human rights, large scale abuses of office and authority by unscrupulous officers, close connections among the police, criminals and politicians. In India, the police have been implicated in cases of kickbacks from the brothels where child trafficking victims work as bonded labor. “Local police stations receive payoffs from brothel owners according to rank on a daily basis: a constable could expect Rs. 25, a head constable receives about 40 Rs., and an assistance sub-inspector (ASI) receives about Rs. 80 –Rs. 100; the station house officer (SHO) receives about Rs. 500 per month, and the district special branch police, which addresses special categories of crimes, can collect monthly payments of Rs. 300 per brothel of ten girls, and Rs. 500 for larger ones.”

Prerana has noted that one of their efforts to curtail child trafficking involves training sessions for bus drivers since buses are a major mode of transport for traffickers and victims. By training bus drivers to spot potential trafficking victims and alleged traffickers, they can assist the

13 Asha Mukundan, Personal Interview, Mumbai, 26 April 2006.
police in making arrests and rescuing victims before they are coerced into the CSI. Yet a criminal alliance between the police and the trafficker may compromise the work of Prerana and the bus drivers. “Traffickers mostly use buses for transporting children and adults. Road transport is low risk. It is easy to have suspicions about a trafficking situation so bus drivers can be an early warning system. But we need financial incentives for bus drivers. Police harass bus drivers who report child traffickers. Bus drivers become suspects because the traffickers pay the police ‘hafta’ or bribe money.”

The nexus between organized crime and human trafficking is strong in India and one of the reasons behind the corruptibility of the police services. An India Human Rights Report by the U.S. Department of State Bureau of Consular Affairs states categorically that trafficking in, to, and through the country is largely controlled by organized crime. An analysis in the 2006 U.S. Government TIP Report concurs: “Although the police are charged with enforcing the country’s laws on prostitution and trafficking in women and children, NGOs, observers and sex workers have viewed police action as part of the problem. Sex workers in Mumbai and Calcutta claimed that harassment, extortion and occasional arrests on soliciting charges usually characterized police intervention.”

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arrests on soliciting charges is important. This is a necessary point to examine since a major complaint against the enforcement regime in India is the common experience whereby victims in trafficking situations involving prostitution are often criminalized. Data on the extremely low prosecution and conviction rates for a nation of one billion persons with a well documented child trafficking problem underline this reality.

It is much simpler from a law enforcement perspective to criminalize the victim. The term ‘victim’ takes on special meaning in this context and is crucial to a broader understanding of the problem. An authoritative study has identified some core issues that link child trafficking with police corruption: “the law in India against CSE&T, child sexual exploitation and trafficking, has just not been implemented except to criminalize the victim. The criminal elements have enjoyed almost complete immunity against the law. The extreme socio-economic inequalities, the low status of the women and girl child, the lucrative offers and the lack of accountability all together have ensured an active partnership of the police and the prosecution in sustaining the crime.”

If police corruption is indeed a contributing factor, as many authoritative voices and experts suggest, then this represents a further challenge to the enforcement regime. This point was established in the field work interviews whereby respondents reported a strong link between police corruption and child trafficking.

In an impoverished society, such as India, where the majority of the population live below the poverty line and extremes of wealth and poverty exist, the propensity toward corruption is evident. The poverty line debate in India is important. Government estimates for the year 2000, calculate the poverty line at 24% based upon Rupees 327 and 454 per month per capita in rural and urban areas respectively. The Indian Center for Policy Alternatives has asserted a need for a redefinition of the Indian poverty line. “As of December 2005, the poverty line, after adjusting for inflation, was Rupees 368 and 559 per person respectively for rural and urban areas. This line is an unsatisfactory criterion. This is because apart from factoring around 650 grams of food grains per day, this line makes little provision for other necessities. A person should be deemed poor in India if they have a monthly per capita expenditure of less than Rs 840 or does not have access to clean drinking water, proper shelter, quality secondary education, sanitation, and adequate public transport.” 20 It is evident that income poverty levels have an effect on both police corruption as noted and the propensity of some families to sell their children to the CSI. Income poverty is an important distinction to examine because government data on poverty may obscure an accurate portrayal of socio-economic conditions.

Section Three: Weaknesses in the Enforcement Regime including the Judiciary

Effective enforcement against child trafficking requires a multi-pronged approach in collaboration with partners in the government bureaucracy, NGO community, judiciary, police and political establishment. This section addresses key areas of concern in the Indian enforcement regime.

Age Determination

A key issue in the enforcement process is victim age determination. Age determination of victims is vitally important for three reasons. First, it allows the police to accurately list the victim as a child or an adult, so that the appropriate penalties can apply should a prosecution and conviction proceed. Second, through accurate age determination, the judiciary, government and NGO community will attain more accurate information on the numbers of child prostitution victims. Third, accurate data on child trafficking victimization and the experience of working with children in the judicial and rehabilitation process will help to inform and shape policy and programs of the government and other stakeholders in the community.

However, a number of difficulties have arisen that complicate the accurate assessment of age levels. Brothels employees and owners often conspire to falsify the age of victims when they are brought before the courts. Under the Immoral Traffic Prevention Act, 1956, prostitution is not an offense but the sexual exploitation of persons is. Under sections 7 and 8 of the ITPA, soliciting in public and conducting prostitution in a public place are
offences. However, the penalties for trafficking and employing children in prostitution can be severe. Thus for traffickers and brothel owners, it is essential that the age of the child prostitute be falsified.

The margin of error in age determination can be as wide as 12-18 months and this is a serious concern in cases where the police, brothel keepers and the medical profession are in collusion, moreover, in at least ten case studies, where the person was shown as 18 or 19 years of age, an adult in legal terms, when NGOs objected, a second ossification test was completed and the age was reported as 16/17 or 15/16. Age falsification undermines the enforcement process because it obscures court records on the actual age of child victims and is a convenient ploy in the arsenal of deceit used by the trafficker/brothel network to evade more serious charges. This is an important issue that relates directly to concerns about data collection well noted in the literature. In many cases, the brothel owner or employee, involved in the purchase of a child for work in the CSI, will quickly have the child brought before the local police detachment to file a complaint that the person was soliciting. This is a common tactic.

The brothel owner, manager or employee will oversee the completion of the First Information Report (FIR) with the presiding officer on duty, who will be the first of many in the system to receive a bribe, and falsely list the age of the child as being an adult, 18 years or older. When the child is produced before the court, she will be charged with an offense under the

21 Report to the National Workshop 34.
ITPA and a fine is usually levied. The fine is promptly paid by a brothel employee, and the child, when released, is taken back to the brothel where she works and lives. The brothel owner/manager receives a copy of the FIR, an official document, which falsely lists the child prostitute as an adult. Thus completes the cycle of deception.

Age falsification, the under-reporting of crime against child victims, the pattern of avoidance in the judicial process in charging and prosecuting the perpetrators of crimes all feed into the child trafficking enforcement gap. An enormous gap exits between recorded cases of child trafficking charges and prosecutions and the actual number of children who are enslaved in the commercial sex industry. According to child rights expert Asha Bajpai, official data obscures the reality of significant numbers of children working in the CSI. “Though there are no comprehensive and absolutely reliable statistics to that effect, it is a known and acknowledged fact that trafficking women and girls for labor and commercial sexual exploitation is on the rise in India. There is a pervasive and powerful alliance, always adult-dominant, in society which originates, perpetuates and proliferates this demand.”

Reliable sources place the average age of child prostitutes working in the CSI at between 14 and 15. Officials with ASHA, a Mumbai based NGO that operates child trafficking prevention and rehabilitation programs, reports that, “the average age is fourteen for girls in the

22 Bajpai 249.
commercial sex industry.”  

The Anti-Trafficking Center in Mumbai states that the “average age of a child prostitute in India is 15-16 years old. But the age is rapidly lowering to between 12–14 years. The average age of recruitment in Bombay has been between 15-16 years of age.”

The false FIR registration process is one of the reasons why child prostitution is under-reported in India and the prosecution and conviction rate, reviewed in the Appendix, is low. Experts who work in the child trafficking field and with child victims see a more accurate perspective. Moreover, the Supreme Court has ruled that in cases with a range in the age verification result, the lower range should be taken as the age of the person.

**Police Training**

The police exercise a pivotal role in the arrest, investigation and prosecution of child trafficking offences. However, instances of inadequate police training and resources to address child trafficking issues are a contributing factor to the enforcement gap. The National Human Rights Commission (NHRC) study on trafficking included interviews with 852 police officers, 117 senior officers and 735 investigating officers. The results offer important insights on the enforcement gap - police training link: “eighty per cent attach either ‘nil’ or low priority to the issue of trafficking. Forty per cent of the officers surveyed had not even heard of

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23 Kumar Tamang, Personal Interview, Mumbai, 24 April 2006.
the concept of trafficking while only 7% had received any kind of training on the subject." The NHRC study provides an important insight towards understanding police involvement in the investigation and deterrence of child trafficking. As we have seen, the police exercise a pivotal role including: completion of the First Information Report, and completion of charge sheets, investigation of alleged crimes and cooperation with prosecutors. If basic knowledge and training about child trafficking is inadequate and officers themselves place low priority on the crime then the results on arrests, prosecutions and convictions will be marginal, a point well noted in the annual U.S. Government TIP reports on India.

The level of police training vis a vis human trafficking was highlighted at a Regional South Asian law enforcement conference. Participant S.P. Hooda, DCP, a senior official with the police services in New Delhi, India, commented that, "we are not a specialized agency to handle trafficking. Due to limitations such as trained manpower, police can hardly go beyond arresting soliciting individuals. Most of the police officers are not aware of the seriousness of trafficking. There is a need to establish a specialized and trained agency to fight this problem." Without adequate training, police officials may have less sensitivity to the problem of child trafficking nor the ability to apply the law in the right context which must be done in order

26 One Day Stakeholders Meeting of the Law Enforcing Agencies, (June 2006) 5.
to ensure effective investigation and prosecution. As noted, if a study of 852 police officers, representative of a large sampling, found that only 7% had any formal training on child trafficking matter, this is indicative of failures generally to understand and properly investigate the crime.

A comprehensive study on police training and investigation related to child trafficking offences enumerated critical errors in the investigative process and fundamental flaws in police training/knowledge that compromise effective enforcement. For example: 1) Senior law enforcement officials who are supposed to receive pre-service training on trafficking laws admitted that they had not had any specific training; 2) police constables do not receive training in law and enforcement; 3) Law enforcement officials cited incorrect information about the ITPA when asked about procedures for rescuing children in prostitution from brothels; 4) Many officers believed that the ITPA requires police to have a female witness from the locality when inspecting or conducting a raid and rescue of trafficked children from a brothel. This is false because the ITPA was amended to not require a woman from the locality, permitting a woman from outside the locality to fulfill the role of a required adult female witness; 5) Many police wrongly they must secure the approval of the District Magistrate to arrest a trafficker, under Section 14, of ITPA, all offences are cognizable, which means police sub-inspectors may arrest without warrant, provided that they have the authorization from the special police officer appointed for dealing with ITPA offences; 6) Many police
also wrongly assumed that they must first receive a complaint in order to search a brothel suspected of employing children. ITPA Section 15 allows police sub-inspectors to search without a warrant from a magistrate.\textsuperscript{27}

During the investigation stage, the information gathered by the police forms a crucial foundation of evidence that assists the prosecution in rendering a successful case. The charge sheet is an important document for the preparation of criminal charges and the eventual prosecution of suspects and others’ responsible for CSI crimes against children. There are examples where the completion of the charge sheet is legally flawed by the input of inaccurate or incomplete information.

“The charge sheet includes a description of the offence and all sections of the law that may be relevant to the case. Unfortunately, the facts of the case and pertinent citations to laws are often missing. In addition, the police often do not identify all witnesses at an early stage of the investigation or explain to witnesses that they need to make themselves available to provide testimony for the case. In the absence of good witnesses, the trial results in acquittal.”\textsuperscript{28} Legal and administrative errors committed by police officers and insufficient training about the law, as noted, have a direct bearing upon the prosecution of the alleged offenders. “There have been instances where traffickers and brothel madams have

\textsuperscript{27} United Nations Office on Drugs and Crime, Regional Office for South Asia, Project Summary IND/S16, (2003) 3.
\textsuperscript{28} One Day Stakeholders Meeting of the Law Enforcing Agencies, (June 2006) 5.
been given custody of the rescued girls because they have feigned to be their parents. The police have not taken the time to carry out an in depth investigation for many times it has been observed that these girls are adopted when they are very young and brought up by the brothel madams to be induced into prostitution once they grow up.”

Lack of coordination between senior administrative officials, senior police inspectors and police officers also hampers investigation and the enforcement rate. Training on important matters of trafficking is not, according to studies, reaching the rank and file of the police force who are on the front lines of investigation. Many police members do not fully understand the laws on trafficking and other important functions such as conducting brothel raids.

A frequent complaint against the police is that sex workers are routinely arrested under section 8 of the ITPA for soliciting in a public place. Instead of concentrating on the victims, the police should focus efforts upon arresting brothel managers and owners, and targeting traffickers, which is possible under provisions of the ITPA. Cr. P.C. section 156 grants authority to the police to conduct an inquiry in cases involving sexual crimes against children without permission from a Magistrate. “The police officer is required immediately thereafter to send the report to the Magistrate and can proceed to investigate the facts and circumstances of the case, and if

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29 Recovering Childhoods 53-54.
necessary, take measures to discover and arrest the alleges exploiters and abusers.” 30

**Enforcement Weaknesses in the Judicial System**

The system in India for addressing the crimes of child trafficking and sexual exploitation is fraught with inadequate procedures, which fail to properly protect child victims and undermines overall enforcement efforts. The lack of access to legal representation for children is a weakness in the court and judicial system. For instance, difficulties have arisen when children are close to adult age and age determination is required to assist with the legal proceedings. “Only in limited circumstances is a bone ossification test made to ascertain the child’s age and the application for the test can only be requested by someone other than the child. Since children rarely have their own lawyers, this application is usually not made. Since trials do not normally begin until one to two years after the crime is reported, at the time of the trial the child may have become an adult, and at that stage is not treated as a child.” 31 Thus the right to a fair hearing conducted within a reasonable period of time and the right to legal representation, hallmarks of many legal systems, have been denied. When the child is finally called to testify, which may be several months later, they are not shown the original statement which they made to the police.

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30 Cr..P.C. section 154  
In child trafficking cases, “during the trial, the child will be asked to explain what happened and then be cross-examined by opposing counsel on any inconsistencies between the child’s statement at the time of the incident and years later at the trial. Again, the Criminal Procedure Code does not allow for children in these circumstances to have legal counsel, and while the Supreme Court has passed judgments providing rape victim’s access to legal counsel, this ruling has not extended to children.” 32

Another concern relates to the custom whereby prosecutors do not meet with the victim before the trial. In accordance with the prosecutors Code of Ethics, this practice is maintained. The accused has the right to counsel and in many cases, when out on bail before the trial has begun, has made contact with the victim and/or the victim’s family to exert pressure for a change of testimony. The legal system, in cases involving the sexual exploitation of children, appears weighted in favor of more complete representation and rights for the accused. According to legal guidelines set forth by the judicial branch, “Prosecutors are not allowed to meet with or interview the victims in advance and advise them of the course of action to be taken. Prosecutors must act as officers of the court and not appear prejudiced but in many cases the result is that prosecutors do not know the nature of witnesses’ statements.” 33

The large number of cases awaiting trial and the heavy workload of prosecutors and judges also compromises the administration of justice in India. A review of case lists posted outside courts, reveals that, “on average, a prosecutor is opposing approximately 30 cases each day. At any given point in time, a prosecutor is involved in at least two trials and opposing 20 bail applications, in addition to other miscellaneous motions. Considering that they have no contact with victims or access to other first-hand sources of information, they are primarily dependent on police information. It is only in cases where a victim engages a private lawyer that a prosecutor meets with the victim and is able to understand the case from the victim’s perspective.”

