

# The Politics of Human Trafficking in India and Malaysia

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*Abstract*—Trafficking of women and children is a regional, as well as an international and global, issue. Trade liberalization and globalization have encouraged the influx of trafficked victims and traffickers from one country to another, as in India and Malaysia. However, the primary policy that governs labor migration in India, Emigration Act of 1983 and its consequent Emigration Rules, is problematic, they actually encourage irregular migration or even trafficking, and further, stringent laws enforcing restrictive movements also further strengthens organized crime. In a similar vein, Malaysia's labor migration policy as governed by the Immigration Act 1959/63, and other pertinent laws not only encourages even more irregular migrants, but also facilitates trafficking. Hence, this paper affirms the contention of various authors (Castles 2004; Chuang 2006; Jandl 2007) that globalization, labor migration and human trafficking are inextricably linked to each other. Moreover, this paper affirms that the governments of both India and Malaysia, have tried to address the issue of trafficking, however, problem areas are still abound. In addition, the presence of non-governmental organizations (NGOs) and the partnerships they established with the government's law enforcement agencies in order to address the issue of human trafficking is also affirmed. This partnership is beneficial for the society because where the state may not be able to provide basic services, NGOs and civil society groups can provide such necessary services. The dynamics of state – society partnership thus encapsulates the politics of human trafficking in India and Malaysia.

*Keywords*—Globalization, Labor Migration, Human Trafficking, State-Society Partnership

## I. INTRODUCTION

Where globalization has opened doors of opportunities for people to move from one place to another in search of stable work environments, so has it brought about the massive influx of human smuggling or human trafficking in countries where employment and economic opportunities abound. The flow of trafficked victims and traffickers from one country to the next stems from fundamental economic disparities and distortions that are integrally intertwined with trade liberalization and globalization (Bravo 2008:67). The “permeable” borders (Buckley 2008:30) has resulted to the relative ease by which people cross these borders, bringing forth trafficking, especially of women, into territories that cater to either sexual

slavery or the commodification of women, especially in centers where “adult entertainment” has become a lucrative industry (Lehti and Aromaa 2006:138, refers to this as a lucrative “enterprise”) – a multi-billion dollar business.

India and Malaysia are Asian countries that are economically thriving, culturally distinct, but socially and politically different. Both countries have been confronted with issues pertaining to trafficking and other migration issues. In so far as the literature reviewed is concerned, India on one hand, is considered as a point of origin of migration (Tzvetkova 2002: 62), meaning that it is a country where people migrate out of the country for various reasons. On the other, Malaysia is considered as a country of destination for migrants from within and outside the region (Barbora et.al. 2008:58), though in a much earlier work by Pillai (1995:221), it is considered as both a sender and a receiver. Samarasinghe and Burton (2007:53) considers both countries as destination countries of trafficked women from all over the region, though both are considered by the US Department of State to be “making efforts to comply with anti-slavery treaties” (Kapstein 2006:109), and it is for these reasons that India and Malaysia are taken as subjects of this study for comparative purposes. And as this paper reveals, both countries have enacted laws and took efforts in establishing partnerships with civil society organizations in strengthening law enforcement against traffickers.

### *Statement of the Problem*

This study examines the politics of human trafficking in India and Malaysia.

Specifically, the study attempts to identify specific policies that are in place in both India and Malaysia in order to address trafficking of women and children. In addition, it looks at what brought about these specific policies as well as their political relevance. And finally, the paper looks into how the respective governments of India and Malaysia have partnered with civil society actors and non-governmental organizations in order to address the issue of human trafficking.

### *Framework of the Paper*

The State-society framework is used in the analysis of this paper as incorporated in the various sections of the text. The paper considers the state to be genuinely interested in addressing the issue of human traffic, such that it enacted laws that would prevent trafficking or penalize offenders. Civil society and other non-state actors are considered as active agents in partnership with the state in three levels: (1) information dissemination and awareness campaigns; (2) rescue and rehabilitation of victims; and (3) prevention measures.

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## II. METHODOLOGY

The primary method used in analyzing state action of both India and Malaysia towards trafficking is content analysis. A thorough analysis of documents made accessible to the author were examined as well as information and data available online from reliable academic journal articles.

