

THE PRICE OF A LIFE: LEGISLATING SEX WORK AND TRAFFICKING IN
NEPAL

A Thesis

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Leila Ann McNeill

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ABSTRACT

This thesis focuses on the legislation that best regulates commercial sexual exploitation and sex trafficking and guarantees rights to trafficked victims in the context of Nepal. I consider the viewpoints of leaders in international and Nepali organizations, sex workers and trafficked women, the Nepali government and police force, women's rights activists, and the Nepali public. Then, I analyze the new Nepali Bill Controlling Human Selling and Trafficking of 2063 BS (2006 AD), which was passed into law in Summer 2007. I also address the historical and current context of prostitution and sex trafficking policy, especially through the lens of the three major methods of legislating prostitution—criminalization, decriminalization, and legalization (or legal regulation)—in terms of how each approach has influenced and could influence commercial sexual exploitation and trafficking in Nepal and Asia.

Much of the problem for Nepal lies in constructing flexible enough policies to punish the true criminals of the sex trade and allow trafficked victims access to legal protection. Many organizations take a radical stance: some promoting the full legal regulation of prostitution and others desiring to enforce its criminalization because they believe all sex workers are victims. This thesis argues that the best solution for Nepal lies in continuing to punish sex traffickers and pimps without criminalizing prostitutes or legally over-regulating the sex trade.

BIOGRAPHICAL SKETCH

Leila Ann McNeill (1986—) is a master of public administration student with a concentration in international development at Cornell University. She is a world traveler and has lived in the United States, England, Nepal, and China, where she spent a year teaching university-level English. She was home-schooled until she began her undergraduate degree at John Brown University in Arkansas. She is committed to the welfare of women and children and international human rights.

In dedication to James, Lois, and Julia McNeill
for their unending support and love and to the
countless survivors of commercial
sexual exploitation and sex trafficking.
May you know the healing grace of God.

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LIST OF ABBREVIATIONS

Acquired Immune Deficiency Syndrome (AIDS)
Central Bureau of Statistics Nepal (CBS)
Community Action Center-Nepal (CAC Nepal)
Convention on the Elimination of All Forms of Discrimination against Women
(CEDAW)
Cornell Nepal Studies Program (CNSP)
Human Immunodeficiency Virus (HIV)
International Labour Organization (ILO)
Kathmandu School of Law (KSL)
Ministry of Health and Population (MHP)
Ministry of Women, Children, and Social Welfare (MWCSW)
National Public Health Laboratory (NPHL)
Non-governmental organization (NGO)
Organization for Security and Co-operation in Europe (OSCE)
Post Traumatic Stress Disorder (PTSD)
Sexually Transmitted Disease (STD)
Sexually Transmitted Infection (STI)
South Asian Association for Regional Cooperation (SAARC)
Terre Des Hommes Foundation (TDH)
United Marxist Leninist (UML)
United Nations Children's Fund (UNICEF)

PREFACE

A survivor of sex trafficking once described a prostitute as an “object of beauty and desire, a statue with no voice” (IN TDH 2007). From what I saw on a trip to a conference in Thailand—ads selling wives, women waiting to be bought for a night, and beautiful young women caressing old white men—I found this description to be true. I was sickened enough by this experience to enter a master’s degree program that would allow me to pursue field research on the best legislative practices regulating commercial sexual exploitation and trafficking.

During my research in Nepal, I met a young woman at Peace Rehabilitation Center, a Christian home for trafficked, abused, exploited, and vulnerable girls in Nepal, who changed the way I thought about women and children’s rights. “I don’t know why I am here,” she mumbled, her brown eyes piercing mine. I knew that wasn’t the complete story, but the language barrier and her distrust of me jolted the conversation to an end. She came to Peace when she was twelve years old. She never told me how she got there, but I think rescue workers at the Nepal-India border intercepted her from being trafficked and sold to a brothel.

I went to Peace because I wrote them a proposal for the US State Department’s anti-human trafficking grant. They took me in as family, allowing me to spend the night and talk with the women and girls sheltered there. The founder told me that the girls just need love. They need a mom, a dad, a family to cry with them, and that’s what Peace is. The women and girls call the founder “mommy” and her husband “bua” or father. Mommy and Bua are their advocates to the outside world, one of rejection toward any woman or girl who has had her virginity questioned or forced from her. After the women are rehabilitated, they are reintegrated into Nepali society. Reintegration means education and job and skill training for all the survivors. But Peace does not stop there. They recognize that the root cause of sex trafficking and

prostitution in Nepal is gender inequality, and, as such, they work to train women as leaders who are empowered and have a purpose, dreams, and a future. Their victims are treated as equals to men and become survivors who have found their legal and social voice.

The girls at Peace are given a ring engraved with the Biblical reference of 1 Corinthians 6:19-20. The verse enjoins, “Do you not know that your bodies are temples of the Holy Spirit, who is in you, whom you have received from God? You are not your own; you were bought at a price. Therefore honor God with your bodies” (The Holy Bible 2005). This verse is the inspiration of my thesis’ title because it lies at the heart of why I have begun and will continue this research: every person is unique and special to the true and living God because He cared enough to pay the price to eternally save every person’s life. No man, woman, or child should be purchased otherwise. This God also provides hope and justice to those who are abused and suffering. It is my desire that that the victims and the victimizers of commercial sexual exploitation and trafficking can find such hope and justice and that my research and thesis can help Nepal and other nations strengthen their laws and enforcement and recognize that the fight against the sexual commodification of human beings is imperative because every life is priceless.

Leila McNeill

Ithaca, NY

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CHAPTER 1: INTRODUCTION

“I want them to see how it feels, I want the world to understand how rape and violence destroy a woman’s will to live.” –Survivor of sex trafficking (IN TDH 2007)

Today’s Nepal, with its changing government and political situation, is facing the challenge of constructing a new constitution. January 15, 2007 ushered in a new interim constitution and parliament that includes Maoist leaders and strips the monarchy of power (Shneiderman 2007). Everything from human rights to property rights is being revised and is open for discussion. One important issue that is being discussed is what to do about Nepali sex workers and victims of sex trafficking. Many organizations take a radical stance: some promoting the full legalization and legal regulation of prostitution and others desiring to enforce its criminalization. However, some organizations have come to a middle-ground policy approach. Once I analyzed the Nepali and international discourses on sex trafficking and prostitution, I found that decriminalization of prostitution appears to provide the best option for the current situation of the Nepali government and women and children involved in the sex trade.

In Nepal, prostitution is stigmatized and mainly criminalized, which makes prostitution and sex trafficking divisive and guarded issues to discuss. Over fifty NGOs currently work to stop sex trafficking in Nepal, but still numbers as high as 5,000 to 10,000 girls are quoted as being trafficked in and from Nepal each year (Pradhan 1997: 11). Much of the problem lies in constructing flexible enough policies to punish the true criminals of the sex trade—pimps, madams, traffickers, and brothel owners—and allow trafficked victims and sex workers access to legal protection. Other problems include enforcement, community awareness, the unequal treatment of women, increased migration due to economic and personal hardships and the political

conflict, people's distrust of the court system, and the failure to address the economic supply/demand cycle of the sex trade.

A new bill, called the Bill Controlling Human Selling and Trafficking of 2063 BS (2006 AD, see appendix 1 for translated text as of May 2007), was passed in Parliament in the summer of 2007. This bill, an update from the antiquated 1986 human trafficking bill, and others like it have been debated in Parliament since 2001. For six years, discussions continued but nothing happened, mostly because of the political conflict and governmental breakdowns and changes.

In 1990, Nepal began to democratize its monarchy, ending the panchayat era of partyless politics and the absolute authoritarian rule of the palace. In 1996, after years of party infighting, the Communist (Maoist) Party of Nepal declared the People's War. While the conflict was growing in intensity, the entire royal family was massacred in 2001, and King Gyanendra Bir Bikram Shah Dev, the former king's brother, acceded to the throne. Both the government and the Maoist party declared several ceasefires and attempted peace talks, but, each time, either the Maoists or the government withdrew and violence erupted again. In November 2001, the King declared a state of emergency and proclaimed the Maoists a terrorist organization.

The King dismissed the prime minister he had personally appointed—Sher Bahadur Deuba—after Deuba's recommendation to postpone elections in 2002 and assumed executive authority. The King disbanded Parliament entirely in 2005 and claimed full political authority. In response to the people's protests and strikes, the King reinstated Parliament in 2006, right after which they voted unanimously to curtail his political powers. The Maoist's leader Prachanda and the new Prime Minister Girija Prasad Koirala agreed that the Maoists would be included in an interim government and decided upon an interim constitution in 2007 (Shneiderman 2007).

Currently, the government is scrambling to hold elections so that the new Constitution can be created.

During the political turmoil, the government was not actively focused on effective policy-making or human rights initiatives and is still struggling to provide equal representation and create a democratic government. But many NGOs and the government Ministry of Women, Children, and Social Welfare (MWCSW) pushed to pass the new anti human trafficking bill. Although it has made meaningful improvements, the new bill has significant faults.

1.1 International Context

In evaluating the Nepali situation and policy, the international context provides important insights. Sex trafficking transcends borders and has become a problem of international importance. Nepali laws and law enforcement will play into this global context through its supply of women and children for the international market of women and children for sex.