Inefficient preparation of evidence and reports by the police can have a negative domino effect on the entire prosecutorial process. In the overcrowded and time pressed Indian judicial system, prosecutors rely upon the police for key information and instructions about cases. “If the police fail to provide sufficient information, the prosecutor’s ability to try the case is hampered. For example, when alleged offenders are arrested, they immediately apply for bail, and the bail application is served on the relevant police station at the time the application is made. Discussions with lawyers and prosecutors revealed that the police officer in charge of an investigation, who must instruct the prosecutor, rarely, if ever, meets with

the prosecutor in advance of the hearing to plan a strategy for opposing the bail application. In most cases, the alleged abuser obtains bail.” 35

Many of the issues that influence the workings and effectiveness of public prosecutors apply to judges as well. A key problem in trying cases involving the commercial sexual exploitation of children is the apparent lack of awareness among those prosecuting and hearing cases and inconsistent application of laws preventing child exploitation.

For example, “judges have powers under the criminal procedure code to advise the police to conduct additional or new investigations if necessary, but this rarely occurs, even when a case merits additional investigation. Another obstacle is the pressure on judges and the resources available to them. There are not enough judges to handle the massive caseloads and these judges have little support including assistance with researching laws and legal procedures.” 36

A general overview of the main workings of the Indian judicial system reveals several difficulties that restrict the enforcement of child trafficking laws. The absence of proper police training on law and procedures leaves officers in many cases ill-prepared and ill-trained to be briefing the prosecutor on the salient issues of child exploitation and trafficking cases. Moreover, this problem can compromise the accurate completion

of charge sheets thus rendering acquittals to persons who may have faced successful prosecution. In addition, the cursory nature of trial preparation and victim briefing by prosecutors may also jeopardize the just disposition of cases. Inadequate witness protection in the prosecution process is another area of concern. This work has articulated the necessity of a strengthened prosecution regime that includes more effective victim support and victim protection measures. In India, the absence or inadequacy of these two paramount pillars of an enforcement strategy undermine effective prosecution. There are complaints that children who are engaged in legal proceedings against traffickers or brothel staff have been exposed during the bail and trial phase to their abusers. Post rescue operations (PRO) for trafficked children are often inadequate and fail to protect the victims from intimidation or harm. The following incidents have been recorded from a sampling of 99 underage girls rescued from Mumbai brothels. “ 1) In contravention of the legal provisions the officer in charge of the special Home formally refused to admit these girls stating that the Home had no vacancy for the girls; 2) the police, having no idea what to do, placed the girls in police custody for more than 4 days; 3) the police called upon Prerana to intervene and assist with shelter arrangements; 4) while being interviewed by police, it was observed that the girls were strongly tutored by the pimps and the brothel keepers. In the first instance, all misquoted their age, pretended to be majors and argued that they had been under no compulsion but were selling sex voluntarily.
This they maintained even when the age verification tests showed them as minors.” 37

When a child has been apprehended by the police, as a suspected trafficking or child prostitution victim, the criminal network that controls her faces two immediate threats. The first threat relates to lost earnings from the child prostitute. Evidence suggests that demand for younger child prostitutes is growing. The second threat involves fear of arrest, prosecution and conviction. For these reasons, criminal networks are known to go to great lengths to subvert the legal process and to gain access to the child victim. Such steps are not difficult to achieve.

The post-rescue phase is critically important for the care and protection of the child and for the proper administration of legal proceedings related to child trafficking offences. Under the Juvenile Justice (Care and Protection) Act 2000, children falling under the scope of the legislation are categorized into two areas: those in need of care and protection and those in conflict with the law. The Act includes specific clauses that address children involved with or at risk of involvement in the CSI. Section 2 (d) of the Act states: “a child in need of care and protection” means a child: (iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child, (iv) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,

37 Priti Patkar and Pravin Patkar, Post Rescue Operations, 60.
(vii) who is found vulnerable to and is likely to be inducted into drug abuse or trafficking, (viii) who is being or likely to be abused for unconscionable gains.”

A juvenile in conflict with the law means a child who is alleged to have committed an offence. Such a child will be referred to the authorities for legal disposition and may be remanded, for example, in a juvenile detention facility. The Home Investigation Report, HIR, is an essential document in rescue and rehabilitation operations. Once a child has been recovered from a brothel, beer bar, dance bar or other establishment in the CSI, where prostitution is occurring, they are brought by the police before a constituted government authority, as proscribed under the 2000 Juvenile Justice Act, 2000. This authority may be a Child Welfare Committee or Juvenile Justice Board. The Act requires the completion of an HIR which is prepared by a probation officer or other sanctioned official. The purpose of the HIR is to document the home and family situation of the child, to make a determination over custody of the child and to determine if any person purporting to be a guardian or parent of the child is legitimate and if they are capable of providing safe custody. Once completed, the HIR forms an instrumental document informing the CWC or JJB about the best custody arrangements for the child and rehabilitation efforts.

This is a central issue because of the past and current practice whereby

38 J.J. Act  2000, Section 2 (d.).
persons who are not legitimate guardians, but actually persons associated with the child’s activity in the CSI, attempt to take custody of the child under false pretenses and often succeed. Intimidation of rescued children including harm is a well documented occurrence. Studies of HIR reports on selected cases indicate that, “victims did not have any family, extended family, community or kinship based support system that could function as a protective mechanism to protect them against situations which were prone to sexual exploitation. The victims did have a family, extended family, community or a kinship environment that was in fact inclined to goad these girls to engage in such hazardous work situations where the chances of sexual exploitation and trafficking into the flesh trade were very high.”

When a girl has been rescued by the police or on rare occasions, an NGO, and interviewed by the police and the Court, she will normally be placed in a remand home or shelter, a form of protective custody, while awaiting legal and rehabilitative determinations and the HIR report. However, once in these protective homes, victims are still vulnerable to influence and threats from the criminal elements in the CSI, usually those who have enslaved them.

Two key issues emerge from these cases. First, there is often pronounced family/ extended family involvement in the trafficking of girls and evidence of family remittances from trafficking and commercial sexual

activity. Second, it is clear that the brothel network is extensive and exerts tremendous fear and influence over the victims even when they have been apprehended by authorities and remain in ‘protective’ custody. The problem of victim re-trafficking is a key area of concern in this enquiry and one of the factors that bears heavily upon the low conviction rate in the enforcement regime. The Prajwala case is illustrative: “out of 130 victims who were repatriated and rehabilitated, 72 are missing.” An important factor to be considered concerns the waiting period between the rescue and trial. The waiting period is normally several months, which is customary given the backlogged court dockets in India. During this time, the victim will normally remain in a shelter or may be released. The absence of legal representation for child victims and the lax protective environment in which children are placed while awaiting trial have had dire consequences on the enforcement and prosecution of child trafficking. The accused, in cases of child trafficking and exploitation, are normally granted bail while awaiting the disposition of the case against them.

The point repeatedly emerges that once rescued from brothels and other establishments within the CSI, children are not free from coercion and re-trafficking. Recent case studies underline this fact. A brothel raid in May 2002 led to the rescue of 24 persons, 14 of whom were deemed to be minors. The juveniles were produced before the Juvenile Justice Board,

40 Report of the National Workshop 35.
which is for juveniles in conflict with the law and not the Child Welfare Committee, the more appropriate forum. Legal irregularities in the handling of the case led to an appeal before the Mumbai High Court. The Court noted errors of law and procedure including: “the accountability of the police who handled the arrests of the girls; the accountability of the judicial magistrate who referred the case to the JJ Board instead of the CWC, in violation of the JJ Act, 2000; the accountability of the judicial magistrate who released the minors without waiting for the HIR from the probation officer; the accountability of the advocate who appeared on behalf of both the accused and the victims, clearly at the behest of the traffickers.”

A joint Report by the Human Rights Law Network and ECPAT raises valid concerns about witness tampering and the denial of legal representation to child victims of sexual exploitation. “Once released on bail, the accused is in a position to exert tremendous pressure on the children. In many instances, the alleged abusers pretend to be the child’s family and make application to take their custody. Since children often do not have legal counsel, children’s rights are not separately protected. Many Courts knowingly release children to their abusers’ custody; the prosecutor has little or no contact with child witnesses and is not in a position to represent children’s interests in these custody situations.”

41 Report of the National Workshop 37.
Another concern about the enforcement process relates to the police and judicial focus upon the sex workers’ alleged crime and not the main perpetrators of the crime who include the trafficker, the brothel owner, brothel manager, and/or family members. Under Section 5 of the Immoral Traffic in Persons Act, (ITPA) procuring persons for the purpose of prostitution is an offence. Section 6 of the ITPA, refers to the illegal detainment of a person in a place of prostitution. However, sections 5 and 6 of the Act are seldom invoked. These sections could be applied more effectively to pressure and prosecute key figures in the CSI. Most arrested sex workers are charged under section 8 of the Act, relating to soliciting in a public place. “In most of the states, 93% of the arrests made under section 8 of the ITPA are females in prostitution who are subsequently being convicted and jailed.” 43 Conversely, key figures responsible for the trafficking and sexual entrapment of children and adults, face little deterrent pressure under the judicial system. “Quick and easy bail, even in cases under section 5 and 6 of the ITPA, is a problem area, as the fine sentences imposed on the brothel keepers are not stringent enough. The period of sentence is of very small duration, e.g. 2-3 days, and this does not act as a serious deterrent for them.” 44 According to one study, only 5% of cases registered under the ITPA are against the traffickers. They mostly

end up in acquittal or are kept pending, and the conviction rate is very low. About one-third of the cases are against females under the age group of 18-21." Under section 18 of the ITPA, the courts and police have the authority to close brothels and evict persons who have been engaged in prostitution. Again, this is a section of the ITPA that is seldom invoked. To close brothels and convict influential figures in the child trafficking chain requires political will and dedicated officials. Accordingly, such actions require a determined effort to confront powerful business and organized crime interests who have a lucrative stake hold in the commercial sex industry. It is much easier and less confrontational to prosecute sex workers than to attack powerful vested interests.

The continued focus on criminalizing the victim, which is a function of gender discrimination, marginalization and the inadequate application of child trafficking laws, has an adverse impact upon enforcement levels. It is imperative to note that the criminalization of the victim nullifies child trafficking cases and obscures accuracy on the number of victims. The absence of child trafficking cases before the courts is a compelling reminder of this reality, as noted in the TIP Reports.

A number of factors contribute to weak law enforcement and the low conviction rate for persons engaged in child trafficking. These factors include: the lack of legal representation for the victims; witness tampering.

and intimidation; the relative ease with which the accused obtain bail; failure by the police to register a First Information Report (FIR); the ease with which the accused and their accomplices gain entry to remand homes; inconsistencies in the application of HIRs; the systemic abuse and exploitation of marginalized groups, who represent a majority of CSI victims; delays in getting cases to trial; and a backlogged Public Prosecutors Office.

Additional factors include police corruption, the criminalization of victims through the erroneous application of the ITPA; a knowledge gap on child trafficking issues within the police and prosecutorial ranks; inadequate completion of charge sheets and the ineffective application of existing laws, such as sections 5, 6 and 18 of the ITPA.

Section Four: Marginalization and Child Trafficking

There are 160 million Dalits, formerly known as untouchables, in India. The historic and systemic exploitation of these persons, affecting all aspects of their lives, is well documented by various organizations including the United Nations, The Asian Human Rights Commission and the Indian National Human Rights Commission. The level of suffering that they have endured, and continue to endure is tragic. According to Shankaran, “Most of the victims of child trafficking are Dalits or come from the backward classes. Their numbers are easily above 70%.”

Since poverty and marginalization are viewed in this analysis as instrumental to the enforcement gap, it is critical therefore to focus on the particular situation of the Dalits. They compose a minority within Indian society, albeit numbering about 100 million persons. In a poor country, where child trafficking renders profits and much needed income particularly in areas of impoverishment, there are inducements that motivate child traffickers. Reports also indicate that family members are often involved in child trafficking.

A leading Indian NGO involved with child rights and trafficking issues reports: “From the home studies that we have done, with our partners, we found that in some cases it was very blatant where the father would sell them. In many cases they turned up and said, ‘we didn’t know, we were told it was for babysitting work’ and all that kind of rubbish. The majority of families know when their daughter is put into the CSI.”

In an impoverished society, such as India, where the majority of the population live below the poverty line and extremes of wealth and poverty exist, exploitation is common. The poverty line debate in India is important. Government estimates for the year 2000, calculate the poverty line at 24% based upon Rupees 327 and 454 per month per capita in rural and urban areas respectively. As noted, government data was challenged by the Center for Policy Alternatives for under –reporting true poverty levels.

In the broader context, income poverty is an important distinction to examine because government data on poverty may actually obscure an accurate portrayal of socio-economic conditions in the country. Moreover material levels are related to specific issues of deprivation and neglect, themselves partial drivers of the very vulnerabilities to which trafficked children are often exposed.

The examination of child rights and theories therein often focus upon the general nature of child vulnerability and the concomitant need for parental and state authority to guide the child appropriately and with due attention to essential needs. The broader question which emerges from these discussions is what level of care and protection is the family and indeed the state, in cases of extreme poverty and marginalization, able to afford the child. Arneil outlines a child rights paradigm that focuses upon three elementary ‘rights.’ “These include the right to provision; the right to protection and the right to autonomy. Autonomy is the freedom to make changes over ones life, a freedom that is restricted for children by both parents and the state.” In pursuing this analysis, if one examines the first ‘right’ of provision or basis needs, it can be argued, with reference to marginalized children, such as Dalits and Schedules Tribes, that basic needs are commonly unfulfilled.

In the category of education, to take one example, approximately 132 million children aged 6-14 do not attend school in India. Moreover, in the second ‘rights’ category, protection from abuse, exploitation and violence, Indian data reveals a child labor force of approximately 100 million children despite clear prohibitions in the Constitution against child labor under the age of fourteen. Thus it is clear that when examining the special circumstances of marginalized children, the magnitude of vulnerability, deprivation and exploitation is extremely high and exposes these children to elevated risks of child trafficking. The protective umbrella, family, state, community that ideally supports children is often absent when considering the circumstances of marginalized and severely impoverished children.

Labor is a fact of life for many children in the developing world. Economist Amartya Sen provides a distinction between generalized poverty and capability deprivation: “Poverty can be sensibly identified in terms of capability deprivation; the approach concentrates on deprivations that are intrinsically important, unlike low income which is only instrumentally significant. The relationship between income and capability would be strongly affected by the age of the person, by gender and social roles, by location, by insecurity and violence. If there is systematic “boy preference” in the family allocation, then the extent of the deprivation of the neglected members, girls in the example considered, may not be adequately reflected in terms of family income.” 49

49 Sen 242.
Within Indian society and the familial structure, gender bias has been well noted in the literature. These realities appear to be exacerbated within the lower socio-economic levels of society. Moreover there is a link between gender bias and child trafficking. In interviews conducted in India for this research, respondents identified strong links between gender discrimination and child trafficking. Gender discrimination takes many forms. Denial of educational opportunities, bias in food distribution favoring male adults and children, girl child neglect and female infanticide are common examples. Additionally, there are sharply divergent practices related to child labor between the developed world and the developing world. In India, child labor is more prevalent in conditions of extreme poverty and marginalization. Gender bias may have an additional impact on the extent and severity of the labor imposed upon female children. Bajpai asserts that, “in a culture that idolizes sons and dreads the birth of a daughter, to be born female comes perilously close to being less than human.”