## III. ANALYSIS

Trafficking in human beings cannot be separated from the forces of globalization (Puleo 2000:157), because its causes are profoundly economic (Bravo 2008:67-68), such as the rapidly increasing economic and social inequalities between industrialized and third-world countries (Lehti and Aromaa 2006:138). Though poverty usually plays a principal role, poverty alone does not explain why certain poor families fall victim to trafficking and others not (ILO 2007:8). Needless to say, Wheaton, Shauer and Galli (2010:114) considers human trafficking as a monopolistically competitive industry in which traffickers act as intermediaries between vulnerable individuals and employers by supplying differentiated products to employers. These authors add that in the human trafficking market, the consumers are employers of trafficked labor and the products are human beings. It is therefore apparent that globalization, labor migration and human trafficking are interrelated issues. As globalization provides the avenues and reasons for labor migration to occur, the act of migration is often hampered by stringent migration policies thereby facilitating shadow economies and illegal migratory routes to ensue between countries of origin and countries of destination of migrants, both for legitimate migrants and trafficked workers.

### *India and Malaysia: Addressing Human Trafficking*

According to Khan (n.d.:39), rapid urbanization is eroding traditional social security networks of families and communities, and that relaxation of trade barriers and improvements in transport and communications infrastructure is facilitating movement across national and international borders. Here, labor migration is linked with globalization. The Emigration Act of 1983 and its consequent Emigration Rules (as amended) are the primary policies that govern labor migration in India. However, foreign migrant workers are not covered by the law, hence depriving them of adequate protection from abuse and exploitation within India. Also, the policy prohibits women below the age of 30 to emigrate for employment opportunities. Hence this encourages cross-border human trafficking or smuggling since the policy denies women of employment due to limitations as to age.

Adding to this is the fact that India is not a signatory to any of the key international conventions related to refugees or migrant workers, but has signed two protocols in 2002 – the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) and Protocol Against the Smuggling of Migrants by Land, Air and Sea (Situation Report 2012:60). However, India is a

signatory to the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, it has also passed the Immoral Trafficking Act (ITPA), as the primary legislation dealing with trafficking, it has signed labor welfare and protection agreements with the GCC and Malaysia, and has Amended in 2009 the Emigration Act of 1983, which is the primary labor migration policy of the country. In addition, in relation to the definition of Trafficking in Article 2 of the Palermo Protocol, the SAARC Convention, to which India is a signatory, considers trafficking in women and children for the purpose of prostitution as a violation of basic human rights.

Moreover, the Immoral Traffic (Prevention) Act of 1956 or the ITPA, penalizes specific activities related to commercial sex, while providing rescue and rehabilitation of persons in sex work. This law is enforced through special police officers (local level) and the trafficking police officers (national level) without the need of the issuances of warrants. Accordingly, the acts punishable under ITPA are: operating brothels, living on earnings of sex work this, and procuring, inducing or detaining for prostitution. Accordingly, offences that involve children have a higher consequent penalty. In addition, the Magistrates can authorize the arrest and removal, as well as direct the custody of rescued persons, close down brothels and evict sex workers. Furthermore, the Act also provides for rehabilitation of those who were rescued from sex work.

Despite this, the Country Report for India of the Protection Project (2013:2-3) mentions various forms of trafficking existing in the country. Bonded and sex labor (in the form of sexual exploitation and slavery) being the most common. The emergence of new trends of sexual exploitation such as sex tourism, child sex tourism, pedophilia, prostitution in cross-border trafficking, forced marriage, as well as child marriages, adds to already complicated issue of human traffic. Moreover, child soldiering and organ harvesting are also forms of trafficking that occur in India, though on a much lesser scale than forced labor and sexual exploitation.

What can be deduced from the Report is that the Government responds to these activities by taking an active stance through strict enforcement of existing laws together with the implementation of social programs, and thru establishing partnerships with state governments, NGOs, and unions and association in private industries. However, the report also specifies that:

“Despite extensive legislation targeting the major drivers and forms of human trafficking, enforcement is severely lacking. Compared to the scope of human trafficking, few are arrested and even fewer are convicted and incarcerated. Beyond lax enforcement, police reportedly receive bribes from brothel owners and human traffickers as a fee to allow them to operate. Moreover, it provides that the Central Bureau of Investigation (CBI) and the Ministry of Home Affairs acknowledges that human trafficking is a major problem in India

and that the current enforcement effort is not sufficient (Protection Project 2013:7).”

Hence, there is difficulty in terms of law enforcement against acts of human trafficking in India because primarily in areas where extreme poverty is present, more money is made from trafficking women into prostitution than dealing in drugs, and the risk is, apparently, lower. In addition, whereas drugs and guns are sold once, women and girls can be repeatedly traded to clients. Hence, unemployment, serious economic hardship and hope for a better life for them and their families are all push factors of human trafficking. Buckley (2004:31) contends that ready global markets for the trafficked as commodities fuel demand.