The US State Department estimates that approximately 600,000 to 800,000 people are trafficked across national borders throughout the world annually (2004). These numbers do not include those people trafficked within their own countries. Human trafficking can be defined simply as the forced or coerced movement of men, women, or children for sale or mandatory labor. People who are trafficked are often falsely promised job opportunities or marriage and can be used in a variety of ways including work in sweatshops or other demanding physical labor, sexual exploitation, begging, or organ sales. In their “Facts about Human Trafficking” brochure, the US State Department lists the major threats of human trafficking: the deprivation of basic human rights and freedoms in a modern form of slavery, a global health risk, and a stimulus to the growth of organized crime (2004: 1).

The trafficking of women and children for sex makes up a significant portion of the trafficking industry, and the sex industry makes billions of dollars each year. The US State Department's 2007 Trafficking in Persons Report recognizes sex trafficking as the largest subcategory of modern slavery (2007: 29). In addition, it notes that around two million children face commercial sexual exploitation every year (2007: 29). A BBC News article in 2000 noted that the global trade of women and children for sex is estimated to make around \$12 billion a year (Botsford 2000). In the same report, BBC News found that the worldwide sex trade makes \$52 billion annually (Botsford 2000). A study of prostitutes in the United States estimated that around 23 out of every 100,000 people in the US are prostitutes (Potterat et. al. 2004); for the approximate 303,200,000 people in the United States, Potterat's estimate suggests that there are around 70,000 prostitutes in the US. However, the international estimates, reaching 40 million prostitutes worldwide, are on an even larger *per capita* basis (Poulin 2007).

1.2 Process, Methodology, and Overview of Literature

I undertook my field research in the Kathmandu valley because it is Nepal's capital, where the laws are made, and because most of the NGOs that work on the sex trade in Nepal are headquartered there. I employed four main methodological techniques: observation, interview, survey, and textual analysis.

I conducted almost thirty interviews, some of which were conducted completely in Nepali with my translator and assistant Sunita Subba¹. I interviewed leaders in national and international, governmental and non-governmental organizations dealing with the sex trade or women's rights in Nepal, current cabin

¹ I have thanked Sunita Subba in other context, but I cannot underscore enough how grateful I am to her for her thoughtful and skilled contributions to my work.

restaurant workers (cabin restaurants are establishments where customers are served food and drink in private cubicles by female waitresses), a journalist, Nepali government officials, female parliamentarians from three different parties, and the Nepali police force. However, I did not interview anyone who claimed to be a survivor of sex trafficking or a sex worker. I went to two cabin restaurants and one dance restaurant, where I completed some interviews and observation. I also spent a significant amount of time at one rehabilitation center, partly because I wrote a grant proposal for them. Finally, I performed a survey of Tribhuvan University anthropology and sociology master's students on their opinion of the sex trade and sex workers in Nepal. I wanted to question these students because I felt that their opinions are indicative of those the future leaders of Nepal might espouse.

I utilized four different interview mechanisms and one survey (see appendix 4). The four interview questionnaires deal with the following groups: 1) government officials, activists, and NGO leaders, 2) Nepali police, 3) cabin restaurant waitresses, and 4) survivors of trafficking. The fourth interview was presented to the organization *Maiti Nepal* on paper for them to write the answers of their survivors. My survey was for Tribhuvan University master's students' opinions on sex work and sex workers. In my interviews and surveys, I mainly asked questions regarding what the subjects thought of the policies on sex work and sex trafficking in Nepal, what they thought of sex workers, what they did in regard to sex workers (or their job), and what policies should be implemented or better enforced.

Many limitations to my research arose. Some government officials, NGO leaders, and police may have been corrupt, and sex workers may have been unwilling to reveal their involvement in the trade. Because sexuality is a guarded topic, especially among elites and people in Kathmandu, I sometimes faced trouble helping my interviewees feel comfortable about answering the questions I asked. Because

many of my research documents and interviews were translated into Nepali, I also faced some trouble in language differences. My research had great breadth but did not necessarily account for depth of knowledge on any one specific view of the sex trade in Nepal. None of these limitations are, I believe, fatal because this is only a preliminary study and, in the end, public policy analysis must have a wide enough focus to find the best options for all concerned.

I have been greatly concerned about the privacy and ethics of my research because it involves such a taboo topic in Nepali society, at least among those sectors largely involved in central governance and policy making. I gained each person's oral consent before interviewing them to protect their privacy, confidentiality, and/or anonymity as they wished. I completed one-on-one interviews and did not record third party names mentioned. I also kept all suspected current and former sex worker's names and identities completely anonymous by only using pseudonyms in my field notes and published materials, never recording their identities at any point.

The general literature that I analyzed included work on global human and sex trafficking (Bales 2004; Farr 2005; Hughes 2004), economics and poverty alleviation (Sachs 2005), and economic criminal and humanistic theory (Lutz 1993; Sieberg 2005). This thesis, however, is overwhelmingly based upon sources about Nepal. I studied the 2001 Nepal census data, government and NGO reports on sex trafficking and the sex trade (Amatya 2002; CAC 2002; IIDS/UNIFEM 2004; ILO 2006a; ILO 2006b; Pradhan 1997; Suwal 2002), laws and policies pertaining to women and the sex trade in Nepal (MWCSW 2001; Sangroula and Pathak 2002; Pradhan-Malla 2004), and Nepali newspapers. I also looked at women's rights and Nepali religious and cultural beliefs and practices regarding women (Acharya 1994; Bennet 2002; DFID 2006; Sattaur 1993). I reviewed other country's comparative sex trade laws and enforcement policies (Bales 2004; Farr 2005; OSCE 1999; UNICEF 2001). Finally, I

looked at the international debate on the legalization of the sex trade (de Pommereau 2005; Farley 2004; Sanlaap 1998; West 1993).

My research fits into the overall debate by attempting to take into account the Nepali context as well as the global debate on how the legislation of the sex trade impacts sex trafficking to create an effective policy recommendation about the sex trade in Nepal. The latest sex trafficking law in Nepal was enacted in 2007. This new bill faces a few problems. It combines many issues, including normal prostitution laws, into one bill; does not address some important concerns; and is vague. An effective policy recommendation will be helpful to refine and improve this policy.

1.3 Terms

“The girl in prostitution [is] an object of beauty and desire, a statue with no voice.” – Survivor of sex trafficking (IN TDH 2007)

In the discussion of human and sex trafficking and prostitution policy, an analysis of the terms are important. Terminology is a major debate, especially in any discussion dealing with sex and sex work. For the purpose of this thesis, the following definitions will be used.

CHILD vs. ADULT

Ages of adults and children need to be defined due to the young age at which many children are trafficked. The international and South Asian Association for Regional Cooperation’s (SAARC) definition of a child (*bachchaa* in Nepali) is a person under the age of 18; whereas, an adult (*bayaska*) is a person aged 18 or older. In Nepal’s Bill Controlling Human Selling and Trafficking, a child is defined as a person under the age of 16. Because many marriages in Nepal take place before the girl reaches the age of sixteen, the age of adulthood is not easily determined in the Nepali context. Furthermore, Nepali legal citizenship status is granted at the age of

sixteen. Therefore, this thesis will employ the current Nepali definition of a child as anyone under the age of 16 and an adult as a person aged 16 or over.

SEX WORKER vs. PROSTITUTE

Both the words sex worker (*yaunkarmi*) and prostitute (*beshyaa*) are general terms used to refer to anyone engaged in prostitution or the sex trade—whether child or adult and whether exploited, trafficked, or participant in the sex trade by personal “choice.” The word “choice” is in quotation marks because the nature of that choice will be questioned throughout this paper. Most Nepalis working to help sex workers and victims of sex trafficking prefer the term “sex worker” to “prostitute” because of the negative connotations the word “prostitute” has in Nepali society. However, others say that the word should continue to be “prostitute” because the word “sex worker” legitimizes prostitution as an occupation. Sex workers in Nepal rarely tell anyone that they are sex workers and often use another occupation as a cover. For the purposes of this thesis, I mainly contextualize sex workers and prostitutes to be women or children involved in the sex trade, but I leave the interpretation open because men can also become sex workers or prostitutes.

PROSTITUTION, SEX WORK, EXPLOITATION, TRAFFICKING, AND VICTIM

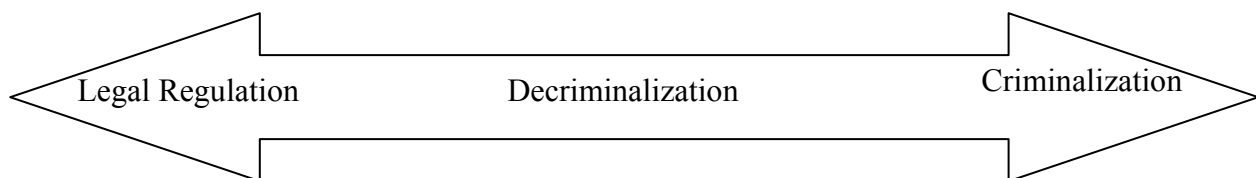
Throughout this thesis, prostitution and sex work will be used synonymously for the reasons described in the above section. Commercial sexual exploitation (*yaun shoshan*) is a situation in which 1) a child is engaged in any type of willing or unwilling prostitution or 2) any person is tricked, lured, or otherwise manipulated into becoming or remaining a sex worker, has to become a sex worker because of economic necessity, and/or is not paid for or receives abuse in a commercial sex-based exchange.