India has approximately 300 million children under the age of fourteen. The facts related to child labor and education rates are sobering. “It is estimated that 100 million children are forced to work in the organized and unorganized sectors; the 1991 census lists approximately 150 million children living in rural areas; out of 175 million children aged 6-14, approximately 132 million do not attend school, despite the stipulation

50 Bajpai 368.
under Article 45 of the Indian Constitution that all children under 14 attend school."

The interconnection between poverty, gender bias and child labor is significant. The girl child who is marginalized due to poverty and gender is at a disadvantage in terms of education, opportunity, family protection, health, nutrition and other key indicators of well-being. Moreover data on the number of rural children, where poverty levels are highest and there is non-school attendance of 132 million children, is cause for deep concern. These factors have an impact upon child trafficking and underscore the general vulnerability of marginalized children. The deprivation and discrimination that the Dalits and STs experience across India is rooted in the economic, social, political and religious life of the nation today, as it has been for centuries. A clear example is the Atrocities Act of 1989, which has minimally reduced severe abuses against Dalits and STs.

The intention of the Act was twofold. First, to provide a constitutional framework for protective action to safeguard the rights of the Scheduled Castes, and second, to educate the masses through the rule of law on the higher ideals of Indian society vis a vis minority rights. The experience of the past seventeen years clearly demonstrates that Dalits continue to suffer violence, degradation and deprivation. Children from these groups are directly impacted and victimized by child trafficking. A report by the Dalit

51 Rao 6.
Freedom Network states that, “The sex trade in the sub-continent draws its victims from the Dalits, Tribals and oppressed castes. The targeting of Dalit and Tribal Women for these trades is a symptom of the caste system and its view of Dalit/Tribal women in particular.” 52

Effective law enforcement is a long standing problem in India that is not confined to child rights matters alone. However the consequences can be particularly devastating for children. “Children still work in carpet weaving or glass factories and serve as domestic help despite laws against child labor and hundreds of thousands suffer in bondage, including children, despite the Bonded Labor (Abolition) Act, 1976.” 53

The Dalits compose a marginalized class whose rights should be a principal focus of social legislation such as the Bonded Labor Act, but who fall outside its protective scope. Article 17 of the Indian Constitution abolished the practice of untouchability. The Constitution also forbids the practice of caste – based discrimination. As observed by the Indian Human Rights Commission: “A stable law and order environment where the rule of law prevails and where constitutional safeguards can be exercised freely is essential to the realization of Dalit human rights.” 54

In 1990, The National Commissioner for Scheduled Castes and Scheduled Tribes conducted a detailed analysis of atrocities such as murder, rape, arson and property crimes against Dalits between 1983-1987 in the states of Bihar, Madhya Pradesh, Rajasthan, and Tamil Nadu. “The Commission found an alarming increase in crimes against SCs (an 8% rise between 1981-1986) especially murder and rape. There was a link between atrocities, both of caste prejudice and untouchability. The distance between economic and social aspects of deprivation is acutely visible in relation to Dalits engaged in traditionally ‘unclean’ occupations such as scavenging, disposal of human and animal carcasses, flaying and tanning and prostitution.”

One dimension of the problem relates to evidence of police and judicial indifference to Dalit conditions. Members of the police services in India, for example, often fail to complete FIRs on behalf of Dalits who have been victims of crime. Research by the Tata Institute of Social Sciences and the National Human Rights Commission recorded that out of 952 police officers interviewed, they register FIRs in about 40% of cases.” This represents a fundamental breakdown in the judicial process since the FIR is the essential first step in the investigation and prosecution of crimes. Dalit related crime statistics provide a revealing example. In the state of Tamil Nadu, “between 1992-1997, only four out of 1500 cases of crimes against Dalits and the State 153.

55 Report of the National Workshop 33.
Dalits under the Atrocities Act led to convictions, despite the fact that 118 villages were considered by the government to be ‘atrocity prone.’ The institutional authorities in India, representative of the judiciary, government, bureaucracy, police, business establishment and religious communities, provide important leadership on national issues.

The non-registration of crimes against Dalits and other marginalized groups is a major problem in the criminal justice system. According to Amnesty International, “Without a First Information Report, a case cannot continue. A lawyer in Uttar Pradesh estimated that a maximum of 20% of cases of rape are registered and reach the courts but only 5% of rape cases against Dalit women are registered. Police do not want to register crimes under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act because of stringent punishments against their own caste or those higher. Police withhold or destroy evidence often at the behest of alleged perpetrators who might have caste and other links with police officers.”

Research on caste violence outlines institutional and caste bias against Dalits. For example, even when cases are registered, the lack of appropriate investigation, or the judge’s own caste and gender biases can lead to acquittal, regardless of the availability of the evidence or

57 Human Rights Watch, “Broken People” 7
witnesses. The failure to successfully prosecute cases of rape also allows for crimes against women to continue unabated.”

Such incidents underscore the broken link between functional citizenship and marginalized persons. The enforcement regime in India to prosecute child trafficking offences is seriously handicapped by three major deficiencies. First, systemic discrimination against Dalits has influenced the investigative procedures and conduct of the police. Second, institutional and societal discrimination against the Dalits also appears to have influenced judicial decision-making. Third, the low rate of prosecution and conviction of child trafficking offences relative to the widespread existence of the problem, suggests that Dalits and other oppressed groups are severely marginalized when it comes to human rights protection.

Section Five: The Panchayat System and Child Trafficking

In India, there are 476 designated districts. Districts are subdivided into *taluqs*, areas that have between 200 and 600 villages. Under article 40 of the Indian Constitution, the government is directed to establish panchayats to serve as councils of local self-government. The panchayats were relatively inactive until the Government of Rajiv Gandhi introduced the Jawahar Employment Plan which provided direct funding to the panchayats for the purpose of employment and economic development. In 1992, the

59 Human Rights Watch, “Broken People”, Section 9, 5-6.
Indian Congress passed a bill that gave panchayats constitutional status. The government also formalized a three tiered structure for the panchayats based on a village, block and district model.

All village persons over the age of 18 are included in the Gram Sabha. The Gram Sabha elects the Gram Panchayat, which is a council of elected members which renders decisions on important socio-economic matters of relevance to the village community. The panchayats receive three sources of funding: a) local grants approved by the Central Finance Commission; b) funds for Centrally approved projects and 3) funds released by the State governments. The panchayat village councils have extensive influence over economic and social issues in their territory. They are also aware of family and social issues in the village district.

Questions have been raised about the role of the panchayats vis a vis child trafficking. Given the frequent allegations of corruption attached to many panchayat council members, there is cause for concern that some panchayat council members may be involved in the trafficking of children. The other issue which arises is the level of commitment that panchayat members have exerted in order to safeguard children from trafficking. The panchayats operate at the village level, the source of a significant number of child trafficking victims. Human rights observers have been critical of the weak role of the panchayats in protecting children from trafficking.

Although the panchayat system is designed to be inclusive of both men and women over 18 years of age and all castes, the process appears
political and thus influenced by the constant realities of caste and its attendant socio-economic linkages. A World Bank study of the panchayat system in 53 villages noted the following: “In all 53 villages examined in the study, 65% of villagers did not attend a single gram sabha meeting in the previous year and only 7% attended meetings regularly. Of those attending meetings, 37% percent said they voted on issues because of social pressure, 19% voted to avoid conflict and 18% voted out of fear that if they did not participate in voting, their names would be deleted from lists of persons eligible for anti-poverty benefits in the village and lose food ration cards.” Thus food politics, social exclusion and features of intimidation appear to be factors in the participation rate of the panchayats. Moreover, the fact that the panchayats receive funding from three sources and are agents of social and economic development at the village level, where poverty is identifiable at high rates in India, only increases their importance and influence.

Unequal influence and corruption have also been identified as detriments in the operation of the panchayats. For example, “one village of 700 households is dominated by Patidars, a farming caste designated as an Other Backward Caste, OBC. It has influence over vulnerable members from the scheduled tribes and scheduled castes. One scheduled tribe member from the wardpanch, said that he has no powers and that he and

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other wardpanches have to go along with whatever the Patidars decide in the panchayat as many of them are also dependent on the Patidars for employment.\(^6\) As Dalits live within a general environment of poverty, they are extremely susceptible to economic, employment and food pressures. According to another analysis of the modern panchayat system:

“ The lack of responsible leadership at the village level has led to corruption, increased factional conflicts and misuse of resources. The panchayats have become political tools for manipulating districts.” \(^6\)

Kumar Tamang emphasizes that anti-child trafficking initiatives too often focus on the end destination rather than the source areas. “We need to work at the grassroots level to stop vulnerable children from the village from being trafficked. We need to work at the village level. The end of the problem is in Kamathipura (the red light district of Mumbai) but the start is in the village.” \(^6\)

Other concerns have been raised over the inactivity of the panchayats to protect children. “Each village has a panchayat. It is mostly men who serve on the voted body. If a girl goes missing, everyone knows. If the panchayat was active, then they would show concern for the girl, but panchayats are indifferent to the child trafficking problem. They are obviously aware of the problem.” \(^6\)

\(^6\) Alsop 13.
\(^6\) Kumar Tamang, Personal Interview, Mumbai, 24 April 2006.

\(^6\) Sarita Sankaran, Personal Interview, Mumbai, 24 April 2006.
trafficking observed that the, “panchayat is very political, they are guided by self-interest. They used to be there for the village welfare, but not so much now. The panchayat system offers weak protection against child trafficking.” 65

The issue of female involvement in the panchayats is relevant to the operation of the panchayats and their role in promoting women’s development. Panchayats generally have low rates of participation from women. According to the World Bank study, “Gender is once again strongly associated with participation. Of the female wardpanches spoken to in the eight case study panchayats, 75% held that they rarely attended the panchayat. Only 11% of the women representatives spoken to felt that they could put forward issues and actively participate. This reticence originates in the social custom that women, and particularly younger women, are not supposed to speak up in front of the men of their husbands. 66

In the overall enforcement regime, it is evident that initiatives at the end destinations, such as Calcutta and Mumbai, need to be complemented by greater control and awareness at the village level. The Indian enforcement regime would clearly benefit from a continuum of enforcement and monitoring that reaches from village to city. The village panchayat system is an important grass-roots organization that is ideally suited to identify, monitor and deter child trafficking vulnerabilities.

65 Asha Mukundan, Personal Interview, Mumbai 26 April 2006.
66 Alsop 18.
CHAPTER 6

THE ENFORCEMENT GAP IN THAILAND: CHALLENGES IN THE PREVENTION AND PROSECUTION OF CHILD TRAFFICKING

Thailand is recognized as a State with a significant child trafficking problem. According to the authoritative Trafficking in Persons Report, produced annually by the United States Department of State, Thailand is ranked as a Tier 2 country. This designation refers to the fact that human trafficking is widespread in the country although efforts are underway by the government to combat the problem.

The central crisis facing the war on child trafficking in Thailand is the lack of an effective and sustainable enforcement regime. The problem in Thailand, which is comparable to India, rests not with the law but with the proper enforcement of laws designed to deter child trafficking and protect children who are vulnerable and exploited in the CSI.

In the proceeding chapter, Sections 1 - 3 will focus upon the major contributing factors behind the enforcement gap in Thailand. These factors include:

**Section 1:** Corruption within the police services of Thailand

**Section 2:** Weaknesses inherent in the enforcement system including the judiciary

**Section 3:** An examination of marginalized groups including the Northern Hill Tribes and the corresponding link to the enforcement gap.
Introduction

Corruption is a systemic problem in both Thailand and India. In both States, a link has been established between corruption and child trafficking. As in India, the literature on corruption is not fully developed and contains specific gaps as noted in Chapter five. An interesting and emerging area in the corruption literature, highly relevant to both States, is the connection between leadership and corruption. Moreover, leadership as defined in the literature, includes a moral dimension. Before proceeding, it is useful to define corruption at the operational level. The World Bank has identified two types of corruption: 1) state capture and 2) administrative corruption. “State capture refers to the actions of individuals, groups or firms, both in the public and private sectors, who influence the formation of laws, regulations, decrees and other government polices to their advantage as the result of the illicit and non-transparent provisions of private benefits to public officials. Administrative corruption refers to the intentional imposition of distortions in the prescribed implementation of existing laws, rules and regulations to provide advantages to either government or non-government actors as a result of the illicit and non-transparent provisions of private benefits to public officials.”

The discussion of corruption is particularly relevant in the child trafficking context given the damaging effects corruption has upon the poor and marginalized. Many corruption scholars and studies have emphasized this point. C. Raj Kumar has summarized this perspective aptly. “First, corruption dilutes human rights; second, an institutionalized form of corruption creates mass victimization resulting in a threat to the rule of law; and third, corruption is a human rights violation.”

Corruption is clearly entrenched in both Thailand and India. However, the growing focus on leadership values and influence to combat the dilemma brings new approaches to the debate. “Several analysts maintain that the single most important factor in combating corruption generally, not specifically related to trafficking, is political will. This is usually taken to refer to the political will of the leadership.” Another study by the World Bank reported that 80% of government officials from sixty countries who participated in the survey ranked the need to improve the quality of leadership as the single most important factor in the battle against corruption (Kaufman, 1997). Moreover, Klitgaard reports that corruption is at its heart an ethical problem (Klitgaard, 1991, p.11). Other scholars take a similar view. Rose-Ackerman refers to a basic requirement for “personal honesty and a devotion to democratic ideals”

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2 C. Raj Kumar, “Corruption and Human Rights – Promoting Transparency in Governance and the Fundamental Right to Corruption-Free Service in India”
3 National Defense Academy, p.114
(Rose-Ackerman, 1978, p.95). Cragg meanwhile asserts a symmetrical point by suggesting that, “Bribery is *prima facie* unethical virtually everywhere judged by the standards of prevailing conventional morality” (Cragg, 1999). Despite a strong current of opinion on the need for ethical, moral leadership to combat corruption, there is not a considerable amount of literature on the topic area. According to corruption expert Stephen Schwenke, “the lack of emphasis on the ethical dimension of corruption is puzzling. Problems of moral relativism are hardly insurmountable, as evident in widely accepted human rights principles. The application of ethics to the problem of development is generally found in the new field of development ethics. However, leading multinational and bilateral aid organizations, such as the World Bank and USAID rarely frame their discussions on corruption using a development ethics perspective.”

This trend may be due to the reluctance of leading aid groups and scholars to politicize the issue and frame the development debate as one between ethical and non-ethical actors. Interjecting a development ethics approach may also be viewed as both politically and culturally insensitive, particularly when the discourse emanates from the West.

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Section One: Corruption within the Police Services and Judiciary

It is significant to note the high priority which the Thai NGO community places upon corruption as a leading inhibitor of child trafficking enforcement. Indeed, in a submission to the United Nations Committee on the Rights of the Child, in 2005, the National Council for Child and Youth Development (NCYD), the Center for the Protection of Children’s Rights (CPCR) and other child and youth development NGOs argued that corruption is undermining law enforcement on several key areas of human rights concern for children.

As reported in the submission, “Corrupt practices remain a national concern and these are a breeding ground for widespread drugs trafficking, unresolved human trafficking, weak law enforcement, poor quality of education and social services, and slow infrastructure and human resource development. As a result, many children are put at greater risk, deprived of their basic rights and unable to attain the highest possible level of development.”

Reviewing the evolution of Thai police culture in the 20th Century, the following salient features emerge: “low salaries; forcing the government to accept people of low quality; stealing the salaries of subordinates, extorting money from gambling house owners, opium dens and prostitutes. The early stage of the development of the police molded a force which was designed to impose central authority rather than afford community protection.”

5 Thailand NGO Reports, p.3
which was poorly paid and disciplined, and which still tended to live off
the land in the style of gin muang administration.  