In Malaysia, labor migration policy is governed by the Immigration Act 1959/63, the Immigration Regulation 1963 and the Passports Act of 1966. These policies penalize illegal migrants instead of addressing unregulated mechanisms that facilitate illegal migration. People, especially women, migrate for work, made available through the employers’ access to cheap migrant labor. These penalties imposed for illegal migrants, however, does not only encourage even more irregular migrants, but also facilitate trafficking.

Since Malaysia has been said to be “a country of origin, destination, and transit for trafficking in women and children (Country Report on Malaysia of the Protection Project 2013:1), she has enacted Act 670 or the Anti-Trafficking in Persons Act of 2007. In addition, the Malaysian government also relies on Act no. 106 of 1973 (or the Women and Girls Protection Act, and Act no. 611 of 2001 (or the Child Act of 2002) to prosecute traffickers.

Malaysia’s laws penalizing human trafficking are clear. The Women and Girls Protection Act prohibits prostitution, illegal detention, and employment of women and girls for purposes of prostitution or for “immoral purpose”. Trafficking in “female persons” is penalized, along with those (1) benefitting from the prostitution of others, (2) keeping or running a public resort for the purpose of prostitution, (3) maintaining a brothel; (4) soliciting for the purpose of prostitution. The Child Act, on the other hand, provides for protection of children in need. It penalizes anyone who (a) sells, lets for hire, buys, hires, or otherwise disposes of a child for the purpose of prostitution within or outside of Malaysia; (b) procures a child for prostitution within or outside of Malaysia; (c) brings, takes out of Malaysia, or assists in bringing or taking out of Malaysia by false pretenses, false representation, fraudulent, or deceitful means a child for prostitution; (d) brings into Malaysia, receives, or harbors a child, knowing that a child has been procured for purposes of prostitution; (e) detains a child in a brothel against the child’s will; (f) detains a child in a place against a child’s will with the intent of employing a child in prostitution; (g) advertises a child for purposes of prostitution or seeks information for that purpose; or (h) attempts to do any of those acts. (note: All information contained in this paragraph are directly lifted from the Country Report on Malaysia of the Protection Project 2013:3-4).

It is clear that Malaysian laws pertaining to the protection of women and children against prostitution and human trafficking are in place. The difficulty in its enforcement, considering that the country’s archipelagic nature, adding to the federalized system of states, is understandably geographic, and not due to the lack of political will to enforce them. Malaysia’s national policies on migrants, *illegal or otherwise*, are adapted to the situation in each of the states (Kanapathy 2008:2, phrase with emphasis supplied).

#### *State and Civil Society Partnership in Addressing the Issue of Human Traffic*

As the state governments of both India and Malaysia, despite the challenges and the difficulties, dealt with the issue of human trafficking, civil society actors are also present in collaborating and assisting the government to crackdown on perpetrators of trafficking and its victims.

As these civil society groups contribute to the effort on the rescue and rehabilitation (of victims), prevention and awareness raising (on trafficking) by virtue of the activities they do, they are in fact helping the state.

In India, the state also strengthens its internal mechanisms (law enforcement agencies) through its partnership with local NGOs, such as Impulse. Impulse conducts trainings for law enforcement officers in order to facilitate the proper identification of trafficking victims and aid in their investigation. Another state-civil society collaboration is the Kolkata Core Group Anti-Human Trafficking (KCGAHT), this is a partnership between the Kolkata Police, the local businesses, the Chambers of Commerce, the Confederation of Indian Industries, and a number of local NGOs with the purpose of strengthening forces to combat human trafficking – it further coordinates a local network to provide skills, training and opportunities to trafficking victims (The Protection Project 2012:64).

In Malaysia, the state also has established partnerships with civil society organizations such as Tenaganita and AWAM to protect the rights of migrant workers through the provision of a domestic workers program, and a help desk for migrants, while also conducting trainings involving law enforcement agencies and other NGOs.

The networks that are available for NGOs, that may not be available for the state, can help strengthen advocacy and implementation, much less aid in the awareness raising campaign efforts to help educate, inform, and disseminate available information. Hence, “governments, NGOs, the police, and law enforcement personnel need to work together to combat trafficking” (Tzvetkova 2002:67).

The United Nations Office On Drugs and Crime (no date: pp.125-136) reports that the Action against Trafficking and Sexual Exploitation of Children (ATSEC), a network of over five hundred non-governmental organizations (NGOs) operating mainly in India with chapters in Pakistan, Bangladesh, Nepal and Sri Lanka, is part of a community policing intervention along the India-Bangladesh border. It uses different approaches, such as foot patrol and problem-solving at the neighborhood level (UNODC n.d:126).