Sex trafficking (a kind of human trafficking: *maanab bechbikhan tathaa osaarpasaar*) is the act or attempt of moving, buying, or selling someone into

prostitution, aiding someone in the act or attempt of moving, buying, or selling someone into prostitution, or forcing someone to become a prostitute. Usually, trafficking precludes the last part of the above definition because trafficking can connote moving someone across national borders. However, the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution defines trafficking as “the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking” (SAARC, 2002). Because of the SAARC definition and a similar definition in Nepal’s new anti-trafficking bill, this thesis will use the word trafficking to describe both movement within or outside of national borders.

A victim (*pidit*) is anyone who has been commercially sexually exploited or sex trafficked. Under the above definitions, almost all Nepali sex workers are victims. Most people working to help sex workers in Nepal believe that sex workers are exploited and raped every time they have sex in exchange for money, whether or not they are actually paid for sex.

LEGALIZATION (or LEGAL REGULATION), DECRIMINALIZATION, AND CRIMINALIZATION



The three main legislative approaches to prostitution policy include legalization² (from here forward referred to as legal regulation, or a legal sex trade

² Legalization is the term most frequently used in the international prostitution policy debate to mean a legal but highly regulated sex trade. Usually, with legalization, the sex trade is only allowed in registered brothels so that the act of prostitution itself is not legalized but the act of prostitution within the confines of a legal brothel. I disagree with the use of the word legalization to refer to this definition because, in other contexts, legalization merely means to make legal. Therefore, throughout this thesis, I

with over-regulation), decriminalization (legalized but unregulated sex trade), and criminalization (regulated against and illegal sex trade). Criminalization (*aparaadhikaran*) of sex work is legislation aimed at the condemnation and eradication of prostitution. This method is often criticized on grounds of public health because it helps keep prostitution invisible and unregulated. It also can give too much power to the police, who often use their powers to blackmail, bribe, and harass sex workers.

Criminalization can take on different forms in actual legislation.

1) Criminalization of the sale of sexual services penalizes the sex workers (Shrestha 2007: 4). 2) Criminalization of the purchase of sexual services makes the clients of sex workers the criminals. This method attempts to cut off demand for sex work and is based on the ideology that sex workers are already victimized so the law should not doubly victimize them (Shrestha 2007). 3) Criminalization of solicitation includes bans on the owning or running of brothels, pimping, and/or publicizing sexual services (Shrestha 2007). Current Nepali law criminalizes the sale of sexual services in public places, the purchase and solicitation of sexual services, and pimping and the owning and running of brothels.

Decriminalization (*uirparaadhikaran*) of sex work is when the law remains silent about prostitution and the sex trade as a specific profession, while still dealing with such acts as sex trafficking, commercial sexual exploitation, and rape in the criminal law. Prostitution is legal but not regulated and brothels may be opened as businesses regulated no differently than any other service business (i.e. a nightclub or restaurant). Sex workers have the same rights as other working people with protection by law and obligation to law and pay taxes on their earnings.

will use the term legal regulation to refer to this concept of the sex trade to avoid confusion of those outside the prostitution policy debate.

Legal regulation (*kaanuni baidhataa*) occurs with the legalization of sex work when the government acknowledges sex work, gives it legal recognition and definition, and engages in its regulation. Typically, this takes forms such as licensing of brothels and mandatory health testing for prostitutes. In the sex trafficking and prostitution legal debate, legalization itself is often used as a term synonymous to this governmental legal regulation of prostitution and is thought to be an alternative to decriminalization. In effect, legal regulation makes sex work a specifically defined occupation performed only in the context of registered brothels. Sex workers also pay taxes on their earnings and are obligated to and supposedly protected by the law.

CHAPTER 2: ANALYSIS OF WORLDWIDE SEX WORK AND TRAFFICKING

2.1 Historical Context of Prostitution

The beginnings of prostitution can be traced to the temple prostitution of the Ancient Near East, India, and Southeast Asia (Perkins 1991). Prostitution became a form of religious duty for women, who prostituted themselves at the temples of love and fertility gods and goddesses and whose salaries went towards temple maintenance. In Ancient Greece and Rome, slaves were often sold to state-controlled brothels. This practice could be described as one of the earliest forms of sex trafficking. Other women, often those without men to support them, became prostitutes in the taverns and streets, and some hired themselves out as musicians, acrobats, and strip-tease dancers. The highest form of prostitutes in Ancient Greece and usually elsewhere were courtesans, who had to attain high levels of social refinement and have learned to read and write in order to gain access to the upper class men in society.

Prostitution flourished in the European Middle Ages and often took place in the streets, taverns, brothels, and courts. The poorest women, including widows and orphans, participated in the lower ranks, while the more educated women became courtesans. Geishas in Japan and courtesans in India were considered upper-class women in society who were trained in the arts, educated, and skilled in the pretense of pleasing a patron.

Courtesans were often more independent than other women, such as wives, and had the possibility to attain great wealth and prestige. In the Indian civic tax ledgers of 1858-1877, dancing and singing girls were in the highest tax bracket and had the largest individual incomes in the city of Lucknow (Oldenburg 1990: 259). Madams usually controlled a house for the managing, housing, and training of courtesans. In this way, courtesans could subvert traditional gender relations by using the gender

hierarchy and male dominated power structures for their economic and personal benefit.

The nineteenth century saw the largest recorded numbers of women selling sex for a living (Perkins 1991). Again, the widows, orphans, deserted wives, and impoverished were most likely to become prostitutes. The French physician Alexandre Jean-Baptists Parent-Duchatelet decided that the 5,200 Parisian street prostitutes he studied in the 1830s were there due to poverty (Perkins 1991: 16).

British colonization in the nineteenth century changed the way prostitution worked and was regulated and viewed in the colonized countries, such as India and Kenya. Colonialism broke up the large regal establishments, which were courtesans and dancing girls' primary customer base, and instituted demand from the colonizers for the sexual services provided by prostitutes. This shift caused the location of prostitution to change from an upper class, high society atmosphere to brothels or prostitute's small rooms. Because of widespread venereal disease among British soldiers, the British passed disease control acts to regulate prostitution. White notes that disease control acts and strict housing regulations were the primary controls over prostitution in colonial Nairobi, Kenya (1990).

The years 1900 to 1918 marked Western societies' most zealous campaigns against prostitution. This era emphasized virtue and hygiene and shifted thought from prostitution as a necessity to prostitution as a social evil (Rosen 1982). Prostitutes became known as home wreckers and bad women. By 1918, campaigns in the US resulted in the closure of the previously tolerated red-light districts in most American cities (Rosen 1982). As a result, public brothels were replaced by streetwalking, and control of prostitution shifted from madams and prostitutes to pimps. Prostitutes could rarely be free agents. In this way, prostitution came to be linked with organized crime.

2.2 Academic and Moral Responses to Prostitution

The academic and moral responses to prostitution have influenced the debate surrounding prostitution policy. The inability of scholars and moralists to come to an overall conclusion on prostitution reveals why prostitution is such a difficult topic to legislate.

The academic response takes the form of research, mainly in the social sciences and especially in the areas of psychoanalysis and criminology, which approaches prostitution logically and scientifically. This type of research began around the nineteenth century. Psychoanalysts often looked at prostitutes through the oedipal lens, but with extremely varied results. Caprio reasoned that lesbians were more likely to become prostitutes in attempt to counteract their lack of heterosexual desire, and Szasz thought that prostitutes denied their genitals by allowing men to “possess” them (IN Perkins 1991: 37). deLichtenstein claimed prostitutes symbolically castrated their clients in order to own a penis and reclaim the love of their mother lost in the Oedipal phase, while Hollander argued symbolic castration in revenge for the way men mistreat women (IN Perkins 1991: 37). Still others viewed prostitutes as sexual deviants, participants in an immature fantasy, or seekers of a father figure to love.

The rise of feminism brought a renewed interest in prostitution issues with the application of statistical findings to the causes of prostitution. Jennifer James, an anthropologist who worked with street prostitutes in Seattle, studied the familial relationships and early sexual experiences of these women to determine why they entered the trade. James found that the prostitutes she studied had experienced intercourse at least a year before a comparative sample of non-prostitute women, learned the most about sex from personal experience, and were more often involved in incest with fathers or stepfathers (IN Perkins 1991).

The Marxist definition of prostitution is as a kind of work wherein prostitution is a business transaction whereby the client goes to a worker to pay for and receive an agreed upon sexual service. In this system, sex work is a commercial transaction and interaction based on bargaining and free trade. An American call girl describes her work as such: “I use my body to earn a living. What is the difference between working with my hands and working with my pussy. You’re still working with a part of your body, which is no different to working with your brains” (IN Perkins 1991: 10). In this view, prostitution is viewed as manual, physical labor, like construction or beauty salon work, in which the worker can attain varying levels of expertise. White takes this stance further, saying that prostitutes get paid for what wives do not and calling prostitution an opportunity to participate in the economy and own property (1990). Sociologist Kingsley Davis argued that prostitution has an important function in society and is more likely to strengthen than weaken a marriage because a husband’s stint with a prostitute could avoid his desire for an extra-marital affair (IN Perkins 1991). He later argued that the exchange of sex for money by prostitutes was practically the same as wives trading sexual access for financial security from their husbands (IN Perkins 1991).