The police services in Thailand, as in many nations, are the first line of
defense in the investigation and reporting of human trafficking offences.
They exercise a critical role in the documentation of crimes and the
gathering of evidence to be used in the prosecution of cases. A valuable
part of the evidentiary role the police perform is the accurate recording of
testimony by victims and witnesses. Without such information, it is
difficult to proceed with successful criminal prosecutions. The extent of
police corruption vis a vis child trafficking therefore has a major impact
upon the prosecution and conviction rate.

**Police Corruption and Child Trafficking**

As in the case of India, low police salaries in Thailand may act as an
inducement to corruption within the child trafficking enforcement regime.
The 2004 Thailand Report of the Bureau of Democracy, Human Rights and
Labor, concluded that, “Official corruption facilitating the worst forms of
trafficking in persons was generally found at the low and mid levels.
Compromised local police protected brothels and other sex venues from
surprise raids.” The report underscores the link between low police
remuneration and corruption vis a vis child trafficking operations.

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Since corruption is also a function of class, it is apparent that by keeping low and mid rank police officials in a low salary position, the government not only saves on public expenditures but may also render these officials economically dependent upon classes and groups within society that rely upon police corruption to more profitably operate commercial enterprises including illegal enterprises. For low paid police officials, corruption provides economic opportunities and purchasing power for family and personal needs. The Akha Heritage Foundation has emphasized that: “corruption remained widespread among police officers. Police officials complained that low pay made them susceptible to bribes. Some police officers were involved in prostitution and trafficking women and children. In August 2004, after an internal investigation, the police department reinstated four police colonels who had been removed from active duty in 2003 for allegedly accepting financial and sexual bribes.”

A study on police corruption related to child trafficking notes a culture of collusion between the CSI and the police. “Two powerful proponents of child sexual exploitation include the police and the government. The police and government rarely enforce laws prohibiting the sexual exploitation of children. When police apprehend traffickers and brothel owners, the offenders bribe police, civil servants, and political leaders, who effortlessly take their money and allow the exploiters to continue prostituting the young children.”

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children. Police guard the brothels and warn the owners about any possible raids.”

According to Bonneau, the twin issues of low pay for law enforcement officials and the low rate of return on child trafficking investigations are impediments to effective enforcement. “Here you are talking about allot of law enforcement officials and I suppose India is the same that don’t get much money at all for what one could consider thankless work, from the outside. And then you are asking them to try to go in and solve this complex case of trafficking. All of this makes it very challenging.”

These are valid points and raise the whole issue of the efficacy, for police officials, of devoting considerable time to conducting intensive child trafficking investigations that rarely bring forth convictions. While it is true that the prosecution rate for child trafficking crimes is low, the conviction rate is extremely low and reflective of a myriad of factors such as lack of evidence, incomplete documentation of reports by police and the failure of witnesses to appear in court. Vitit Muntarbhorn, one of the architects of Thailand’s new Anti–Trafficking Law, has also highlighted the precarious issue of low pay among police officials and the low level of awareness among law enforcement officials over the importance of pursuing child trafficking cases. “I think you have to look at how police and others, including immigration officials, are capacity built in the long term to

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9 Rastogi 271.
10 Lance Bonneau, Personal Interview, Bangkok, 3 May 2006.
respond to human rights as a whole. Most of them are badly paid. Until recently there was no training on human rights in their educational institutions, few incentives and I can remember a few years ago some quite high ranking people were saying it is a low priority and that they had other things to deal with.” 

Higher police salaries would send a clear institutional and governmental message that the work of front line police is valued and second, closing the salary gap may serve to diminish police corruption.

Section Two: Weaknesses in the Enforcement Regime including the Judiciary

The effective enforcement of laws against child trafficking in Thailand depends upon a continuum of transparent, efficient and competent practices at each stage of the prosecution process. Moreover, there must be a significant level of political and institutional will among the police services, judiciary, political and government actors in order for the system to operate effectively. Gaps which exist at any one stage of the process or with respective state actors, such as the judiciary, compromise the utility of the entire prosecutorial process and may explain to some degree why the conviction rate for child trafficking offences is generally considered to be quite low according to international and domestic human rights observers of the Thai child trafficking scene.

11 Vitit Muntarbhorn, Personal Interview, Bangkok, 6 May 2006.
The administration of criminal law in Thailand is shared by many organizations including the Office of the Attorney General, the Courts of Justice, the Ministry of Justice, the Ministry of the Interior and the Royal Thai Police. Thai courts follow a well established process for trying cases of criminal wrongdoing. After the arrest of a suspect, details about the case and the accused are submitted to the prosecutor. An investigation will ensue, carried out by members of the RTP and following guidelines established under the Criminal Procedure Code. Under Thai procedural law, prosecutors do not have the authority to initiate criminal investigations.

When an investigation is completed, the report is submitted to the Office of the Public Prosecutor, who prepares an indictment, a copy of which is submitted to the accused and his or her counsel, whereupon a plea of guilty or not guilty is entered. At this stage, based upon the plea and the evidence submitted, the judge accepts the case for trial or dismisses all charges against the accused. Trials are usually held in open court and during the trial, the accused or counsel can cross-examine prosecution witnesses and re-question defense witnesses. After the completion of the trial portion, the judge renders a decision.

Effective law enforcement on child trafficking offences depends upon the effective and efficient execution of duties by both the Royal Thai Police and the Public Prosecutors Office. The RTP are chiefly responsible for conducting searches, gathering evidence, interviewing suspects and
witnesses, detaining suspects and preparing documentation and reports for submission to the Public Prosecutors Office. The quality and accuracy of the evidence and documentation brought forth by the RTP are decisive factors in the prosecution process. The public prosecutor is responsible for bringing forth and conducting criminal prosecutions on behalf of the government. The role of the Royal Thai Police in deterring and prosecuting child trafficking is critical. According to the Criminal Procedure Code in Thailand, only the police have the authority to initiate a case. Accordingly, as the central government agency responsible for the suppression of crime within the Kingdom, it is evident that corruption and/or the inefficient conduct of investigations by the RTP can have a debilitating effect upon the wider scope of law enforcement.

Thai police conduct a similar approach to prostitution crimes as do their counterparts in India. They focus inordinate time arresting prostitutes for minor offences, such as soliciting, rather than investigating and arresting traffickers, brothel owners, managers and others complicit in CSE & T. Moreover, Thai police are not effectively utilizing existing laws designed to combat human trafficking. In trafficking cases involving prostitution, police routinely utilize the Prostitution Act instead of the Trafficking Act. The Prostitution Act is often applied and utilized to prosecute those involved in the CSI. The extremely low rate of prosecutions, and even lower rate of convictions on child trafficking, similar to India, against child
traffickers and others who commercially exploit minor girls involved in the
CSI underscores the weakness of the enforcement regime.

“According to statistics from the Ministry of Justice, over a two year
period (from January 1996 to December 1997) a total of 325 women and 64
men were convicted under sections 5 to 8 of the Prostitution Act. In this
same period, 52 persons were convicted under sections 9 and 12 of the
Prostitution Act as traffickers, and there were 19 convictions under section
11 of people who had supported prostitution (brothel keeping).” 12

Another study by the Thai NGO, Fight Against Child Exploitation
(FACE) examined the application of differing sections of Thai law to
trafficking and prostitution offences. In many instances, according to the
study, cases were dismissed before they even reached the trial phase. “The
study examined 87 reported cases of criminal proceedings under section 9
(procurement), 11 (brothel-keeping) and 12 (forced prostitution) of the
Prostitution Act. Of the 87 cases reported, 72 were brought before a
prosecutor, 54 cases were issued with a prosecution order and 21 cases
were dismissed. Twenty one traffickers were convicted under section 9 of
the Prostitution Act. These statistics relate to both trafficked women and
children. In cases of trafficked women, only 24 cases were prosecuted and
seven cases were dismissed, usually for lack of evidence.” 13

An important point that needs to be addressed is the practice of families selling their children to the CSI. There is substantial evidence to suggest that this practice occurs with frequency, particularly in impoverished rural areas, as noted. Although law enforcement officials may view this practice as a family matter or an issue of juvenile delinquency, there must be greater governmental and NGO pressure brought to bear upon families that are involved in the crime of child trafficking and child exploitation. Since child trafficking in this context is intertwined with family child abuse and exploitation, increased pressure and prosecution must be exercised in order to strengthen enforcement and public education, to underline the point that child exploitation is a serious violation of law with severe legal consequences.

A recurring theme that emerges with respect to prosecuting child trafficking crimes in both Thailand and India is the failure of law enforcement officials to apply the appropriate laws to the offences committed. In many cases, the activity of women and or children involved in the CSI, whether by choice or coercion, is the focus of police action including harassment, arrest and detention. It is important to note the distinction in the definition of child trafficking in the Trafficking Protocol that it is a crime of coercion. The police also demonstrate a reluctance to apply existing laws which allow them to investigate and arrest the organizers and profiteers of child trafficking, namely, traffickers, brothel owners, employees and brothel managers.
There are four reasons for this apparent reluctance. First, it is easier for law enforcement to investigate and arrest sex workers who operate on the front lines of the CSI. Moreover, convictions against sex workers for minor offences such as soliciting are easier to secure and demonstrate police effectiveness in upholding morality laws. In effect, within the enforcement regime in Thailand, the actions of the prostitute are consistently criminalized and not the actions of those who perpetrate child prostitution and trafficking. Second, the police may be dissuaded from investigating the conduct of those perpetuating child trafficking offences due to corruption. Third, a court case against a child trafficker or brothel owner, for instance, would necessitate a lengthier investigation and court process should charges be approved. The opportunity cost of pursuing these types of investigations, where the conviction rate is extremely low, does not often warrant the support of the police. According to one trafficking expert, “Officials have told me that they do not have the internal will because it is so hard to prosecute. Apart from that, I think that there is still a lack of understanding of what trafficking is. Lack of understanding of the definition and how it should be applied.”

Fourth, court proceedings against powerful interests in the CSI may also place difficult political and bureaucratic pressures upon the police and other actors in the enforcement regime.

14 Lance Bonneau, Personal Interview, Bangkok, 3 May 2006.
According to Muntarbhorn, “we have to take action against those who exploit people, first and foremost, and not criminalize the victim. When you meddle in prostitution you get into rather deeper waters. In some communities the laws are still against the prostitute, or at least the law enforcers interpret the law against the prostitute. Sadly, some of the anti-prostitution laws are used negatively against victims of trafficking.”

Police Training

In an effort to increase understanding and enforcement on human trafficking, the Thai government in 1999 introduced the Memorandum of Understanding on Common Guidelines of Practices among Concerned Agencies for Operation in Case Women and Children are Victims of Human Trafficking, B.E. 2542. The MOU is a non-binding legal agreement signed in 1999 between the Office of the Prime Minister, (under whose authority the Royal Thai Police now reports to), The Royal Thai Police, the Ministry of Public Welfare and various non governmental organizations. While the MOU provides a useful basis for cooperation and coordination between important actors in the overall enforcement regime, the test of its value lies in the application of the recommendations. Since the introduction of the MOU in 1999, the Director of the National Police Bureau has ordered the respective police officials involved in human trafficking cases to follow the MOU recommendations. “The Director of

15 Vitit Muntarbhorn, Personal Interview, Bangkok, 6 May 2006.
the National Police Bureau in Thailand has threatened to punish police who do not follow the guidelines of the 1999 MOU. Many police are unaware of its existence and instead simply enforce the Prostitution Act and Immigration Act thereby committing further violations of the rights of the trafficked persons. Where police are aware of the MOU, they generally only use it in relation to acts covered under the Traffic Act and Prostitution Act, although the MOU provides an expanded definition of trafficking including forced labor.”

The low rate of prosecution and conviction well after the implementation of the MOU suggests that the effect has been minimal and/or that the MOU is more for public consumption to demonstrate resolve in combating child trafficking. As with the case in India, the reluctance by Thai authorities to investigate and prosecute child trafficking offences lowers public and government awareness of the issue and hinders data collection on the crime and an accurate calculation of its proportions.

Under the terms of the Prostitution Act of 1996, procurement of prostitutes is established as an offence. These offences include procuring, enticing, luring, other persons to engage in prostitution or sheltering prostitutes, with or without the victims consent. Offences against children are regarded under the Act as aggravated offences. Two convergent issues that impact the enforcement of anti-trafficking laws are the low level of

police training on trafficking issues and law and secondly, the lack of commitment by the RTP and the Public Prosecutors Office to diligently spearhead investigations to a successful conclusion. The low rate of prosecution and conviction against child traffickers and others major figures responsible for the commercial sexual exploitation of children has been well documented in the U.S. Department of State, Trafficking in convictions in Thailand were recorded for all human trafficking offences. The development of broader knowledge on child trafficking issues, concentrated training for the RTP on human trafficking and law and a more sustained commitment by the Thai government are crucial building blocks towards effective anti-child trafficking policies.

Bonneau argues that the incentives for Thai police to investigate child trafficking offences are low compared with the higher returns obtained for other types of crime. “Think about terrorism, there are actually monetary incentives put out by Western governments to catch terrorists. And even within the department for a big drug haul. They don’t exist for trafficking cases. If they are not getting results, not getting cooperation, not getting any prosecutions, and feeling like they are not making any impact on the thing, they are going to look to where they can make an impact. And this is being realistic. It is hard to buy them into the fight on trafficking. It is easy to get them on terrorism, on narcotics, and easy to prosecute these cases too.”

17 Lance Bonneau, Personal Interview, Bangkok, 3 May 2006.
Enforcement Weaknesses in the Judicial System

One of the chief concerns that human rights activists frequently voice relates to the high rate of case dismissal in human trafficking trials. The lack of strong evidence and credible witnesses undermines the prosecution of cases. If the police fail to properly investigate and document trafficking offences, the lack of evidence becomes an obstacle to convictions. A joint conference co-sponsored by the Asian Development Bank and the Organization for Economic Cooperation and Development, addressed the major practices that constitute a strong and functional judicial system. The following elements were noted: “without an effective, functioning and independent judicial system the results for society are inevitable and predictable: uncertainty will pervade society, the efficient conduct of business and economic affairs will face oppressive burdens, social integration and development will be strongly resisted and widespread injustice and deprivation of the rights of ordinary citizens, especially the poor, women, and children, will be likely.” 18

An ILO-IPEC study on problems and remedies related to child prostitution in Thailand observed that, “Many police officers are unaware of revised laws, budgets to combat child prostitution are limited and the issue is not a top priority with the police. The study also concludes that

child prostitution cases are complicated and require substantial human resources in terms of hours. A further complication are links between criminal networks and law enforcement agencies that have been well documented.19

Securing witnesses is another key issue affecting the prosecution of cases. There are several reasons why the testimony of witnesses is difficult to obtain. First, witnesses may be transient or move away from the area where the court proceedings are conducted. Second, the length of time between a charge being laid and the opening of a trial may take months or even years. Third, witnesses can be subject to intimidation and violence by participants in the trafficking / brothel industry. Fourth, witnesses may themselves be subject to bribery in order to change their testimony or disappear so as not to participate in court proceedings. Reliable witnesses provide substantial credibility to a prosecution case. The paucity of credible witnesses hampers the overall child trafficking enforcement effort. A 2003 international conference that addressed issues surrounding the prevention of human trafficking in Asia stated that: the police cannot be relied upon to deliver even the trafficking data needed to help fight trafficking related crimes. Trafficking convictions are often based upon victim testimonies which are difficult to obtain and many victims are too frightened to testify.

19 Berger and van de Glind 11-12.
Consequently, enforcement agencies often abandon the prosecution of traffickers since investigative efforts rarely result in conviction.  