The strategy of ATSEC is thru the formation of peer groups from sixteen schools in the Basirhat subdivision of the North 24 Parganas district of West Bengal state, consisting of school teachers and students, from the primary, secondary and senior schools. Through discussions, posters, films and other education-communication tools, they were trained to educate each other on human trafficking and how to protect themselves from being trafficked (UNODC n.d.: 126).

Casey Hall (2014:1-2) argues that the solutions to human trafficking require cooperation of origin and destination countries, between law enforcement agencies and officials on both sides, and it cannot happen without carefully designed international oversight. Countries acting alone often become inadvertent parts of the problem. Many countries are hesitant to cooperation for fear that their national sovereignty will be compromised. Only cooperative solutions have shown long-lasting benefit. Accordingly, in order to address the issue of trafficking, it is not only the domestic interaction or coordination efforts that matters, it also requires that there must be a cooperation or efforts to coordinate of both countries of origin and countries of destination such that the problem of human trafficking would be partially addressed.

Hence, India and Malaysia must enter into agreements and/or regional arrangements, in partnership with active civil society organizations, in order to address and prevent human trafficking. Coordinated efforts by both countries, through domestic implementation of laws pertaining to human trafficking, and transnational partnership with inter-governmental agencies and other non-state actors in preventing such activities will help address the problem.

The prevention, protection and prosecution (PPP) model of responding to human trafficking requires many stakeholders. These include the police, prosecution, judiciary, departments of health, departments of welfare, non-governmental organizations, inter-governmental organizations and United Nations agencies, the media, the corporate/business sector, academics, political personalities, grass-roots democratic institutions (in India, the pan-chayati raj institutions etc.) and socially oriented and committed personalities. However, because of the very fact that human trafficking is an organized and a borderless crime, the primary responders who are called upon to address the issues of human trafficking are the law enforcement agencies (UN.GIFT 2007:15). It adds that considering the organized crime dimension of human trafficking, the law enforcement agencies will have to be empowered and strengthened to deal with the issues appropriately. They need to work simultaneously in combating and preventing human trafficking. In the given scenario, the primacy of law enforcement agencies in addressing human trafficking cannot be underestimated. Their synergy with other stakeholders has to be strengthened and institutionalized.

Indian State-Civil society partnerships in prevention and awareness on trafficking. In India, all partnerships of NGOs, IGOs, civil society networks and law enforcement agencies are necessary in order to combat human traffic. The tactics used by these organizations vary, some use the school as a medium, others use forums, while others use organized programs in

partnership with experts in law, among others. What is necessary to see here is that the country of India, whether through the local or national governments are not the only one looking for ways to stop human traffic. It is aided by various sectors of civil society and NGOs.

Sakhi (The Protection Project 2012:8), an Indian NGO based in Bihar, it has taken upon itself to empower fishing communities to prevent trafficking. By empowering the community through information campaigns and vigilance, the local police are aided by the residents in preventing instances of trafficking by closely coordinating with them. Second, there is the Coalition Against Trafficking in Women (CATW). The CATW's Project to Curb Male Demand for Prostitution is designed to combat sex trafficking by discouraging the demand for prostitution through various measures, including education of boys and men, advocacy for laws criminalizing customers, and dissemination of good practices in law enforcement and in community action against male customers. Third is Prajwala (TPP 2010:23). An NGO that operates out of Hyderabad, India, and that focuses on second-generation prevention alongside the rescue, rehabilitation, restoration, and reintegration of victims of sex trafficking. Prajwala's rehabilitation program involves social, economic, and psychological rehabilitation, as well as HIV counseling. Another NGO, Impulse, conducts trainings of police forces in the eight northeast states of India. Impulse has also created and distributed the Handbook for Law Enforcement on Trafficking in Persons, which is a guide for law enforcement personnel on how to identify victims of trafficking and effectively investigate trafficking cases (TPP 2012:44).

Malaysian State-Civil society partnerships in prevention and awareness on trafficking. The 2007 International Council on Social Welfare (ICSW) Report says that there is an absence of data on trafficking cases in Malaysia and only limited data on labor exploitation. The little that exists usually consists of snapshots of exploitation of nationality-based groups in particular sectors. The lack of data effectively serves as a means to keep trafficking hidden from view. In addition the report states that the government fails to record and monitor cases of human trafficking. There are numerous reports, including those of UN agencies, of other governments and NGOs, of trafficking victims being treated as undocumented migrants detained, fined, and deported without access to services or redress. Police and immigration authorities who arrest domestic workers without valid work permits and travel documents often fail to screen them to find out whether they are escaping situations of trafficking or other situations of exploitation or abuse. (ICSW 2007:88).