The two primary moral and religious responses that I studied include the Hindu and the Judeo-Christian views of prostitution. Hinduism is the primary religious belief in Nepal. The Hindu view on virginity, and thus on prostitution, will be analyzed in Chapter 4 the “Nepali Cultural Context.” Judeo-Christianity not only sheds light on how prostitution is viewed by international law and by many international policy-oriented prostitution and sex trafficking prevention programs but also informs my Christian worldview. In addition, the primary rehabilitation center I worked with in Nepal, Peace Rehabilitation Center, is a Christian organization and

others, such as *Maiti* Nepal and *Serve* Nepal, have Western moral biases that are, I believe, affected by the Judeo-Christian moral view on prostitution.

The interpretation of prostitution as an evil practice that destroys society found in the Torah and Bible has been acted upon in today's political arena as reason to limit and criminalize prostitution. The Torah commanded that no father make his daughter a prostitute and that any woman who made herself a prostitute was defiled and should be "burned in the fire" (NIV: Leviticus 21:9). The New Testament instructed that no Christian should have sex with a prostitute. However, even though both the Old and New Testaments are condemnatory of the action of prostitution, they are both sometimes merciful toward the prostitute. Several prostitutes gained standing in the Bible, including Rahab, who was one of only two women included in Jesus Christ's lineage. In the book of Matthew, Jesus mentioned that prostitutes were entering the kingdom of God faster than the Jewish religious leaders were. Anti-prostitution sentiments from this moral view stem from either the idea of prostitution as wicked or as victimizing but always as morally and socially wrong.

2.3 Modern Trends in Demand for Prostitution

Modern thought on prostitution has mostly been shaped by the "prostitution as a social evil" mentality, which means it is something policy must criminalize at best and limit and control otherwise. However, with the rise in empowerment of prostitutes and feminist movements, some women are attempting to view prostitution in terms of work as a credible occupation. The terms "sex work" and "sex worker" arose from this trend. Still the ongoing debate is whether prostitution's harms outweigh its benefits. An analysis of this debate is important in understanding the real situation of prostitutes and what types of policies are needed to address this situation.

The strong economic motivation for women entering prostitution has been important throughout time and across cultures and countries. In a 1983 study of Sydney Australia's inner city prostitutes by Perkins and Bennett, approximately 97 percent of the 121 women studied stated earning an income as their reason for entering prostitution, and another 62 percent professed their only other alternative was welfare (Perkins 1991: 9). A survey of 119 women who were prostituting in escort agencies and on the street in Arizona found that 94 percent of the women would leave prostitution for a different job with similar earnings (Kramer 2003). Prostitution researcher Perkins argues that with today's "increased employment, education and welfare subsidies, much fewer women need to work as prostitutes" (1991: 16).

The cycle of crisis leading to movement to the city and a search for work seems to be a common path toward prostitution. White describes prostitution in colonial Nairobi: "Prostitution emerged out of crises in peasant and pastoral households; it flourished because of the state's inability to dominate city life, which allowed prostitutes to replenish generations of male migrants" (1990: 221-2). White argues that prostitution was an alternative to spousal support, created independence for women, and was beyond the state's reach because it maintained and reproduced the work force.

Migration and conflict play important roles in sex trafficking and the sex trade. A Save the Children report found that the numbers of prostitutes in Nepal increased during the conflict (Hausner 2005). Domestic violence within the home may also cause a woman or girl to migrate to seek independence. This type of migration or running away often results in prostitution (Hausner 2005). However, a migration ending in prostitution is not necessarily trafficking. Trafficking occurs when a person is forced or coerced to change location, even if this move is within the country, and to be sold or placed into bonded labor.

Military occupation, such as that of the American military in the Vietnam War, can also spur the demand for prostitutes. War and even inner-country conflict

“[...] disrupts local economies and produces refugee populations or prisoners of war who can be made into brothel prostitutes or the euphemistically termed ‘camp followers’ or ‘comfort women,’ and soldiers, deprived either permanently or temporarily of kinship relations, are made into the major consumers of the sex industry”

(Brock and Thistlethwaite 1996: 111).

The Maoist conflict in Nepal, combined with a mass migration of young men to work outside of Nepal, caused a movement of women and children without male supporters into Nepal’s major cities. The recent rise in prostitution within Nepal’s major cities could be correlated with these migrations. Much of the demand for prostitutes within major cities in Nepal comes from men who migrate to look for work without their families.

Urbanization, commercialism, and/or capitalism within a country can greatly influence prostitution and the demand for victims of sex trafficking. Some scholars believe that capitalism increases prostitution (Brock and Thistlethwaite 1996). White argues that, as men move into the cities, their need for a home atmosphere and sexual fulfillment drives the demand for prostitutes (1990).

In his article “Carnal Economies,” Liechty argues that the commodification of food and sex in Kathmandu reveals the value shift from completely caste to more market-based social relations (2005). In South Asian culture, food and sex are policed by the concepts of purity and pollution and the nature of social hierarchy and difference. Food and sex are now looked upon as goods to be purchased by the rising male-dominated middle-class because of the anonymity of commercial transactions and the transgressing of the boundaries of purity and pollution that come from free

markets. This market-based approach can precede more open and public prostitution. Liechty explains that prostitution in Kathmandu was hidden and obscure until the growth of consumerism in 1980 when there was an emergence of identifiable prostitution (2005). Single, middle-class women are often linked to prostitution because of their social autonomy and involvement in the labor force, as if all that women have to offer in the labor force is sex.

Some theorists view prostitution in terms of the commodification of the bodies of women for use by men (Brock and Thistlethwaite 1996; Farley et. al. 2003; Hughes 2004). Prostitution, they would say, excludes mutuality of pleasure because its goal is to ensure that one person does not use sexual desire to determine when to act sexually; whereas, the other person acts only on the basis of personal desire (Farley et. al. 2003). The rise of commercialism may make this commodification of women easy for men to grasp because women can be something owned and bought rather than someone who feels and makes choices. The trafficking of women and girls for sex is the prime example of what the thought patterns involved in the commodification of women's bodies can do to the male psyche. Women, then, are treated as property that men can buy, sell, consume, wear out, and throw away after use. A streetwalker explains this scenario best by saying of prostitution: "It kind of kills you but it's over fast" (qtd. in Brock and Thistlethwaite 1996: 109). The consequences of this lifestyle stay with the sex worker forever.

2.4 How Prostitution Impacts the Prostitute

Prostitution has proven to be traumatic and harmful for many, if not most, prostitutes and appears to be often entered into by women and girls who were abused as children. A study by Melissa Farley et. al. on 854 current or recent prostitutes in nine countries found that prostitution was highly traumatic in many different contexts

(2003). After entering prostitution, seventy-one percent of the respondents were physically assaulted, 63% were raped, 68% met criteria for Post Traumatic Stress Disorder (PTSD), and 89% wanted to escape prostitution but could not because they had no other means of survival (Farley et. al 2003). Seventy-five percent of these women had been homeless at some point.

Those who enter into prostitution at a young age often have had a dysfunctional and disadvantaged family life, often involving abuse (DeRiviere 2006). From 55% to 90% of prostitutes in a number of different studies have reported a childhood sexual abuse history (Farley et. al. 2003). Around 47% of the prostitutes surveyed in Farley et. al.'s study entered prostitution at an age younger than 18 (2003). In addition, 59% reported being physically abused to the point of injury as children, and 63% reported childhood sexual abuse (Farley et. al. 2003).

Kramer's survey on prostitutes who were not sex trafficked found that 76 percent of the respondents found "turning tricks" to be emotionally painful and 52 percent reported that "turning tricks" was also physically painful (2003). Prostitutes often also suffer rape and physical abuse from their pimps and brothel owners, and sometimes their customers. Fifty-nine percent of respondents indicated they used drugs to "numb out" and 70 percent reported using substances to detach emotionally while being sexually involved with clients (Kramer 2003).

Pimps primarily control modern prostitution and hold the power-balance against the prostitutes. The pimp's role is to decide when and how the prostitute will work. Prostitutes also often suffer unrecognized intimate partner violence from pimps. DeRiviere's study on prostitutes in Canada found that these prostitutes spent most on drugs and alcohol and gave the second largest portion of their money to pimps, dependent partners, owners of escort agencies, drivers, or drug dealers (2006). It seems, then, that the prostitutes' lives often involve abuse, such as an incestuous

relationship with a father, which could turn into her running away and becoming a 12-14 year old prostitute. The security she finds in her pimp gives him leverage to abuse her further and make her dependent on drugs or alcohol, furthering her need of dependence upon him. At this point, the prostitute is so caught in the trap of abuse, she does not recognize something is wrong or that life could even change for the better.