Victim intimidation and fear of retaliation have been common issues of concern among NGOs who work with child trafficking victims. In both India and Thailand it has been identified as a deterrent to the effective legal prosecution of offenders. The following case study from Thailand is illustrative. “When Jaem identified the trafficker, the police provided her with no protection. Even when her trafficker was granted bail, she did not receive any protection from the police. During the investigation, Jaem returned to her home village. At the bus terminal two men followed her and her friend who was a witness. When they arrived in her home town, a car tried to run them over. They were afraid and hid in a hotel and contacted GAATW (Global Alliance Against Traffic in Women). GAATW staff contacted the police in that town to ask for assistance. After that, Jaem did not want to continue the legal proceedings as she felt unsafe.”

The preceding case study highlights the difficulties that prosecutors often encounter in mounting successful prosecutions. Many victims are in fact dual victims having first been victimized by poverty, marginalization and discrimination. Second, they have been victimized by their oppressors within the CSI.

A crucial factor which may undermine effective enforcement is the ease with which offenders receive bail. This is a problematic area of the law since in a democratic and just legal system, the rights of the accused need to be balanced against the protection of the victim and the general safety of society. In Thailand there is no law to provide protection to witnesses. Another area of concern for those who work on victims’ rights is press freedom regarding the publication or broadcast of the names of persons involved in criminal and other cases. The confidentiality of victims in trafficking and exploitation cases may be compromised thus exposing them to retaliation and violence by the perpetrators of the crimes against them.

According to research by Elaine Pearson, a Bangkok consultant with the International Labor Organization, “some police are involved in the transportation side of trafficking. We also see insufficient victim protection and the bribery of families and victims by traffickers or abusers.” 22

The integrity and success of the prosecutorial process in trafficking and child exploitation cases is heavily dependent witness and victim participation. The Thai judicial system does make allowances, unlike India, to provide minors and adult victims of trafficking and exploitation with legal representation. Human rights advocates emphasize the important benefits of witness protection programs. They restore integrity into the legal process and ensure greater participation by victims which may lead to

a higher conviction rate. Groups that work directly with victims of child trafficking also refer to the critical need to provide protection for victims including protection during the repatriation and reintegration process.

Taneeya Runcheroen, project manager with the United Nations International Program on the Elimination of Child Labor, (IPEC) in Bangkok has studied the issue of victim protection. She argues: “When you look at trafficking, the first notion that comes up is victim protection, rescue operation, remedial progression, family identification and repatriation. From our side in the North, our partners work with Hill Tribes and people from inside the villages are sometimes the trafficker. Often returnees do not want to return to the village and confront the first ring of brokers. They are afraid of retaliation. The traffickers may be in the village or in the next village. So returnees often times request not to go back. Usually those who operate sex work are mafia oriented.” 23

The police are not the only agents within the judicial system who contribute to the enforcement gap. There is evidence that prosecutors and judges have been implicated in corrupt practices which have undermined enforcement efforts targeting child trafficking and child exploitation. Moreover, lack of training and unfamiliarity with aspects of child abuse and child trafficking also hamper overall enforcement. The 2004

23 Taneeya Runcharoen, Personal Interview, Bangkok, 2 May 2006.
Trafficking in Persons Report noted that the Thai judiciary, while generally recognized as being independent, was still subject to corruption and influence. 24

In Thailand there is no trial by jury. A sole judge hears misdemeanor cases. Two or more judges are required to adjudicate more serious cases. Due to the heavy backlog of cases in the Thai court system, cases may often take several months or years to complete. Wait times for the initiation of cases is normally 12-18 months. The absence of a trial by jury process in Thai law is problematic in terms of preventing corruption and undue influence from affecting case outcomes. As noted by the TIP Report, corruption has an influence on the Thai judicial system. The possibility therefore exists that judges, involved in cases of child trafficking and commercial sexual exploitation, may be subject to monetary pressure from criminal interests. The sole reliance on a trial by judge system does not grant the same degree of legal transparency as one generally finds in the trial by jury system, especially in a country that has been cited by international legal and human rights observers as having a judiciary that is vulnerable to corruption.

A study on judicial corruption in Thailand noted that: “over 30 percent of those who had to go to court were asked for bribes. In 50 percent of the cases involving requested payments, the judicial matter was concerning

some kind of economic value and the amount asked to ensure the decision was in average 3.5 percent of this value. The bribes were usually asked by middlemen, so direct indication to the judge or prosecutor could not be made. Probably because of that, the people who paid were uncertain if the money really had any effect on the outcome.”  

Another issue of concern is the relatively low monetary sanction placed on offenders when a conviction is established. Minimal sentences and low financial penalties offer little deterrent value against criminals involved in the commercial exploitation of children particularly when those involved are part of a wider criminal nexus that enjoys substantial profits.

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Source: Corruption in Thailand, International Management: Asia Swiss Federal Institute of Technology, Zurich, 2002

A recent analysis of trafficking and prostitution in the Greater Mekong Sub-Region highlighted the low punitive risks and high financial rewards associated with human trafficking and commercial sexual exploitation. The report noted that, “law enforcement has a key role to play in changing the economics of this business by increasing the risks, in particular removing the impunity currently enjoyed by those at the end of the trafficking chain
Thailand has a low conviction rate for child trafficking and child sexual exploitation offences. This unfortunate reality, coupled with minor penalties for those who are convicted, threaten the deterrent value of Thai law. Judicial enforcement is further hampered by the reality that some officials, including judges, are influenced by corruption. The opportunity cost for traffickers must be restricted through the activation of more stringent penalties that involve higher fines and longer prison sentences.

The judiciary in Thailand operates to some degree as a reflection of power relations and practices in Thai culture and society. An analysis of human trafficking and slavery by Rho-Ng concludes that, “Throughout the years, government sanction of such illicit behavior by Thai law enforcement officials has been all too apparent. The fact that Thai laws and enforcement mechanisms do nothing to alleviate the conditions under which many Thai women are forced to engage in prostitution and the sex trade suggests that such circumstances are characteristic of an outgrowth of sex trafficking.”

As noted, there is a strong, historic connection in Thailand between the military and the police services. Moreover, these


linkages have clear influences upon the judicial level since the police have
powers over the investigation of child trafficking and exploitation cases. A
recent report on trafficking has drawn similar conclusions. “For traffickers,
the profits are too high and the penalties too low to resist. Most trafficking
schemes worldwide generally operate without fear of reprisal, because
criminal sanctions are either weak or go un-enforced. Even when laws
against trafficking exist, they are infrequently implemented, either due to
links between traffickers and law enforcement authorities or because of a
general lack of awareness, training and sensitivity regarding trafficking,
domestic violence and other forms of severe gender discrimination.” 28

Under section 11 of the 1996 Prevention and Suppression of Prostitution
Act, a person operating a prostitution business or place of prostitution, if
found to be employing a person under the age of eighteen, for the purposes
of prostitution, is subject, upon conviction, to a prison sentence of between
5 and fifteen years and a fine of between 100,000 to 300,000 baht. These
penalties are not sufficient to deter the offences committed. Moreover, the
fact remains that relatively few child traffickers and owners/managers of
prostitution establishments face prosecution under section 11 of the Act,
and the current reality is that investigation, evidence gathering and witness
presentation in child trafficking and commercial sexual exploitation cases
are difficult to secure. These factors have created a situation of enforcement

28 Corbin 3.
inertia whereby the effective prosecution of offenders is constrained. The reality is that child trafficking cases rarely come to trial and when they do, the conviction rate is extremely low. United Nations official Runcheroen notes that “between 2000-2005 the rate of prosecution on 2000 cases was less than 10%.”

Police often fail to investigate and lay charges against the key figures involved in child trafficking and exploitation. The courts tend to deliver sentences that are on the lower end of the punitive scale. The preponderance of child prostitution cases involve the arrest and sentencing of the prostitutes themselves, whose involvement in the CSI has been criminalized rather than alleviated by targeting the perpetrators.

An additional factor to be considered is the patriarchal nature of Thai culture and socio-economic conditions whereby millions of women, particularly those who are impoverished and marginalized, suffer discrimination and exploitation. There is evidence to suggest that rape and other crimes against women and children are under-reported in Thailand and when reported, not investigated to the fullest extent possible. Data from the Thai Ministry of Justice is illustrative.

<table>
<thead>
<tr>
<th>Table 2 Criminal Offences Against Women and Children (2000-2002)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of Case</td>
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<tr>
<td>---------------</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Rape</td>
</tr>
<tr>
<td>Rape and Murder</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

Source: Thai Ministry of Justice

29 Taneeya Runcheroen, Personal Interview, Bangkok, 2 May 2006.
Table 3  Number of Sexual Related Cases proceeded to the Criminal Court  Countrywide

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Case</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rape and Incest</td>
<td>3149</td>
<td>3519</td>
<td>3519</td>
<td>3337</td>
<td>3694</td>
<td>3587</td>
<td>4074</td>
<td>4291</td>
<td>4061</td>
<td>4896</td>
</tr>
<tr>
<td>Sexual Offences according to Penal Code Sections 282-287</td>
<td>1005</td>
<td>1177</td>
<td>1519</td>
<td>1590</td>
<td>1423</td>
<td>1664</td>
<td>1766</td>
<td>1996</td>
<td>2429</td>
<td>2246</td>
</tr>
<tr>
<td>Total</td>
<td>154</td>
<td>4696</td>
<td>5038</td>
<td>4927</td>
<td>5117</td>
<td>5251</td>
<td>5840</td>
<td>6287</td>
<td>6490</td>
<td>7142</td>
</tr>
</tbody>
</table>

Source: Thai Ministry of Justice

The previous tables indicate a low level of reported data on crimes against females. This reality has been noted in many human rights reports addressing the issue of discrimination and violence against women and children. According to Muntarbhorn, “there are a variety of new laws to protect women. However, enforcement remains weak on several fronts and violence against women is rife.”

The 2006 TIP report refers to the fact that internal trafficking is evident in Thailand, especially ethnic hill tribe women and girls who are denied Thai citizenship. The denial of citizenship to ethnic hill tribe people makes them more susceptible to trafficking. Sentences handed down for trafficking cases remained light, with an average sentence of three years’ imprisonment.”

arrest / prosecution rate, it is plausible for traffickers to assume the low punitive risks associated with child trafficking.

A Thai government submission to the United Nations Committee on the Rights of the Child observed that, “In the Thai legal system, it is not possible for the provisions of the CRC to be directly invoked before the courts. However, the Juvenile and Family Courts could interpret laws in conformity with the principles and provisions of the Convention, especially the principles of the best interests of the child, non-discrimination and that the child should live with his parents.”

The Convention has no enforcement mechanism to compel states to follow the guidelines established in the respective articles. The articles of the CRC are meant to serve as guidelines that should be followed by states parties and ideally enshrined in various laws, government policies and practices. The CRC contains no enforcement mechanism. When states are deemed to be in violation of the CRC provisions, the CRC committee will take note of these violations when country reports are drafted.

Section Three: Marginalization

The Northern Hill Tribes of Thailand are confronted with a lack of basic human and legal rights protection. Several hundred thousand Northern Hill Tribe persons are excluded from enjoying basic rights in the areas of

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voting, employment, public schooling, access to the new 30 baht health care plan, birth registration and the fundamental right of citizenship. In the crucial area of citizenship, the majority of Northern Hill Tribe persons have become and are in effect, stateless persons within their own country, a country where they have lived for generations and have ancestral connections dating back hundreds of years. These aspects of societal and legal exclusion, conferred upon the Northern Hill Tribes, relegate them to a position of secondary status within Thailand and by virtue of that secondary status, exposed to discrimination and exploitation by the citizenry at large as well as institutional actors such as the bureaucracy, police and judiciary. Features of a caste system include discrimination based upon ethnic, tribal and/or regional origin, impoverishment, and socio-economic and political exclusion. Such features form part of the common experience of the Northern Hill Tribes in Thailand. As noted by Feingold, “one of the things our research shows is that for a highland girl, in Thailand, the single greatest risk factor to be trafficked or exploited is lack of citizenship.”

According to article 24.2 and 24.3 of the United Nations International Covenant on Civil and Political Rights, to which Thailand is a signatory, children have the right to be registered immediately after birth, the right to a name and the right to acquire a nationality. Under article 7 of the 1989

33 David Feingold, Personal Interview, Bangkok, 1 May 2006.
Convention on the Rights of the Child, children have the right to be registered immediately after birth, the right from birth to a name, the right to acquire a nationality and states that the implementation of these rights shall be ensured particularly in cases where the child would otherwise be stateless. No doubt in consideration of the Northern Hill Tribe citizenship issue, the government of Thailand submitted reservations to article 7 of CRC 1989 before acceding to the treaty. The link between poverty, marginalization and child trafficking has been well established in the human rights literature. A 2005 report on poverty and social exclusion states that, “In many countries, certain state benefits are denied to non-citizens, leaving them vulnerable to destitution. People who live in remote or isolated areas may be prevented from fully participating in national economic and social life. Social exclusion matters because it denies some people the same rights and opportunities as are afforded to others in their society. Social exclusion also matters because it causes poverty and gets in the way of poverty reduction.”

Certainly, those who are marginalized within society and have that experience reinforced by dominant actors in society such as the government, are vulnerable to many forms of exploitation. In addition, the judiciary, which reflects mainstream culture and values, may heighten the marginalization and neglect faced by excluded groups.

A legal analysis of human rights protection in India and Thailand observed that, “The absolute right of nation-states to govern within their borders contributes to the ineffectiveness of the current sexual exploitation laws. If Thailand and India accept this notion of the right to territorial sovereignty, then they may refuse to assist the international community in eradicating sexual exploitation.”  

This observation also serves to distinguish the sharp differences between a human security approach to child trafficking and exploitation and one followed by realists in international relations. In 1999, the Canadian government, which has embraced human security principles in their foreign policy, reached for a more pragmatic approach in the debate between traditional security and state sovereignty versus the new paradigm of human security. Accordingly, the government of Canada sponsored the International Commission on Intervention and State Sovereignty (ICISS). “The debate culminated in a report that proposed an innovative redefinition of sovereignty as the ‘responsibility to protect’. A key outcome of the debate included the view that international attention should focus where it is most needed - on the victim. ICISS corroborates the premise that human security acts as a response to the limits of traditional security.”  

The paucity of prosecutions and convictions in Thailand implies two realities. First, that the government enforcement mechanisms vis a vis child

35 Rastogi 274.
trafficking and child commercial exploitation are not adequately applied. Second, the preponderance of child trafficking victims are from the Northern Hill Tribes and Issan Region. Despite the comprehensive scope of the Convention on the Rights of the Child, its adoption by the Government of Thailand, the introduction of domestic laws and programs combined with efforts by the international and domestic NGO communities to combat child trafficking, the problem persists at high levels. The victims of child trafficking and exploitation are normally marginalized persons to begin with. Their marginalization is due to a number of factors which may include, statelessness, lack of citizenship, gender bias, illiteracy, discrimination and poverty. These persons are already removed from mainstream society. The exclusion they face is heightened by involvement in the CSI, which operates illegally and often in a clandestine manner where minors are concerned.

A report by the ILO addressed this important issue. “If the trafficking and sexual exploitation of children renders them effectively invisible, then one way to begin to combat it is to make sure the children remain visible and this means strengthening their presence in their family, community and school.”\(^\text{37}\) However, this requires a broader social commitment by the government and societal institutions to support policies and programs that lead to more inclusion for marginalized and vulnerable children.

In Thailand, it is difficult to spearhead such efforts when the government itself is reluctant to meet commitments regarding citizenship, enfranchisement and birth registration for many Northern Hill Tribe persons. In Thailand, children comprise approximately 34% of the population. The number of Thais living below the poverty line is approximately 8 million of whom about 2.5 million are children.