The impression that one would get from this report is that either the government of Malaysia does not want to address the issue because for them it is non-existent, or that they are addressing the issue quite differently, classified under cases of illegal or irregular migration. What is definite is that there is a clear role that civil society has to offer in terms of where the state has already recognized the significance of these groups in extending the services offered by the state coursed through the NGOs and civil society organizations. There are currently

(date accessed is March 12, 2014) four NGO's that are active in the campaign against human trafficking in Malaysia, these are the All Women's Action Society (AWAM), Women's Force (Tenaganita), the Malaysian Chinese Association (MCA), and the Women's Aid Organization (WAO). In addition to these are state institutions that have created partnerships with these NGOs, namely, the Malaysian Bar Council, which is an independent Bar created by law, while the SUHAKAM is Malaysia's Human Rights Commission tasked to investigate cases of reported human rights violations.

#### IV. CONCLUSION

*Based on the discussions above, the following conclusions are hereby reached:*

The primary policy that governs labor migration in India is its Emigration Act of 1983 and its consequent Emigration Rules (as amended). This paper has shown that the policy has several problem areas such as: (1) the non-inclusion of foreign migrant workers in the coverage of the law specific to Section 42, and (2) the prohibition (actually it is a form of restriction) on women below the age of 30 to emigrate for employment opportunities.

These provisions actually encourage irregular migration or even trafficking, in the first instance, the non-coverage or exclusion of citizens under the law would encourage trafficking rings to use India as a transit for trafficked persons, and in the second, restriction on the movement of women for economic gain would encourage them to work their way under the shadow economy. In addition, the requisite of a security in the form of a one-way plane ticket fare does not assure that the migrant would not be exploited in the country of destination, nor be deprived of her travel papers upon arrival at the receiving country. However, stringent laws enforcing restrictive movements also further strengthens organized crime.

In a similar vein, Malaysia's labor migration policy as governed by the Immigration Act 1959/63, the Immigration Regulation 1963 and the Passports Act 1966, as well as its ad hoc policies on migrant workers, and the subsequent penalties imposed for illegal migrants does not only encourage even more irregular migrants, but also facilitate trafficking. The demand for cheap (accepting low pay) foreign labor in the manufacturing and the service sectors in spite of the government policy to accept only for agricultural employment is a severe problem area. It forces people to take the illegal route of the migration industry since the end goal of employment is better attained through unofficial channels.

In addition, the paper affirms the contention of various authors (Castles 2004; Chuang 2006; Jandl 2007) that globalization, labor migration and human trafficking are inextricably linked to each other. The process of globalization requires that markets be liberalized to ensure that the labor required to facilitate and sustain the growth of the economy is allowed to emigrate from the sending state and entry into the receiving state. Policies on labor migration help regulate the out flow and the arrival of migrant workers, penalizing those

with fraudulent documentation and travel papers. However, subsequent law enforcement and inconsistencies in implementation paves the way for human traffic to ensue – as the state imposes restrictions, the economy continues to hire foreign migrant workers, even with irregular status, as in the case of Malaysia's manufacturing and service sectors. Here, irregular migration and human trafficking then occurs.

Moreover, the governments of both India and Malaysia, have tried to address the issue of trafficking by being a signatory to the Palermo Protocol and the SAARC Convention (India), and the passage of Act 670 in 2007 (Malaysia). Nonetheless, problems areas are still visible to the naked eye. First, is the obvious criminalization of sex work, such that women who either willingly or unwillingly engaged in prostitution are penalized, irrespective of the possibility of being trafficked. Second, is the way governments consider women as victims, denying them of agency, in the way they are exploited or trafficked (this is expressly stated under Malaysian laws – that prior consent is immaterial), but not men and boys. This has severe repercussions especially on the side of male trafficking victims who are considered as criminals, rather than victims. And third, as Malaysia does not keep records of trafficking cases, but instead classifies them under cases of irregular migration, this poses a serious problem on the data on the real incidence of trafficking in that country.

Finally, the presence of NGOs and the partnerships they established with the government's law enforcement agencies in order to address the issue of human trafficking is also affirmed. It is necessary to deduce that this partnership is beneficial for the society because where the state may not be able to provide basic services, or may find it difficult to access certain communities as in the case of the northeastern states of India, NGOs and civil society groups can provide such necessary services. The important contribution of these NGOs and civil society groups should not be undermined, because they provide the services that only they can give given the extent of their involvement (by way of activities and programmes) in certain communities.

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