The long-term health threats related to the sex trade are also concerning. Drug and alcohol abuse is common among prostitutes. In Farley et. al.'s study, 48% of the respondents used drugs and 52% used alcohol. Prostitutes are at especially high risk for hepatitis, STI/STDs, and HIV/AIDS. Of the 62 respondents in DeRiviere's study, 29 percent had contracted a hepatitis virus, 4.8% had contracted HIV/AIDS, 75.8% were addicted to drugs and/or alcohol, and 35.5% experienced depression (2006). As a result of all these factors, a prostitute may experience more overall earnings losses than similar women who enter the labor market (DiRiviere 2006: 392). Furthermore, DiRiviere's "findings revealed increased addictions, lower lifetime productivity, and threats to physical and mental health following transition from the lifestyle" of a sex worker (2006: 396).

Other researchers see less cause for concern. "Psychological Factors in Nepali Former Commercial Sex Workers with HIV," a study by Eller and Mahat of 98 HIV positive Nepali women who were formerly commercial sex workers, found that the level of perceived stress among these women was similar to that of the healthy female population in the same age group (2003: 53). However, this study was conducted using Western methods of determining stress and does not account for the fact that these women may not have known the consequences of HIV (59). In addition, many Nepali women have a resigned acceptance to life's hardships as a result of religious

and cultural thought patterns (59). Eighteen percent of the women in Eller and Mahat's study faced depression (2003: 57).

In some situations, prostitution can promote a prostitute's independence despite its difficulties. In her description of the situation of contemporary prostitutes in Lahore, Pakistan, Brown describes in detail a cycle in which a prostitute will begin when she is 15 years old, have a daughter, and leave the trade once demand for her services end when she is around 30 years old (2005). At this time, her 15-year-old daughter will be ready to begin prostituting and supporting her mother. Oldenburg writes about pre-colonial courtesans of Lucknow, India who lived a similar "Lifestyle as Resistance" by which courtesans could attain greater independence and freedom than wives could (1990). White highlights a system in colonial Nairobi, Kenya by which prostitutes would support their rural, agricultural families with their earnings and be independent property owners with prostitute support systems in the city (1990).

2.5 The Link between Prostitution and Sex Trafficking

Prostitution and sex trafficking have remarkable similarities, and the laws that deal with prostitution within a country can impact that country's sex trafficking situation. Prostitutes and sex trafficking victims often share similar demographics such as poverty, youth, minority status, histories of abuse, and little family support (Farley et. al. 2003; Leidholdt 2003).

Director of a Center for Battered Women's Legal Services Dorchen Leidholdt argues that, like sex trafficking, prostitution stems from gender-based inequality and sexual violence and involves movement and vulnerable girls (2003). The injuries that prostitutes and trafficked women suffer are similar: post-traumatic stress disorder, sexual assault and beatings, depression, substance abuse, and sexually transmitted diseases. The power structures of modern prostitution are also similar to those of sex

trafficking. Pimps and organized criminals control prostitutes and attempt to isolate them, make them dependent on substances and on the pimps, and hide from authorities. Leidholdt even says that sex trafficking is no more than globalized prostitution (2003). Such argumentation, if true, would mean that both sex work and trafficking should be treated as cases of commercial sexual exploitation under the law and prostitutes and sex trafficked women and children be treated as victims.

Sex trafficking and prostitution policy are intimately linked. Women and children who are sex trafficked are often subject to prostitution law enforcement even when there is a reliable system to determine whether a woman or child has been sex trafficked or has chosen prostitution as a profession. In countries that have a partially decriminalized sex trade, like Nepal, the policies that address the sex trade mostly lie in anti human trafficking acts. The supply and demand cycle of the sex industry can also impact what types of women and children are trafficked for sex. For example, if clients pay higher prices for young girls, market demand will increase the profitability of trafficking young girls.

Alternatively, many policymakers view sex trafficking and prostitution as two entirely separate matters. The Save the Children report notes that prostitutes often face a very different level of choice than sex trafficked victims (Hausner 2005). Although most prostitutes would prefer a different job, they can often choose where, when, and how long they prostitute. Sex trafficked victims, on the other hand, are trapped in a situation in which they have no other option and no means of leaving or changing their workplace. Prostitutes can sometimes negotiate prices and services with clients; whereas, sex trafficked victims cannot.

Although these differences cannot and should not be overlooked, sex trafficking and prostitution must be treated as a similar problem with different degrees and be based on the degree of force and containment used to confine the sex worker.

The similarities of the two include the harmful emotional and health effects of prostitution on the prostitute and the sex trafficked victim; the linkages between prostitution, sex trafficking and organized crime; and the stigma that being a prostitute or sex trafficked brings to the victim.

The degree of severity comes in the level of force vs. choice the prostitute or sex trafficked victim has in entering the sex trade and in changing place of employment or leaving after entering the sex trade. Some prostitutes have been forced into prostitution and have little flexibility to leave because of a harsh pimp, and some “sex trafficked” women and children have chosen to be “trafficked” to participate in the sex trade because of restrictions on the movement of women or the lack of better options at home. Most organizations define sex trafficking as the movement of women or children against their will in order to sell them into sexual bondage and define prostitution as somewhat of a choice because people often enter the trade out of economic necessity rather than by human force. However, the difference is not that clear because many prostitutes become entrapped by a pimp and organized gang once they enter the trade and do not have the choice to leave certain sex establishments or set feasible working hours. For policymakers, the difficulty lies in punishing the act of force and containment rather than the mere movement across borders or the help of a middleman, regardless of the name: “sex trafficking” or “prostitution.”

If we can then legally define sex trafficking as an act of force and containment and prostitution as a freer ability to leave one job situation for another, the legal bounds of sex trafficking and prostitution can be better situated in policy. Perkins’ idea of legislation speaks to this difference of force versus choice: “Where trafficking involves the involuntary movement of women, of course, legislation should be enacted against the traffickers, but not against prostitution, since it is not the product of trafficking any more than trafficking is the product of prostitution” (Perkins 1991).

Farley et. al. note, “Prostitution and trafficking can appear voluntary but are not in reality a free choice made from a range of options” (2003: 65). Both prostitutes and victims of sex trafficking need to be treated with care and support instead of like criminals. Therefore, both victims of sex trafficking and prostitution should be given the option of rehabilitation or choice of another occupation.

CHAPTER 3: INTERNATIONAL SEX WORK AND TRAFFICKING POLICY

Although prostitution legislation is practically as old a debate as legislation itself, the recent public focus on sex trafficking has propelled this topic to the forefront of current policy debate. This chapter will analyze the trends in current prostitution policy in Asia and the West through the lenses of policy effectiveness, the role of government, and the impact of policy on prostitutes and sex trafficked victims' lives. I will argue that decriminalization of the sex trade seems to provide the best options for women involved in the sex trade, whether because of trafficking or "choice."

One of the most important issues prostitution and sex trafficking policy needs to address is the economic motivation of women entering prostitution and the men demanding the service. Because developing nations often lack governmental welfare and education for impoverished women and children, these nations must analyze whether prostitution actually betters the status of women in that country. By giving women the opportunity to have a job that provides for them and their children, prostitution may be the only real way for a migrant, impoverished woman to better her status and live an economically sufficient life. Prostitution could even provide women an alternative to spousal or familial support, allowing them to be independent property holders and economic decision makers.

The other side of the story, however, is that men often control the sex industry. Without a practical governmental policy (which could even mean no policy at all), prostitution can be gender discrimination and violence. Many advocates say that prostitutes are always exploited victims, whether or not they were trafficked. Studies on the mental and emotional affects of prostitution on women seem to give credit to this opinion. Prostitution researcher Brown says, "Prostitution has to be damned for the dehumanizing, woman-hating activity that it is" (2000: 255). I agree with Brown's statement, but I believe that policymakers can only decrease prostitution and sex

trafficking by giving women, children, and victims of sex trafficking and prostitution the rights to flee and then fight against their assaulters.

My overview of prostitution policy focuses on Western and Asian best practices in dealing with prostitution and sex trafficking. Because Nepal is located in Asia and because the region has seen a proliferation of sex trafficking and prostitution, this region is important in providing a context for Nepali policy. Western countries' policy is also important to study because these countries greatly influence international policy on prostitution and sex trafficking and provide monetary and NGO support in the combating of sex trafficking in Nepal and throughout Asia. The United States presents an interesting case study because of its range (criminalization of prostitution in most of the country and legalization of prostitution in some counties in Nevada) combined with the wealth of recorded academic research on US prostitution and policy.

Studying the current policy debate in the East and the West provides a good picture of the overall debate surrounding sex trafficking and prostitution. Both Asia and Western countries are currently debating the legalization, decriminalization, and criminalization of prostitution, and these terms have become buzz words in the international sex trafficking debate. Looking at the difference between economically developed countries and emerging markets will provide a better picture of what the emerging markets will face on the path of economic development and in the process of globalization. Because prostitutes worldwide face similar challenges and policy structures, best practices can be identified, but then these best practices must be re-interpreted to fit into the specific cultures within these regions. The factors involved in prostitution are different depending on the country because of law enforcement disparities and the prostitutes' personal choices, history of abuse, and economic situation, which are usually colored by their society and culture. The role of NGOs

and local government is intrinsic to the success of this process of re-interpretation. NGOs can help with application of law and policy to meet the needs of the women and children on the ground, while providing them with an organizing and powerful advocate.