Children living in extreme poverty have limited or no access to education, medical care, and many other social services. As members of impoverished families, children are often compelled to work, often in dangerous and exploitive situations, where their well being and rights are unprotected. Impoverished children are often vulnerable to family separation and family breakdown. All of these factors increase the vulnerability of children and their isolation from mainstream society and its social, economic, health, educational and legal support mechanisms. It is easier for criminal elements to exploit girls who are marginalized, poor, uneducated, perhaps illiterate and living in more isolated rural areas where rescue and repatriation efforts would be more difficult to achieve. Some of these concerns were noted by the U.N. Committee on the Rights of the Child in its 2006 concluding observations on the State report submitted by Thailand. “The committee is concerned about the persistence of both direct and indirect discrimination against the child contrary to article 2 of the Convention, particularly with respect to the girl child, children of indigenous, and religious or ethnic minority communities, children of
refugees and asylum seekers, children of migrant workers, street children, children with disabilities, children living in rural areas, and children living in poverty.” 38

Thailand has been under criticism for several years by many human rights based organizations such as UNESCO, Physicians for Human Rights and others over the Governments’ sustained failure to resolve the Hill Tribe citizenship issue. The notion of an ‘unofficial caste system’ in Thailand, with features of discrimination, socio-economic exclusion and exploitation, gains credence when one considers the general plight of the Northern Hill Tribes. Many Northern Hill Tribes are not only denied fundamental rights such as citizenship and voting, but they are also pushed into an underground economy where exploitation occurs more readily. Hill Tribes commonly experience restrictions on their freedom of movement thus relocating to towns and cities where better employment opportunities may exist, becomes difficult. They must receive special permits before traveling outside designated areas. Since the majority of Hill Tribes are not enumerated in the official census of Thailand, access to work permits, legal employment and even health care is restricted. The Hill Tribe community also faces restrictions on the right to own land. The correlation between child trafficking and the denial of citizenship and other entitlements appears strong. Moreover, these marginalized children are confronted with

the general negation of their human rights in a judicial system that does not vigorously enforce anti-child trafficking laws.

A major human rights study which examined the human trafficking crisis in Thailand vis a vis the minority Hill Tribe and Burmese migrant groups reported the following observations: “interviews with hill tribes and Burmese migrants made it exceptionally clear that as part and parcel of the denial of legal status and its protections, both populations routinely experience ill-treatment from employers, authorities, and members of the majority Thai community. Women and girls are exposed to additional risks because of their gender, including sexual harassment and abuse, rape, unintended pregnancy, and unsafe abortion. Women and girls are also the majority trafficked into and sexually exploited in the sex industry.”

An official with UNIFEM in Bangkok, has stated that with respect to child trafficking, the difficulty continues to lie with the poor, uneducated and the unregistered. Having no registration, such as the Northern Hill Tribes, can be a life long problem. The denial of citizenship is an enduring problem that affects many aspects of life for Hill Tribe persons. Although the Government of Thailand, partly in response to domestic and international pressure, has indicated in recent years a willingness to resolve the issue, progress remains slow.

40 Isabel Lloyd, Personal Interview, Bangkok, 2 May 2006.
Muntarbhorn has observed that, “the status of the Hill Tribes, within mainstream Thai society, is undermined by the lack of citizenship and access to birth registration. These situations are not conducive to child protection in general and affect the human security of families and children might end up in situations of exploitation.” 41 A major concern on the issue of anti-trafficking enforcement is the level of visibility of the victim. There are two issues that arise pertaining to this matter. First, the police and judiciary in general have limited knowledge and training on the issues of child trafficking and child sexual exploitation. Second, those who appear most victimized by these crimes are often marginalized, exploited and impoverished children many of whom do not even possess the elementary right of citizenship. Such children have very low visibility in Thai society and little recourse to defend their rights. One of the reasons why birth registration and citizenship are critical to the overall enforcement effort is that it will help solidify data on who is being trafficked and from what regions of the country. The accumulation of such information will help to focus law enforcement, the government and various NGOs to build upon measures that will assist communities and groups most vulnerable to child trafficking and exploitation.

Just as the crime of child trafficking and commercial exploitation represents a continuum of criminal activity stretching from village to city, effective enforcement must rely on a vigorous and sustained system

41 Vitit Muntarbhorn, Personal Interview, Bangkok, 6 May 2006.
of monitoring, data collection, investigation and prosecution to be effective. Additionally, public education, gender equality provisions, development programs for marginalized children, training for police and other officials, victim centered policies, victim and witness protections programs, strict enforcement and deterrent sentencing must all be applied to create a truly effective integrated prosecution regime. At present, there are too many gaps in the enforcement regime that allow groups and individuals who exploit and traffic children to operate with impunity. Enforcement cannot succeed if elements in one branch of the enforcement chain are resistant. Similarly, enforcement is not effective if strict anti-trafficking legislation and government policies are not subsumed into the prosecution process and court judgments on sentencing.

In the final analysis, there is strong evidence to support the conclusion that a significant enforcement gap exists within Thailand in the area of prosecuting child trafficking offences and CSI crimes against children. The government of Thailand has achieved solid results in developing a legal regime to address child trafficking through the enactment of several important domestic laws and the ratification of the 1989 Convention on the Rights of the Child. These efforts, though important, provide only a partial response to deterring and prosecuting child trafficking offences.
CHAPTER 7

SUMMARY AND RECOMMENDATIONS: THAILAND AND INDIA

Research findings conclude that five critical issues have had and continue to exert a powerful influence on the enforcement problem, namely: 1) police corruption and inadequate police and judicial training on child trafficking laws and issues; 2) gender discrimination against the girl child; 3) poverty and marginalization; 4) caste discrimination and exploitation in India and to a lesser extent, Thailand; 5) judicial and government polices that do not adequately assist and protect victims and witnesses. These factors have been examined in detail. Analysis conducted during field work and the completion of research interviews and data collection, provide further evidence to support these assumptions.

While India and Thailand have sound laws addressing child trafficking offences, they do not possess an effective enforcement regime. Solutions on this important question must rely upon a multi-pronged approach that addresses fundamental social, economic and cultural realities in each State that as of today, profoundly impede progress on enforcement. The data on child trafficking charges, prosecutions and convictions provide a glaring indictment of the deficiencies in each State with respect to child rights and protection on this matter.

The theoretical discussion in the Literature Review highlighted three paradigms: Realism, Cosmopolitanism and Human Security that lend perspective to the analysis and understanding of child trafficking and the
related enforcement gap. This work has referred to Human Security as a valid theoretical framework from which to analyze child trafficking and approaches to mitigate the enforcement problem. In Chapter two, the clear vulnerabilities and exploitation of marginalized children has been noted. These children constitute a high proportion of child trafficking and CSI victims. The situation of these children attends to the very essence of the human security paradigm, namely, to protect persons from threats to human security and to protect fundamental freedoms. Child trafficking victims are exposed to threats to economic security, threats to health security, threats to personal security and threats to community security. Accordingly, the human security paradigm, an approach to rights and security that is ‘people centered’ has a direct bearing upon children confronted and victimized by child trafficking.

As the discussion in chapters three and four demonstrate, Thai and Indian laws addressing child trafficking and prevention are increasingly adopting a victim centered approach and greater sensitivity to human rights. Many of the laws under review relate to specific threats to the human security of children. For instance, the increased focus in legislation in both Thailand and India upon defined age classifications and corresponding sentences for child rape and exploitation offences is an attempt to protect children, to use the human security model, from specific threats to their personal security, health security and community security.
The human security framework places violence and abuse against children and women under the protective scope of personal security threats.

In Chapter five and six, the focus is upon the enforcement gap in each State and specific contributing factors. It can be argued that the failure of each State to meet minimal standards of prosecution and conviction for child trafficking offenses represents direct security threats to the children who are engaged in judicial proceedings. Moreover, extensive evidence exists which documents a consistent inability of each States’ judicial apparatus to properly safeguard the rights and security of victims and witnesses.

It is worth noting some pertinent examples. In India, the consistent underreporting by the police establishment of crimes against Dalits and marginalized children and low rate of FIR completion are clear personal, economic, community and health threats to these persons. Moreover, in India, the extensive misuse of section 8 under the ITPA to criminalize child trafficking victims instead of targeting and prosecuting their exploiters represents a range of pervasive threats to the victims.

In Thailand, the persistent reluctance if successive governments to process Northern Hill Tribe citizenship requests leave these persons in effect stateless and without basic education, health care and economic support. Such a policy, under the human security framework, is a clear violation of fundamental security rights.
In addition, the inadequate enforcement regime in each State and negligible arrest/prosecution/conviction rates for the serious crimes of child trafficking and exploitation in the CSI constitute little or no deterrence to those engaged in this illegal activity thus exposing both victims and marginalized children who are potential victims to serious human security threats. An effective, integrated prosecution regime will go a long way toward mitigating the threats to personal security, health security, economic security and community security that thousands of Thai and Indian children face.

**THAILAND**

Child trafficking is a complex issue that is driven by a number of factors including poverty, gender discrimination, corruption, marginalization of minority groups within society, child abuse, exploitive patterns in the culture of the girl child, and the inadequate enforcement of laws and human rights standards by the government, police and judiciary. Poverty is certainly a key factor in the child trafficking matrix. Within Thailand, the poorest regions of the country include the Northeast. The most severe impact of both poverty and marginalization fall upon the Northern Hill Tribes and the region of Issan. Persons in these regions are primarily dependant upon agriculture to sustain a living. In Thailand, 80% of farmers earn less than $350 US per year. In a population of 64 million, approximately 8 million Thais live below the poverty line. Furthermore, about 2.5 million of these persons are children, who by virtue of their dire
economic circumstances, have limited or no access to education, health care, social assistance and a range of other services and opportunities that collectively enhance life quality and general opportunities.

Poverty becomes a twin problem vis a vis child trafficking. First, it is well documented that impoverished families, in many instances, acquiesce to the trafficking of their own children. Moreover, strong cultural imperatives in Thailand pressure the girl child, already victimized by entrenched societal discrimination in the patriarchal Thai society, to seek out opportunities to support the family. If the girl child comes from an impoverished region and family, the opportunities to provide support may be limited and often lead to the acceptance of exploitive labor including work in the commercial sex industry. Second, organized traffickers as well as those operating on an independent basis, can easily target impoverished families who have daughters and lure them away. Although some child trafficking victims are kidnapped, many are also lured away under false pretenses with offers of ‘legitimate’ employment. According to Gordon Longmuir, a former Canadian diplomat in several Asian states including Thailand, “Historically, the Northern Hill Tribes have always been marginalized. I don’t see that improving in the near future. There is an unofficial caste system.”¹ A child from the Northern Hill Tribes, who has no citizenship and legal status within Thai society, is vulnerable to exploitation and child trafficking in the CSI.

The level of corruption in Thai society, institutionalized in many spheres, and reinforced by historical patterns that favored rewards based upon merit and loyalty in the traditional patron-client relationships, are factors that drive child trafficking. It has been well documented that some members of the police services, government bureaucracy and judiciary have been involved in corrupt practices that have allowed child trafficking to continue without proper investigation, enforcement or sanction. Many experts, in commenting on the general weakness of the child trafficking enforcement regime in Thailand, have also noted that the police, who serve as the first line of defense against trafficking offences and provide crucial investigative functions, are seriously underpaid. The shortfall between income needs and basic salary is deemed by many experts to be significant. The income gap is frequently surmounted through the acceptance of bribes.

Thailand has an impressive array of legislative accomplishments, particularly in the past ten year period, designed to curtail and sanction the crime of child trafficking and offences related to the exploitation of children. The problem does not lie with the law but rather with the application of the law in a societal environment where the forces of corruption, gender discrimination, poverty and marginalization have the power to negate successful efforts to combat child trafficking. The salient point which emerges from the research is that Thailand has a legal apparatus for addressing child trafficking offences but lacks an enforcement culture. An effective enforcement culture demands an
integrated prosecution regime that involves the following core elements:

- police and judicial training on child trafficking law and policy;
- de-criminalization of victims and a stronger application of the law to target CSI perpetrators of trafficking and exploitation against children; increased police salaries; sustained polices of victim/witness support and protection;
- anti-corruption initiatives targeting the police and judiciary related to child trafficking; development approaches to assist marginalized children and communities; specific application of exiting child trafficking laws and improved data collection on child trafficking offences.

**Policy Recommendations**

1. It is important that public education campaigns by the Government of Thailand be intensified to raise awareness of child trafficking and to promote observance of human rights norms. These campaigns should focus upon students at the elementary and high school level and also focus upon target areas that are vulnerable to child trafficking, particularly the Northern Hill Tribes and Northeast including Issan.

2. Capacity building on human rights, legal safeguards and child protection must be a priority. The focus should be upon enhanced, sustained training for government officials, members of the judiciary and members of the Royal Thai Police, particularly those who operate on the front lines of patrol and investigative work. Studies and interviews conducted as part of
the Thailand field work confirm that knowledge of child trafficking issues and related laws among the police and government officials is minimal.

3. The low salary of police officials has been identified as a key contributing factor to police corruption. Consequently, raising police salaries, to ensure an adequate standard of living, must be a government priority.

4. In combating child trafficking, police and prosecutors must shift attention away from the criminalization of the child prostitute, who has been victimized, and focus attention upon the investigation and prosecution of traffickers, brothel owners, brothel managers and others who conspire to profit from the trafficking and exploitation of children in the CSI. Despite provisions under Thai law designed to achieve these goals, they are rarely enforced. The government must promote a more rigorous utilization of Section 9 of The Prostitution Act, addressing procurement; Section 11 of the Act, addressing brothel keeping; and Section 12 of the Act, addressing forced prostitution.

5. An enforcement gap in Thailand vis a vis child trafficking offences is clearly evident. The government must enforce a more rigorous application of the law, more thorough and transparent investigative procedures, and more stringent penalties upon conviction. The deterrent effect of such government actions is important to convey the message that violations will be sanctioned with strict penalties.
6. Police corruption in Thailand, and its impact upon child trafficking, has been well documented. The Thai government risks re-placement on the Tier 2 Watch List in the TIP Report and further international / domestic criticism from respected voices in the human rights community unless firmer steps are taken to reduce the enforcement gap and to root out corrupt practices among government officials, police and other state employees who profit from, acquiesce to or cover-up activities that encourage child trafficking and exploitation in the CSI.

7. The situation of exploitation, discrimination, non-birth registration and citizenship denial affecting hundreds of thousands of Northern Hill Tribe persons must be addressed and corrected by the Government of Thailand. Despite assurances from the previous Thaksin Administration that progress on birth registration and citizenship would occur, progress has been slow. Successive governments have not adequately addressed the issue.

8. The Thai government must demonstrate effective enforcement of the Act on the Prevention and Resolution of Domestic Violence. Accordingly, the government must commit itself to the thorough enforcement of the “Eight Measures to Solve Problems Concerning Violence Against Women” and the “Policies and Plans to Eradicate Violence Against Children and Women” both documents of which were endorsed by the Thai cabinet.

10. Extreme poverty is a trigger for child trafficking. The Government of Thailand must address systemic issues of poverty and utilize effective development programs, with particular emphasis upon the Issan region and the Northern Hill Tribe territories.

11. Recent development studies have confirmed the value of educational initiatives and schooling as an effective deterrent to child trafficking. The Government of Thailand must divert greater resources to programs that assist children, particularly “at–risk” and “vulnerable” children to receive support and assistance to complete high school equivalency.

12. The Thai government must take concrete steps to ensure effective witness protection during the prosecution process as well as ensuring the safety of victims before, during and after testimony. The lack of victim and witness participation in the prosecution process has been identified as a key factor in the enforcement gap. Child–friendly procedures need to be adopted in the prosecution of child trafficking and child exploitation cases where the child victim or child witness is called upon to participate in the proceedings. Furthermore, trial procedures in such cases should be uniformly applied in all proceedings and include, at a minimum, the widespread use of videotaped testimony by a child; the use of closed circuit television; the use of court advocates and counselors for children involved in proceedings; effective security measures so that defendants or their associates have no contact with child victims and witnesses; guidelines for the cross-examination of child victims and witnesses; consideration of the
use of intermediaries to assist child victims and witnesses in presenting testimony; and the protection of victim and witness identity through the use of publication bans in the media.