Prostitution data is relatively limited because of the clandestine nature of prostitution and sex trafficking. Official data, although used throughout the world as fact, cannot be accepted as being reliable because of the underground nature of the sex industry. Very few studies have focused on quantifying the precise number of prostitutes within a country or region. Most research done on sex trafficking and prostitution is qualitative in scope, and the best quantitative researchers have utilized data they received from surveys completed by sex workers and other informants. My analysis is limited by the fact that numbers, even in the United States, are only rough estimates and not a complete reflection of reality.

Because of high public concern for the control of prostitution and prostitution's history of fluctuating criminality and intimacy with organized crime and sex trafficking, the legal debate on prostitution is intense. The three main legislative approaches to prostitution policy include legal regulation (or legalized and governmentally regulated prostitution), decriminalization (legalized but unregulated), and criminalization (regulated against and illegal). However, many different policies are within the scope or combination of the above approaches. For example, some theorists argue that prostitution should only be criminalized in terms of pimping, advertising, and soliciting of customers. Others take a more radical stance and argue for complete legalization, decriminalization, or criminalization.

3.1 Criminalization

Criminalization of prostitution has not proved to be effective. Kuo, professor of Women's Studies and Philosophy at California State University, argues that, to date, criminalization of prostitution has not decreased or eliminated it (2002). Prostitution is illegal in Thailand, China, and India, but these countries have hundreds of red light areas and thousands of prostitutes, and some of the largest numbers of women and children are sex trafficked to and sexually exploited in these countries. Thailand's sex tourism industry is such a great source of profit that the Thai government does not seem to want to reduce or eliminate it (Bales 2004). Brown notes that anti-slavery legal provisions in these countries "are totally meaningless when a potent mixture of culture and poverty blend to produce a supply of prostitutes, a market full of clients and societies that look the other way" (2000: 188). Brown's analysis continues with a description of what is at the heart of the Asian and worldwide sex trade: "The law in relation to prostitution as it is written, interpreted and practiced throughout the world reflects the stigmatized role of the sex worker in societies run by and for the benefit of men. [...] Of course women are seen as criminals" (2000: 188). Women "are simultaneously essential but peripheral to the trade," but they are individually of no consequence because they are easily replaced (Brown: 188).

In countries that criminalize prostitution but do not have effective law enforcement systems, the police take advantage of the criminalization of prostitutes by asking for sexual favors from prostitutes or bribing them to keep them out of jail. Bales writes that Thailand's anti-prostitution laws have no backing because the police are making greater profits by serving the brothel owners and sex traffickers than by preserving justice and the rights of victimized women and children (2004).

Some would point out that the US provides a counterexample to that of Asian criminalization. Most states in the United States criminalize prostitution, and the United States has a low percentage of prostitutes *per capita* compared to others in the world. These proponents would argue that because the US actually enforces criminalization this policy can be more effective. Many American and other Western tourists travel to Asia for sex tourism because the laws in their own countries better enforce their legal codes against sexual exploitation. Criminalization in the US has come with its own problems, however.

By forcing prostitutes to hide, the government creates more opportunities for crime. Criminalization pushes prostitution into the underground network of organized crime, taking away the prostitute's legal protection and ability to go to the police in event of rape (Sieberg 2005). In this system, prostitutes must work in places where prostitution is either hidden or tolerated by police, which means the situation is more dangerous. Prostitutes must also rely more on pimps and organized crime syndicates for protection from police. This reliance creates a cycle of dependence and cohesion, similar to a gang situation, in which the prostitute could find it difficult to leave because of group pressures. In addition, a prostitute finds leaving and finding a "respectable" job harder because of her criminal background. Because most prostitutes see prostitution as a transitional job due to economic necessity rather than desire to remain in the profession, criminalization is not a good strategy to empower them in finding other job options.

Criminalizing prostitution may only make matters worse for victims of sex trafficking (Sieberg 2005). Because prostitution is underground, sex trafficked victims face the same, if not worse, problems as prostitutes in leaving the trade. Under criminalization, because prostitution is hidden or tolerated by police, sex trafficked victims either have no access to law authorities or are overlooked. Even if a

prostitute revealed that she were sex trafficked, she would still be stigmatized by the fact that she had been involved in prostitution. Furthermore, criminalization gives pimps and organized crime networks the leeway to operate more powerful sex trafficking rings.

Criminalization of prostitutes, or treating prostitutes as criminals and social deviants, is inconsistent with defining prostitutes as exploited. The US government's stance on prostitution is conflicted in this way. Although the US government adopted a policy decision that prostitution is inherently injurious and dehumanizing to the prostitute and fuels the growth of sex trafficking in December 2002 (U.S. Department of State 2007), the government overlooks this fact in its criminalization of prostitutes.

3.2 Legalization and Legal Regulation

Those who push for legalization and governmental regulation of prostitution argue from the view of prostitutes as those who chose their own profession, wherein prostitution is a business transaction whereby the client goes to a worker to pay for and receive an agreed upon sexual service. In this view, prostitution is manual, physical labor, not intrinsically different from construction or beauty salon work, in which the worker can attain varying levels of expertise. These motivations behind legal regulation are similar to those behind decriminalization. However, full governmental legalization and regulation typically regulates and limits the sex trade by only allowing prostitution in the context of a registered brothel. Proponents of legal regulation often cite the proposed health benefits of sex trade regulation because prostitutes can be forced to use condoms, undergo weekly health examinations, be confined to a certain limited working area, and be watched more closely by the police.

However, like criminalization, such governmental regulation has also proven to be ineffective. Brothel owners often overlook mandatory condom use if the client

agrees to pay a higher price (Kuo 2002). Mandatory health checks for prostitutes rather than for both prostitutes and clients are unequal and unfair and result in more stigmatization for the prostitute. Additionally, other limitations or confinements of prostitution have usually resulted in an underground network of prostitutes similar to that found with the criminalization of prostitution because some prostitutes do not want to undergo such stigmatizing measures.

Legal regulation has also been unsuccessful in achieving rights for prostitutes and eradicating sex trafficking. It allows the state to name sex industry zones, but it raises critical questions about how to stop sex trafficking of women and get those who choose into a regulated form of prostitution. Several countries, including Belgium, the Netherlands, England, Guatemala, Brazil, and Mexico, have some form of legalized prostitution. However, legal regulation of prostitution has often proved to be legalized exploitation, with prostitutes working long hours, being limited in their movements outside the brothels, and having many clients per day with little right to refuse a client. In these systems, pimps appear to still control the business, and the police appear to have more reason to arrest prostitutes, especially streetwalkers, outside of legal brothels rather than their pimps because prostitutes are the most visible actors in the sex trade.

The legal regulation of prostitution in Nevada has resulted in a system that has stigmatized prostitutes and created such poor working conditions that many prostitutes would rather work illegally than work under the strict sanctions of the regulated brothels (Anderson 1998). In another study of legalized prostitution in Nevada, researchers Brock and Thistlethwaite write that half of the prostitutes' fees go to the brothel owner (1996). The prostitute must usually pay room and board at the brothel, and, if a taxi driver drives a client to the brothel, the prostitutes' fees take another cut in payment for the driver's referral.

Some advocates believe that regulated prostitution (whether by legalization or decriminalization) undercuts the true harms prostitution has upon the prostitute. A Primer on Prostitution Policies dealing with prostitution law in the Philippines notes, “Prostitution is not a choice. The routine violence of prostitution mocks free choice and the pretense that it is employment exacerbates women’s second-class status” (Delfin and Enriquez 2002: 22). The Primer also calls prostitution “paid rape” (Delfin and Enriquez 2002: 9). This argument contends that, even more so than decriminalization, the legal regulation, and thus the government’s legitimization, of a so-called sex profession should not be accepted on moral grounds because prostitutes do not freely choose prostitution and because prostitution is a form of gender violence.

Some people advocate for prostitutes to be decriminalized but their clients to be criminalized. The sex traffickers, pimps, and sex workers’ clients would be punished with varying degrees of severity: sex traffickers and pimps being more harshly punished than the clients. For example, in current Nepali law, sex traffickers could be punished for up to twenty years in prison; whereas, a sex worker’s client could be punished with only a few months’ imprisonment. Advocates of this approach think that criminalization of clients would diminish the demand for prostitutes, and thereby reduce prostitution.

This approach is problematic. Trading one legal inequality (criminalization of only prostitutes) for another is not just to all actors involved in prostitution. Because the client of a sex worker would usually be found in the prostitute’s presence, criminalizing clients could cause the prostitute to be abused, bribed, or treated as a criminal as well. In addition, the act of prostitution would still be stigmatized and illegal so prostitutes and sex trafficked victims would face problems similar to those faced under complete criminalization, such as a fear of the police. Because of this stigma, underground prostitution rings would still exist. Especially in developing

countries where law enforcement may be corrupt or ineffective, the clients of sex workers should not be criminalized so that police can focus on the worst criminals. Because women in these circumstances usually have few other options, criminalizing the clients could also diminish a sex worker's profits.

3.3 Decriminalization

Some current policymakers, economists, and feminists are advocating for a decriminalized sex trade in which prostitution is legal but treated and regulated only as any other profession would be. Although the baseline assumptions of decriminalization and legal regulation are similar, decriminalization is different in that it does not regulate prostitution any differently than any other business and does not force prostitutes to work in a regulated brothel. Kuo, in her argument for decriminalization of prostitution in the US, contends that support policies for prostitutes need to be similar to policies that all women need, such as the provision of social services, incentives improving women's economic opportunities, and support for those suffering from abuse and exploitation (2002).

Decriminalization would allow for prostitutes to become businesswomen in the sale of sexual services under their own authority and personal preferences, more similar to the independence found by the courtesans described by Oldenburg (1990) and by Nairobi prostitutes before British colonial regulation depicted by White (1990). Working hours and choice of customers would be at the prostitute's prerogative, and prostitutes could organize in cooperatives or brothels if they wished to do so. Pimps would be less likely to control this system because women would have access to help from the police in the event of abuse and be able to change working situations if uncomfortable with the working conditions. By either opening businesses in the sale of sexual services or becoming independent contractors, prostitutes' income would be

taxed and the trade would be regulated under ordinary commercial business and income tax laws.

In this way, decriminalization would provide more money for support systems for prostitutes by transferring money and police efforts away from policing and imprisoning prostitutes to support services and policing those who traffic and those who exploit prostitutes (Kuo 2002). This system could also benefit victims of sex trafficking and most likely decrease sex trafficking as a whole. By focusing laws on sexual exploitation and sex trafficking rather than on prostitution, sexually exploited women would feel more empowered in going to the police in the event of rape, trafficking, or forced prostitution. Banerjee argues that “an imperative corollary to helping trafficked victims and combating the challenges globalization offers in this [the sex trafficking] context is that exploitation of women will diminish if other factors come into place” (2006: 197). Two of her top factors include overall poverty reduction and changes in social mores (Banerjee 2006: 198), which both could come about through decriminalization of prostitution. I will discuss decriminalization in more detail in the conclusion (chapter 6).

CHAPTER 4: NEPALI CULTURAL CONTEXT

To better understand why some Nepali girls and women go into prostitution or are vulnerable to sex trafficking, one must analyze their social and cultural context. In addition, high caste Hindu men and women often run NGOs dealing with sex trafficking and prostitution in Nepal. The measures sought by these NGOs often have a Hindu, protectionist approach to policy on everything from dealing with the safeguarding of daughters and wives to containing the victims of sex trafficking. However, times are changing in Nepal, and more women have access to power structures than ever before. Although this section provides overall generalizations that cannot be applied to the entire population of Nepal, the broad cultural context described gives a picture of what Hindu women often have to overcome to gain power and independence.

Journalist Sushma Joshi says that sex trafficked victims' rehabilitation in Nepal often results in a situation similar to brothels, in which the trafficked victims lack mobility and access to the outside world. The victims are often thought to be in need of protection, regulation, and discipline, and the rehabilitation centers often focus on bringing these women, who have often developed "bad habits" like smoking and drinking, back into the confines of normal high-caste Hindu social behavior. Nepal's language of trafficking promotes women as victims or women as dependent kin (Joshi 2001). Pimps and Nepali families and rehab centers are alike in that they often create women who are immobilized in a bounded space by fear of the outside world (Joshi 2001). This fear allows trafficking to exist. The current terminology of sex trafficked women as victims leaves out the possibility that the woman might have desired to cross borders, get married, or choose her own way of life.

This argument is supported by current Nepali advertisements against sex trafficking. The advertisement below, from a photograph taken by Kathryn March,

shows the contradiction of development activities in Nepal. Translated literally, this signboard says, “BE WATCHFUL: Your girls might be sold in the name of employment” (in the large central text) and “Contact us if you are suspicious” (in the small black text) (Bajracharya 2008; Chemjong 2008). Bajracharya said that this signboard could be interpreted to mean, “WARNING: Please be aware: your girl children (women) might be sold to prostitution in the false pretense of employment away from home. Please contact the authorities if you are suspicious of anyone making such offers” (2008).



This campaign against trafficking focuses on showing male relatives that they need to protect their women from harm. The ad promotes the fear of a woman traveling or going somewhere by herself and her need of increased protection from her male relatives because of her sexuality.

While thousands of Nepali rupees are being used in advertising against trafficking, many Nepali women and children do not yet have their basic human needs met. Save the Children Nepal field officer Keith Leslie reveals that protectionist policies in Nepal discouraged women to migrate freely in search of a better life (Hausner 2005).

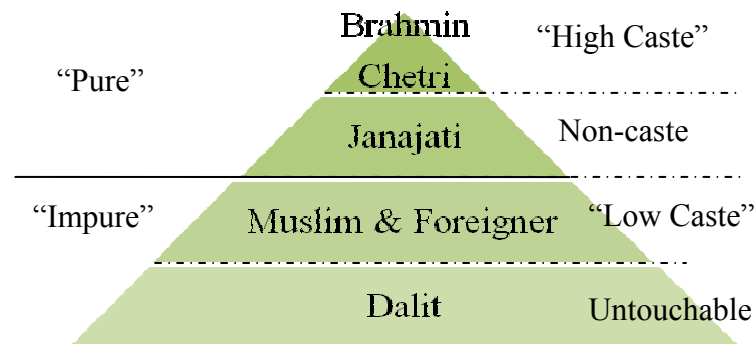
In some cases, Hindu women's social environment contributes directly to their vulnerability of being trafficked. These women face many challenges including caste, poverty, education, health, and social practices. The problems often facing these women revolve in a self-reinforcing cycle. Low education, early marriage, and lack of access to economic resources can lead to less involvement in politics and other means of advancement (Acharya 2003).

The following analysis of Nepali women will focus mainly on the traditional or orthodox Hindu cultural treatment of women because high caste Hindus hold political and social power in Nepal, thereby having a dominant influence on national policy and media representations of the problem. Governmental statistics state that about 81% of Nepalis are Hindus (CBS 2001: Table 17), but this census data is problematic due to inter-country language barriers and the preconceptions of the census takers. High caste Hindus run many of the anti human trafficking organizations in Nepal. In addition, Hindu women are usually more subordinated by men than are Tibeto-Burman women, who are allowed more freedom and access to the means of production and household economics than are Hindu, especially high caste, women.

Gender, caste, ethnicity, language spoken, religion, and geo-political area all serve as ranking practices (see Figure 4.1.1) in Nepal (DFID 2006: 5). According to high caste Hindus, women are subordinate to men, other ethnic language speakers to Nepali language speakers, non-Hindus to Hindus, plain people to hill people, and rural to urban. Within the Hindu caste system are even more confining characteristics. As far as the pure or high castes are concerned, *Brahmin* is above *Chhetri*. In the middle are *Janajati*, non-caste indigenous people of mostly Mongoloid appearance, who speak Tibeto-Burman languages and follow Buddhism or other similar religions. The impure or low caste people include Muslims and foreigners and the *Dalits*, or Hindu untouchables, who lie at the bottommost rung of the system. Although the Nepal

Constitution of 1990 and the new interim Constitution declare that all citizens are equal before the law, the ideology of the caste system still exists in the form of cultural practice. Many parents force their children to marry only within their caste.

Figure 4.1.1 Nepali Caste Ranking System (DFID 2006: 6)



Low caste women are usually not as passive and submissive to male authority as are high caste women in Hindu culture (Cameron 1998: 2). Because low caste women are already in one of the lowest positions possible, they do not need to follow the cultural, high caste guidelines to maintain their position. A high caste woman's social position and an aspect of a high caste husband's reputation is achieved by the woman "not doing" activities and "not going" places considered impure (Cameron 1998: 277). Lower caste women cannot uphold these prescriptions by the fact that they have to publicly labor and trade goods to survive. As a result, they can be more socially and economically autonomous, and their economic contributions to the household are not concealed due to their social status.

Nevertheless, low caste women still have to face harsher poverty than their high caste peers. For example, lower caste women in an agricultural setting have to work for the women who are married to the men who own the land, making acquiring their own property almost impossible (Cameron 1998: 102). But even though upper caste women usually have more social power and economic security than do lower

caste women, this power comes at the cost of serving those above them in the marital home.

Although poverty in Nepal, as based upon national statistical surveys, appears to have dropped from 42 to 31 percent between 1996 and 2004, it decreased most significantly for the *Brahman/Chhetri* groups (DFID 2006: 20). Poverty decreased by 46% for *Brahman/Chhetri* groups, but only by 21% for *Dalits*, 10% for Hill *Janajatis*, and 6% for Muslims (DFID 2006: 20). In addition, the *per capita* consumption levels in *Dalit*, *Janajati*, and Muslim households are still between 15 and 13 percent lower than in *Brahman/Chhetri* households (DFID 2006: 20). Women in the lower castes experience more poverty than do those in the upper castes.