**INDIA**

India is a state with a substantial child trafficking problem. The 2002 and 2003 United States Government, Trafficking in Persons Reports, identified India as a Tier 2 State. The sustained lack of progress in combating human trafficking and overall weak enforcement systems resulted in the downgrade of India in the 2004, 2005 and 2006 TIP Reports to the category of Tier 2 Watch List. In India, as in Thailand, the problem of enforcement rests not with the law, which is comprehensive, but with the implementation and enforcement of existing laws. There are a number of critical factors which drive child trafficking and reduce the utility of anti-trafficking laws and initiatives.

In a nation of 1.1 billion people, approximately 250 million persons live on one dollar per day or less. India has approximately 270 million children between 0-14 years. An estimated 100 million children are involved in various forms of child labor. India’s abject poverty combined with a high percentage of children from impoverished families and involved in child labor create severe vulnerabilities that lead to child trafficking and sexual exploitation. The passage of the 1989 Atrocities Act, designed to protect historically aggrieved minorities such as the Dalits has not led to significant protection for the targeted groups.
Indeed, as noted in a previous study, in the State of Tamil Nadu, between 1992-1997, only four convictions were reported out of 1500 crimes against Dalits that were filed under Atrocities Act. Such a dismal prosecution record underscores the glaring gap between the law and its enforcement. These finding have a significant bearing upon child trafficking issues in general and the culture of child protection that surrounds minority and marginalized children. The majority of trafficked and sexually exploited children are from the Scheduled Caste (including Dalits) and Scheduled Tribe groups.

Another key factor that blocks effective enforcement in India is the existence of corruption at the state and national level affecting government, judicial, commercial and police operations and conduct. Corruption bears the hardest burdens upon the poor, according to numerous international studies by authoritative voices such as the World Bank and the United Nations Development Program. Corrupt practices divert valuable resources away from much needed development programs that benefit the impoverished and marginalized.

India has an entrenched patriarchal society. Gender discrimination is entrenched in society and affirms the reality that millions of female children, particularly the poor and marginalized, suffer extreme forms of exploitation and abuse. Cultural practices, such as the Devadasi System, reinforce the ritualized and institutional practice of exploiting the girl child.
In sum, India has made progress in the adoption of laws and the affirmation of international treaties and standards that herald progress toward the goal of combating child trafficking and exploitation. Hundreds of value-centered Indian NGOs and thousands of dedicated human rights activists, in a variety of professional capacities, lobby every day for the protection and enhancement of child rights including the right to be protected from the dangers of child trafficking and sexual exploitation.

**Policy Recommendations**

1. The Government of India must increase the remuneration given to police officers in order to reduce corruption. Stronger measures must also be taken to sanction and prosecute members of the police services who are caught engaging in corruption.

2. At the judicial level, children involved in court proceedings, either as witnesses or victims, should be accorded direct legal representation.

3. Stringent steps must be taken to safeguard victims and witnesses from the influence and intimidation of persons or their associates who they are testifying against. Protective measures must be improved at the remand homes where victims are often placed during the pre-trial and trial phase.

4. In the repatriation process, victims must be accorded greater protection by the police during the return passage and for a considerable period of time after repatriation to ensure protection from harassment and violence.
5. The government must provide members of the police and judiciary with training on child trafficking laws and policies. This is essential.

6. The government, police and judiciary must re-examine the current focus on criminalizing the victim in prostitution cases. Section 8 of the ITPA is commonly used to arrest and convict females involved in prostitution.

Section 5 of the ITPA, relating to the procurement of persons for prostitution; Section 6, relating to the illegal detainment of persons; and Section 18, relating to police and court authority to close brothels; should be more diligently applied and can serve as effective obstacles to the commercialization of child exploitation.

7. The government and legal community should encourage the greater use of Public Interest Litigation by NGOs and funding support where warranted, to safeguard children who are exploited by commercial interests in the CSI.

8. The Government should create a special anti-trafficking unit, involving public officials, prosecutors and members of the police, to investigate and prosecute child trafficking offences. Laws which apply to trafficking offences need to be applied with greater force. Related laws, such as the Prevention of Corruption Act (1988) and The Prevention of Money Laundering Bill (1998) need to be utilized more fully. These laws, properly enforced, can be an effective sanction against commercial interests who profit from the exploitation of children.
9. Court procedures must ensure the protection of child victims and witnesses. Bail limits for accused in cases of child trafficking and sexual exploitation should be more stringent. Sentencing guidelines need to be re-examined to ensure that penalties and fines imposed actually serve as a deterrent.

10. The government and police services must re-examine and rectify the traditional police practice of failing to complete First Information Reports in many cases involving lower caste persons, namely Scheduled Castes and Scheduled Tribes. Without the adequate completion of an FIR, it is difficult to proceed with a prosecution. It may be necessary to amend the Indian Penal Code, the Atrocities Act, or both to ensure that police are compelled to complete an FIR in all instances where a criminal offense is alleged to have occurred. Such action would also have a bearing upon the extremely low rate of child trafficking and child sexual exploitation cases that actually appear before the Indian Courts, a situation which represents a statistical anomaly and obscures the generally acknowledged scope of such offences in India.

11. Poverty is an extreme and enduring problem in India. However, this reality should not deter the government, at both the state and national level, from targeting anti-poverty programs and employment initiatives in traditionally impoverished rural areas and urban slums. As John F. Kennedy once noted, education is the keystone in the arch of freedom. Numerous studies bear out the fact that education improves social, health
and economic standings and provides impoverished and vulnerable children with greater opportunities in life. The State of Kerala, which has invested heavily in education, has the highest literacy rate in India. Higher levels of education and longer periods of school involvement have been found to minimize the vulnerability of children to trafficking.

12. The government of India, at the state and national level, in collaboration with the NGO community must initiate stronger ties with the Panchayats to reduce child trafficking and to foster development programs that improve the social, health and educational environment of children and families. Existing Government funding to the Panchayats should be expanded in scope to include provisions for these important initiatives.
Appendix 1

Prosecutions and Convictions for Child Trafficking Offences – India

The United States Department of State, Trafficking in Persons Report, an authoritative annual source of trafficking data, has been highly critical of the Indian Government over the failure to exercise acceptable controls and enforcement to contain human trafficking.

In 2002 and 2003, the TIP Report placed India on the Tier 2 list of countries. This list is reserved for countries which have significant human trafficking problems but which are making progress to eliminate the problem. In 2004, India was downgraded to the Tier 2 (Watch List) and remained on the Watch List in 2005 and 2006. The 2006 TIP Report observed that: “The Government of India does not fully comply with the minimum standards for the elimination of trafficking, however it is making significant efforts to do so. India is placed on the Tier 2 Watch List for the third consecutive year due to its failure to show evidence of increasing efforts to address trafficking in persons. India lacks a national law enforcement response to any form of trafficking but took some preliminary measures to create a central law enforcement unit to do so. The Indian government also did not take meaningful steps to address its sizable trafficking-related corruption problem.”

1 United States Department of State, 2006 Trafficking in Persons (TIP) Report, Country Narratives, India
Data on trafficking offences is difficult to obtain in India. The time
differential between arrest and prosecution can be lengthy. Often
prosecutions begun one year will carry on for one or two years or longer
due to overcrowding in the Indian court system, the difficulties of securing
witnesses and the appeal process. Moreover, trafficking offences in India
are often tried under different laws. A trafficker or brothel keeper may be
tried for child labor law violations, thus obscuring data collection on child
trafficking offences.

Appendix 1 - India Data and Surveys

Country Narratives, India

Table 1

2002 Trafficking Related Prosecutions and Convictions- India

<table>
<thead>
<tr>
<th>Location</th>
<th>Arrested /Charged</th>
<th>Prosecutions</th>
<th>Convictions</th>
<th>Narrative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh (State)</td>
<td>66</td>
<td>10</td>
<td>-</td>
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</tr>
<tr>
<td>Karnataka (State)</td>
<td>-</td>
<td>20</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Mumbai (City)</td>
<td>-</td>
<td>1</td>
<td>1</td>
<td>Mumbai is considered to be the largest center for sex trafficking in India</td>
</tr>
<tr>
<td>New Delhi (City)</td>
<td>-</td>
<td>48</td>
<td>14</td>
<td></td>
</tr>
</tbody>
</table>

Source: U.S. Dept. of State, Trafficking in Persons Report, 2002
### Table 2

**2003 Trafficking Related Prosecutions and Convictions – India**

<table>
<thead>
<tr>
<th>Location</th>
<th>Arrested/ Charged</th>
<th>Prosecutions</th>
<th>Convictions</th>
<th>Narrative</th>
</tr>
</thead>
<tbody>
<tr>
<td>All India</td>
<td>2504</td>
<td>318</td>
<td></td>
<td>Many child labor offences and convictions may be trafficking cases</td>
</tr>
<tr>
<td>New Delhi</td>
<td>180</td>
<td>35</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Calcutta (City)</td>
<td>30</td>
<td>-</td>
<td></td>
<td>Charged for kidnapping and prostitution under the Indian Penal Code</td>
</tr>
<tr>
<td>Calcutta</td>
<td>168</td>
<td>99</td>
<td>10</td>
<td>Charged and prosecuted under the Immoral Trafficking Protection Act</td>
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<td>Mumbai</td>
<td>21</td>
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<td>2</td>
<td></td>
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<td>Karnataka State And Tamil</td>
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<td>-</td>
<td>-</td>
<td>Joint Operation</td>
</tr>
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<td>Nadu State</td>
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<td>Andhra Pradesh State</td>
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<tr>
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</tbody>
</table>

Dept. of State, Trafficking in Persons Report, 2003 and 2004
### Table 3

**2004 Trafficking Related Prosecutions and Convictions, India**

<table>
<thead>
<tr>
<th>Location</th>
<th>Arrested/Charged</th>
<th>Prosecutions</th>
<th>Convictions</th>
<th>Narrative</th>
</tr>
</thead>
<tbody>
<tr>
<td>All India</td>
<td>-</td>
<td>2058</td>
<td>1051</td>
<td>Child Labor Offences</td>
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<tr>
<td>All India</td>
<td>-</td>
<td>195</td>
<td>82</td>
<td>Offences related to trafficking for sexual exploitation</td>
</tr>
<tr>
<td>All India</td>
<td>-</td>
<td></td>
<td>6341</td>
<td>Convicted for offences under the ITPA</td>
</tr>
<tr>
<td>Mumbai</td>
<td></td>
<td>53</td>
<td>11</td>
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</tr>
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### Table 4

**2005 Trafficking Related Prosecutions and Convictions, India**

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<th>Location</th>
<th>Arrested/Charged</th>
<th>Prosecutions</th>
<th>Convictions</th>
<th>Narrative</th>
</tr>
</thead>
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<tr>
<td>Chennai (City)</td>
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<tr>
<td>Mumbai</td>
<td>13</td>
<td>-</td>
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</tr>
</tbody>
</table>

The decline in the 2005 figures is due to the lack of data provided by the Government of India, unlike in previous years.

Source: U.S. Dept. of State, Trafficking in Persons Report, 2006
### Table 5

**2006 Trafficking Related Prosecutions and Convictions, India**

<table>
<thead>
<tr>
<th>Location</th>
<th>Arrested/Charged</th>
<th>Prosecutions</th>
<th>Convictions</th>
<th>Narrative</th>
</tr>
</thead>
<tbody>
<tr>
<td>All India</td>
<td>-</td>
<td>-</td>
<td>27</td>
<td>Low reporting of data in the reporting Year</td>
</tr>
</tbody>
</table>

Source: U.S. Dept. of State, Trafficking in Persons Report, 2007

### Table 6

**2007 Trafficking Related Prosecutions and Convictions, India**

<table>
<thead>
<tr>
<th>Location</th>
<th>Arrested/Charged</th>
<th>Prosecutions</th>
<th>Convictions</th>
<th>Narrative</th>
</tr>
</thead>
<tbody>
<tr>
<td>All India</td>
<td>1289</td>
<td>-</td>
<td>4</td>
<td>Continued lack of concerted action by police and the government to pursue trafficking charges and prosecutions</td>
</tr>
</tbody>
</table>

Section 6

Interview Analysis – India

<table>
<thead>
<tr>
<th>Interview Number (India)</th>
<th>1 Corruption Police</th>
<th>2 Enforcement</th>
<th>3 Gender</th>
<th>4 Caste</th>
<th>5 Poverty</th>
<th>6 Parents/Relatives Sell Child</th>
<th>7 Entry Age in CSI</th>
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<td>-</td>
<td>-</td>
</tr>
<tr>
<td>TOTALS</td>
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<td>14</td>
<td>6</td>
<td>6</td>
<td>14</td>
<td>3</td>
<td>3</td>
</tr>
</tbody>
</table>

Data Interpretation

Nine interviews were conducted in India in 2006. Based on content analysis the interviews were scanned for core issues, identified by the respondents that contribute to child trafficking. For example, in Interview #1, there was one reference each to corruption, enforcement, gender and caste, as issues of significance to the problem of child trafficking. There were two references each to poverty and parents/relatives selling a child. There was one reference in the interview to the issue of entry age of the child into the CSI.

The interview subjects included: 1) Dr. I.S. Gilada, founder, Indian Health Organization, now Peoples Health Organization, 2) Fr. Joe Periera, founder of KIRIPA drug addiction centers; 3) Pravin Patkar, co-founder of PRERANA; 4) Priti Patkar, co-founder of PRERANA; 5) Kumar Tamang,
Project Officer, ASHA Street Child Project; 6) Dr. N. Dabir, Tata Institute of Social Sciences; 7) Mr. Vijay, Program Director, Tata Institute of Social Sciences; 8) Sarita Shankaran, Director, CCCT; 9) Dr. Asha Mukundun, Director, Center for Criminology and Justice, Tata Institute of Social Sciences.

The seven core issues are: 1) General corruption and police corruption; 2) Enforcement issues; 3) Gender; 4) Caste; 5) Poverty; 6) Parents or relatives sell the child; 7) Age at entry into the CSI.

An analysis of the Research interviews, reveals the following:

A total of 14 references to weak law enforcement in India as a core issue contributing to child trafficking.

A total of 14 references to poverty as a core issue.

A total of 8 references in the interviews to corruption including police corruption.

A total of 6 references respectively to gender and caste.

A total of 3 references respectively to the issue of parents and/or relatives selling a child into the CSI and to the issue of age at entry into the CSI.

In sum, the issue of poverty was identified by 8 out of 9 interview subjects as a strong factor contributing to child trafficking. The issue of weak law enforcement was identified by 7 out of 9 interview subjects as a strong factor contributing to the problem of child trafficking in India. There is a strong linkage between poverty, weak law enforcement and child trafficking. A preponderant number of child trafficking victims are
impoverished and marginalized. A high percentage are from the Dalit and Scheduled Tribe classes. Weak law enforcement against child trafficking offences is attributable to many factors, as noted. However, the issue of law enforcement neglect, by the police services and judiciary, is a common and well-documented experience among the Dalits and Tribals. These conclusions are vitally important to the research because they provide academic and field work data that upholds the major contention of the thesis that four core issues, namely, police corruption, caste discrimination, gender discrimination and marginalization are key factors inherent in the failure of the enforcement regime in India. The gap between India’s legal system (law enforcement, penal code, prosecution process) and social values of the mainstream and dominant population is significant. This reality is a major factor behind the child trafficking enforcement gap in India. This conclusion further underscores an essential point in this thesis that a legalistic approach to the problem of child trafficking and enforcement is incomplete and ineffective. India has a variety of laws that can be applied to the enforcement and prosecution of child trafficking offences. They are not effective and infrequently applied. Effective solutions must embrace approaches that are also outside the legal framework, as discussed in the following Recommendations section.
Selected Interview Transcript

Sarita Shankaran, Assistant Director, Committed Community Development Trust, CCCT, Mumbai, India
Interview Date: April 25, 2006

Q Describe the work of CCDT.
A We work with a slum population of 40,000 in Mumbai. The government asked us to start a health program in the red light area. Some work in the most difficult areas was given to NGOs to run. That’s how we began working there in 1993. There were many children who needed support. We started with our daycare program in 1993. We started to see young mothers who were dying and we started our HIV program. Today we cover about 450 families in our home care program.

Q What is the average age of children involved with child trafficking in Mumbai?
A I have worked with a juvenile home for minor girls from the red light areas. The ages there range from 14 to 16. At that age they have been working in the red light areas and have already been seeing clients.

Q How do they get into this work? Is it forced?
A Yes.

Q What percentage of trafficked girls and girls in the CSI are Dalits?
A I think most are Dalit or the backward classes. It is easily above 70%.

Q What is the effect of gender oppression on child trafficking?
A From 199 to 2004 I was managing a project. I would say that most are
oppressed. But they do not see it in that context. What they see is poverty or I ran away. But the whole thing is, if you look at it, the problem trickles down to gender. The girl in the family doesn’t seem to have enough importance. She is seen as an expense rather than as a support or as an income. And therefore, she becomes most vulnerable in a situation where the family is unable crisis.

Q  What is the connection between poverty, caste and child trafficking?
A  It goes beyond that. Underneath that it is the family set up or whole structure. For me, my understanding is like this. Those might be factors, caste and poverty, that trigger overriding factors. But understanding of a problem or problem solving skills in family are lacking. Most of the girls talk about so many crises happening one after another, and the families are unable to cope and understand the crisis. Their response to a crisis is to allow their girl to go into prostitution. Especially in a rural setting, the family is never alone.

Sometimes the whole community network is not holding together.

Certain families will send their daughter into prostitution and other families in the same village don’t see this as an option. One family may send a daughter into prostitution and they get used to the earnings and don’t feel any shame about it. And this paves the way for the second daughter. It becomes that much more easier.
Q If a family sends a daughter to the CSI, is it purely economics? What is their feeling?

A From the home studies that we have done with our partners, we found that in some cases it was very blatant where the father would sell them. In many cases they turned up and said we didn’t know, we were told it was for babysitting work, and all that kind of rubbish. The majority of families know when their daughter is put into the CSI. Also, many villages are isolated, there are no schools and no phones.

Q How effective is the enforcement of anti trafficking laws in India?

A It is not very good. First of all, understanding of the laws are weak. They just don’t know the law. Only sections of the law are applied. You see, this is not a priority issue. Unfortunately, you have a murder or a VIP issue and that is more of a priority than a child in prostitution.
Appendix 2

Section 4 – Thailand Data

Prosecutions and Convictions for Child Trafficking Offences - Thailand

The high number of child trafficking victims, when compared to the generally low rate of prosecution and conviction, is cause for serious concern among international and domestic human rights groups and monitoring agencies. In 2002, The U.S. Government Department of State, Trafficking in Persons (TIP) Report, placed Thailand on the Tier 2 List. In 2003, due to inadequate efforts by the government to contain human trafficking, Thailand was placed on the Tier 2 (Watch List) and remained on the Watch List in 2004. In 2005, in recognition of improved results vis a vis human trafficking enforcement, Thailand was placed back on the Tier 2 List and remained there in 2006.

Corruption and weak enforcement continue to hamper Thailand’s overall effectiveness in combating child trafficking. According to the 2005 TIP Report, “As in previous years, the Thai government made minimal progress in reducing trafficking-related corruption in the police, immigration services and judiciary. Law enforcement officials continued to be implicated in facilitating trafficking but only one officer was convicted and sentenced to ten years imprisonment over the past year, prosecutions of 18 others fired in 2003 for complicity in trafficking continues.”¹

¹ United States Department of State, Trafficking in Persons Report, 2005.
Prosecutions and convictions for trafficking and exploitation offences against children remain low. Moreover, data on prosecutions and convictions is not readily available and court cases may take several months or years to complete. Another issue that obscures enforcement data is the fact that many child trafficking and exploitation related cases are prosecuted under different categories in Thai law such as child labor violations.

Table 1

2002-2005 Human Trafficking Arrests, Prosecutions and Convictions - Thailand

<table>
<thead>
<tr>
<th>Year</th>
<th>Arrests</th>
<th>Prosecutions</th>
<th>Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>504</td>
<td>42</td>
<td>21</td>
</tr>
<tr>
<td>2003</td>
<td>211</td>
<td>86</td>
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<td>2004</td>
<td>307</td>
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<td>12</td>
</tr>
<tr>
<td>2005</td>
<td>352</td>
<td>N/A</td>
<td>74</td>
</tr>
</tbody>
</table>


Table 2

2006-2007 Human Trafficking Arrests, Prosecutions and Convictions – Thailand

<table>
<thead>
<tr>
<th>Year</th>
<th>Arrests</th>
<th>Prosecutions</th>
<th>Narratives</th>
</tr>
</thead>
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<tr>
<td>2006</td>
<td>88*</td>
<td>N/A</td>
<td>*Arrests between September 2005 and February 2007</td>
</tr>
<tr>
<td>2007</td>
<td>N/A</td>
<td>144**</td>
<td>**Prosecutions for 2006-2007</td>
</tr>
</tbody>
</table>

Section 5

Interview Analysis – Thailand

<table>
<thead>
<tr>
<th>Interview Number (Thailand)</th>
<th>1 Corruption/Police</th>
<th>2 Enforcement</th>
<th>3 Gender</th>
<th>4 Caste</th>
<th>5 Poverty</th>
<th>6 Parents/Relatives Sell Child</th>
<th>7 Entry Age In CSI</th>
</tr>
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<tbody>
<tr>
<td>#1</td>
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<td>20</td>
<td>2</td>
<td>2</td>
<td>1</td>
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</tbody>
</table>

Data Interpretation

Ten interviews were conducted in Thailand in 2006. Based on content analysis, the interviews were scanned for core concepts that contribute to child trafficking.

Interview Subjects


2) Isabel Lloyd, Technical Advisor, UNIFEM,

3) Lance Bonneau, Program Director, International Organization for Migration;

4) Alan Dow, Program Officer, International Labor Organization;

5) Taneeya Runcharoen, Program Director, International Program on the Elimination of Child Labor;
6) David Feingold, Director, UNESCO;
7) Ms. Sudarat, Thammasat University, founder of End Child Prostitution and Trafficking (ECPAT);
8) Elaine Pearson, Consultant, ILO,
9) Melissa Macdonald, Program Manager, South East Asia Regional Cooperation in Human Development, SEARCH;
10) Michael Miner, Regional Manager, SEARCH.

The seven core concepts are: 1) General corruption and police corruption; 2) Enforcement issues; 3) Gender; 4) Caste; 5) Poverty; 6) Parents or relatives sell the child; 7) Age at entry into the CSI.

Interview reviews utilizing content analysis led to the following conclusions:

A total of 20 references to marginalization/caste-like features related to the Northern Hill Tribes as key factors in child trafficking.
A total of 15 references to weak enforcement in Thailand as a contributing factor to child trafficking.
A total of 8 references to general and police corruption as contributing factors to child trafficking.
Two references respectively to poverty/parents selling their own children into the CSI as factors in child trafficking.

In sum, the issue of Northern Hill Tribe marginalization and caste-like features was noted by 8 out of 10 respondents. The general literature on child trafficking in Thailand and remarks by the interview subjects...
highlight the extreme vulnerability of Hill Tribe girls to child trafficking and commercial sexual exploitation.

These findings support a major contention of the thesis that caste-like features in Thailand and extreme marginalization affecting millions of Thai persons have a direct bearing upon child trafficking and weak enforcement.

The issue of weak enforcement was identified by 5 out of 10 interview subjects as a strong factor contributing to child trafficking in Thailand. The issue of corruption including police corruption was observed by 5 out of 10 interview subjects as a contributing factor to child trafficking.

Thailand and India represent distinct cultures and societies, yet there are noted commonalities with respect to child trafficking and the enforcement gap. Both societies experience systemic corruption within the police services, in both states the police exert strong influence over the investigation and prosecution process in child trafficking cases. There is also evidence of corruption which impedes the prosecution process. Caste oppression exists to a high degree in India and does exist, to a lesser extent in Thailand. Both states have large populations of marginalized, impoverished persons. Gender inequality is prevalent in both states.
Selected Interview Transcript

Vitit Muntarbhorn, Law Professor, Chulalongkorn University, Bangkok, former United Nations Special Rapporteur on the sale of children, child prostitution and pornography

Q  Discuss the effectiveness of the Thai government in enforcing articles 34 and 35 of CRC 1989.

A  Article 34 concerns the sexual exploitation of children and article 35 deals with the sale and trafficking, these have been concretized by other treaties, the Optional Protocol on the Sale of Children and Child Prostitution to which Thailand has now become a party, and Thailand also signed the Protocol against Trans-National Crime, which deals with trafficking, so let’s say that in terms of normative commitment, the political will is there. Secondly, there have been various legislative and policy responses of a constructive kind. We have had for quite a few years, a specific law against trafficking, as well as sexual exploitation, prostitution, which have some bearing on trafficking and now the government is drafting a new law on trafficking again, so as to comply with the Protocol on Trafficking attached to the Convention Against Trans-National Crime. And last year, 2005, the Prime Minister came out specifically with a high ranking conference on human Trafficking, sighting that he would take very strong action against this. So let’s say the political will is there, and the normative elements are there. And some of the concrete results, apart from legislative reform, have been that they are establishing a more concrete unit in the police force that deals with
prostitution issues and related trafficking. Also, I think they have opened the door to more civil society participation to take action. And if anything, I think there has been somewhat of a challenge in respect to the U.S. law which pressured all countries to have anti-trafficking laws. And Thailand found itself in this middle Tier 2, which means some efforts taken, but many things to do, which is an impending sword of Damocles in terms of falling into Tier 3, which means those that do not perform well enough.

Q Is this a sword of Damocles hanging over Thailand?

A Yes, many of us have different opinions on U.S. pressure. I think progress is happening here without the U.S. pressure, and we should be very careful to avoid quick fixes, and the quick fixes tend to be quick arrest, quick new legislation, and really we need to address more systemic issues.

Q How significant a step will article 5 of the new Thai trafficking law be?

A Well, the Draft Anti-Trafficking Law will pretty well follow the Protocol attached to the UN Convention on Trans-National and Organized Crime, and one of the challenges, number one, is the definition of trafficking under that UN Protocol isn’t very easy to integrate into national law. It is ten lines long, so when this draft was put to us at the national level, we really felt it was a really difficult definition, it was basically a governmental comprise, and my reduction of it to a simple understanding, is that trafficking is really about a transfer of people into a situation of exploitation, irrespective of a person’s consent. That is one line and
when they go into specifics of ten lines, it is very difficult. And the understanding is that trafficking should be criminalized, but trafficking is already criminalized here and in many countries. So you get to a question of law enforcement and what type of quality law enforcement do you have, are you dealing with the consequences, but what about the root causes, what are measures to attenuate the impact of root causes in terms of prevention. At the moment a lot of emphasis is on prosecution and new law that is partly due to U.S. pressure, which is fine a one level, but even there you have to be very careful that prosecution must mean prosecution according to the rule of law. And many countries do not even have courts that are really dependable. And some courts are in the same boat as some of the law enforcement which are not very transparent. So we have to be very careful there to work towards more effective quality based prevention and enforcement, but when you get back to the prevention issue, things that have to be underlined, it has to be proved in Thailand that less Thai children are in situations of exploitation because they are kept in school. So that’s been accepted by NGOs. So in terms of prevention it is very important that you get all children into school. Now who’s going to assist for that, it’s more important than quick fixes. And likewise, it does not suffice to say, do it here when you have to address the countries of origin as well. We know that if you keep children in school and away from the market, it is a good way of keeping children out of exploitation.
Q  Describe the situation of hill tribe girls in commercial sex work.
A  In recent years more hill tribe children have got access to education. The numbers would not be comparable to those coming in from neighboring countries. However, there remain various issues pertaining to hill tribes which still undermine their status. Number one is birth registration, number two is access to Thai nationality. And we have situations where Thai hill tribe people have their nationality taken away from them and cases have to be taken to the courts to revoke the orders. Now these situations are not conducive to child protection in general, and likewise affect the human security of families and children might end up in situations of exploitation.

Q  Talk about ethnic pluralism and how inclusive is Thai society for Northern Hill Tribes.
A  Birth registration and ID cards are very important because we don’t know who they are. So who are you going to track if you don’t know who they are, and if they disappear. And that is a different issue than nationality. Some officials still fear birth registration because they fear that it will lead to advocacy of trans nationality, but there is not an automatic link between birth registration and Thai nationality in any case, even though, of course, we do not wish to see stateless people in our territory. It is very important that all people and children have access to birth registration. One of the problems until this past year was that the children of illegal migrant workers were not
registered in terms of birth. And the only mitigating factor was that some of them were given delivery certificates, issued by the hospital, but they are not formal recognition by the authorities in terms of being computerized. Now to give credit to the authorities, they now realize and are moving toward registration of all people in Thailand and they submit that is tantamount to birth registration.

Q Discuss the role of the police in enforcing child trafficking laws.

A I think the police know that there are great expectations on them. They know that they have to work hard to fulfill those expectations. I think everyone knows what to do and the question is – will they do it in a sustained manner. But getting back to square one, I think it is a question of more than policing against trafficking. I think you have to look at how police and others, including immigration officials, are capacity built in the long run to respond to human rights as a whole. Most if them are badly paid. Until recently there was no training on human rights in their educational institution, few incentives, and I can remember a few years ago, some quite high ranking people were saying it is a low priority, that they had other things to deal with. Now it is not a low priority. This would suggest that it is an opportune time to not only propel a specific focus on law enforcement in terms of a more specific unit, but in terms of structural capacity building which is very important.
Q  Is it easier to prosecute drug traffickers than human traffickers?
A  I have heard prosecutors that it is easier to prosecute drug traffickers in a way because you have a mass in front of you, you have got a catch. In recent years it has been difficult to disaggregate the date because many of the prosecutions have been under prostitution laws rather than trafficking laws. But because of U.S. pressure in part, there has been a greater need to disaggregate the data to make sure they are understood as trafficking cases.

Q  Are there problems with the term ‘human trafficking’?
A  It is not the term but how it is understood and defined. The definition is a very difficult one. Without being simplistic, we must ensure that people understand it in a simple manner of communication. Secondly, you have a UN Treaty so there is no escaping it. Let’s try to make it work well. It is very important to understand that we are talking about measures that lead to exploitation.

There is a lot of confusion between trafficking and migrant smuggling. Here, particularly a couple of years ago, if you asked some of the law enforcement people, they couldn’t tell the difference. We have to explain it to them. Trafficking you measure it for the reason of exploitation. Smuggling is cross border exploitation, illegal entry. A smuggled person might not be trafficked at all. Trafficking and prostitution are not necessarily the same frankly. My humble belief is that we have to take action against those who exploit people, first and foremost, and not criminalize the victim. When you meddle in prostitution, then you get into
rather deeper waters. In some communities laws are still against the prostitute, or at least the law enforcers interpret the law against the prostitute. Sadly, some of the anti-prostitution laws are used negatively against the victims of trafficking. Likewise some countries classify children or young people in prostitution as juvenile delinquents. You cannot push them into a juvenile delinquency framework at all and internationally we don’t even accept the term juvenile delinquency. We talk about juvenile justice. Those under 18 are really victims.
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