Women face more economic insecurity than do men because their access to livestock, land, real estate, and other primary means of production is usually dependent on their status as daughter, wife, or mother (DFID 2006: 24) and often their sexuality. In this way, Nepali laws have historically discriminated against women in property laws and inheritance rights. *Aungsabanda*, a law governing the division of ancestral property among heirs, gives only male heirs the right to ancestral property that has not been disposed of at the parents' death (Sangroula and Pathak 2002). The only way a woman can share in this property is to remain sexually chaste and unmarried to the age of 35. Any subsequent sexual delinquencies or marriage would result in the woman having to forfeit the property.

Many other Nepali laws discriminate against women despite the fact that Nepal's Constitution prohibits unequal treatment based on sex and Nepal has signed various human rights conventions such as the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Discriminatory laws are found in many different arenas, including nationality and citizenship, education, trafficking and sexual abuse, marriage and family, and legal procedure and court

proceedings rights laws. Until recently, a woman could not transfer citizenship to her children or her spouse, whereas a man could (Pradhan-Malla 2004). The law does not provide harsh enough punishments for sexual harassment or domestic violence. A daughter must have her male relative's permission before traveling, working, or studying abroad. The law denies mothers the right to child custody in the event of remarriage, but the father has this right. In some cases, women have to face harsher punishments than do men for the same crime, such as bestiality (Pradhan-Malla 2004). These are only some examples of the discriminatory laws against women in Nepal.

Though statistics show that women's presence in the workforce outside of the home is lower than men's, they have less time for leisure than do men (Cameron 1998: 93). Cameron points out, "High-caste men actually spend more time in leisure activities than in work" (93). In 2001, 71.5% of males aged 10 and above were economically active compared to 55.3% of the females (Acharya 2003). However, women spend more hours doing productive and reproductive work than do men (Cameron 1998: 92).

With social norms relaxing somewhat for women, women have begun to work longer hours and do more physically demanding tasks, like carrying rocks and digging fields. Previously, these tasks were regarded as impure for high caste women, too difficult for women, or likely to put women into inappropriate situations (Cameron 1998: 99). The men's workload has not been increasing, however, so women do most of the household tasks in combination with more work outside the home. In addition, women are rarely present in top positions in Nepal. Only 19% of the professional and technical human power and 13.8% of the administration and management in Nepal is made up of women (Acharya 2003).

Women usually are paid less than men for completing the same type of job. In agriculture, women are paid four-fifths of what men are, and women receive three-

fourths of men's pay in non-agriculture jobs, with the exception of civil service (Acharya 2003). A study of agricultural workers in Bhalara, Nepal found that low-caste women earn on average five times less than low-caste men (Cameron 1998: 111). However, women bring in more cash and grain income than do their male counterparts, meaning that these women have to work longer and harder doing many different tasks, for numerous households, and with more daily uncertainty and competition (Cameron 1998: 112). These realities place more of a burden on women than on men and give relevant reasons as to why some women might choose prostitution or work in the dance or cabin restaurant industry as a preferable option to hard labor.

The literacy and primary educational gender gaps are beginning to close in Nepal. The literacy rate for people six years of age and older is 65.1% for males and 42.5% for females (Acharya 2003). For every 100 literate males, there are 65.8 literate females (Acharya 2003). 44.1% of people in primary schools, 41.5% in secondary, and 40.6% in higher secondary schools are girls (Acharya 2003). The net enrollment for girls in the primary school age group is quickly approaching the enrollment rate for boys. If this rate continues, Nepal could realize gender parity in enrollment by 2010 (DFID 2006: 29). Rural and low caste children have less access to education than do urban and high caste children.

The major gap between male and female school rates lies in higher education. Only 43.6 women to every 100 men have their School Leaving Certificate (SLC), which students can receive when they pass a test after their tenth year in school, and only 22.9 females to every 100 males have graduate degrees or above (Acharya 2003). These statistics reveal that higher education for women should be given more precedence in Nepal so that the inclusion of women in the workplace and in politics can be greater.

In part as a result of these lower numbers of women in higher education, women are hard to find in the political realm. Although the 1990 Nepali constitution demands that five percent of each political party's candidates in parliamentary elections are women, only 6.4% of the parliamentarians, 5.8% in the House of Representatives, 15% in the Upper House or *Rastriya Savha*, and 8.3% of the major political parties' executives were women in 2000 (Acharya 2003). Currently, there is a movement of women's activists fighting for gender equal representation in the new constitutional drafting committee. Equal representation for everyone will be hard to achieve in Nepal because of lack of women in politics and the uneven caste and ethnic distribution in politics. Usually, the women in politics come from the higher castes and are in some way related to the male parliamentarians.

Dharma—or duty according to one's station in life—and Hindu beliefs about purity and impurity discriminate against women, even in their own homes. Many Hindu women have to sleep outside or in the barn with the animals when they are menstruating. They cannot go inside the kitchen or even be touched by their husbands or non-menstruating women at this time because they are considered impure.

The husband is to be treated as the equivalent of a god to the high caste Hindu wife, and her *dharma* in life is defined almost exclusively by her relationship to him (Cameron 1998: 144, 149). A Hindu woman can only receive her final caste identity after marriage. The high caste Hindu woman's duty to her husband continues even after his death in the restricting of her food and wearing of mourning colors. Hindu widows are considered unlucky and are stigmatized by society. Low caste Hindu women can quickly remarry to avoid social prescriptions against widows, but high caste women usually cannot due to social pressures.

Especially in high caste and middle or upper middle class Hindu families, the birth of a girl is not auspicious to a family, as is a son's. In addition, parents are often

sad when a girl child is born because she will have to leave the natal home and reside in the family of her husband. Because the girl must eventually leave and because of other marriage customs such as dowry, a high caste Hindu girl child is often seen as an “economic burden” within her parent’s home (UNICEF 1992: 40). After these women are married, their caste and economic links with their original families are severed. Therefore, such a woman’s original family does not necessarily seek to educate her because they see this investment as a waste of money and time. UNICEF notes, “Even though the average girl child works harder and longer hours she is valued less, has less freedom and receives less in the way of health care and food” (1992). The high caste Hindu family often sees their unmarried girl child as someone who must pay off the amount the family invests in her by doing household chores.

In preparation for their future role as wives, high caste and middle or upper middle class Hindu girls are taught to be modest, pure, obedient, respectful, hard working, and dependent upon their husbands. Until marriage, these girls are often restricted in their social interactions to preserve their sexual purity because their premarital sexual behavior is a threat to their father’s family’s honor. If her reputation is tarnished, her family will have a difficult time arranging her marriage, which would be devastating both to a traditional high caste Hindu family and to the girl herself. The gift of a virgin girl, called *kanyadaan*, is an important symbolic aspect of Hindu marriages and grants the girl’s father spiritual credit. A woman in such contexts who is found to be HIV positive is stigmatized, socially isolated, and rejected (Eller and Mahat 2003).

Dharma advocates for universal marriage, and the Hindu Vedas or scriptures say that the ideal age to marry is 16 for girls and 25 for boys (UNICEF 1992: 56). These social prescriptions combined with the fact that women are not often able to hold individual property make marriage almost the only way for a girl to have

economic security. In most Hindu communities, the daughter-in-law's position in the family is very low. Among other things, she is the one who does the most strenuous domestic tasks and cooks for the family and cannot eat until after her parents-in-law, husband, and, later, her sons eat.

Child marriage rates remain fairly high in Nepal. In 2001, the mean age of marriage was 19.5 for females and 22.9 for males, up from 17.2 for females and 20.7 for males in 1981 (Acharya 2003). High early marriage rates result in earlier pregnancies and higher fertility rates. A CWIN report accounted that, out of 14,000 pregnant women registered at a certain hospital in 1995, 2,443 were under-age teenagers (Subba 1995: 5). Having children at young ages is risky to the mother's and baby's health, it may hamper her education, and her lack of experience could be detrimental to the baby.

The total fertility rate is usually a good indicator of family planning and health sophistication in a country. Often, poorer, developing countries have higher fertility rates than richer, more developed countries. The total fertility rate or number of children per woman aged 15-49 was 4.1 in 2001, compared with 5.6 in 1981 and 5.1 in 1991 (Acharya 2003: 43). Higher education is shown to have a connection with lower fertility rates. An NDHS 2001 survey found that the Total Fertility Rate for uneducated women in Nepal is 4.8, but for women with some secondary education it is 2.3 (DFID 2006: 28).

A great advance for Nepali women in 2001 was in the realm of life expectancy. The life expectancy for both men and women after birth is now 60 years, the female life expectancy jumping from 53.5 years—2.5 years lower than the male's—in 1991 (Acharya 2003). However, the 2001 female infant and child mortality rates are higher than the males' rates. Per every thousand babies born, the infant mortality rate is 64.4 for males and 79.2 for females and the under-five mortality rate is 91.2 for males and

112.4 for females (DFID 2006: 26). These factors could reveal a preference for male children by giving them better access to health care and healthy food than their sisters. Moreover, the peoples' ease of access to hospitals and health care is still limited, especially in the villages.

CHAPTER 5: NEPALI CASE STUDY OF SEX WORK AND TRAFFICKING

5.1 Nepal's Internal Sex Trade

“When I was 19, I lost my husband in the conflict between the State and the Maoists. I have two children to look after. I felt like a cadaver when I returned to my room after my first day at the dance restaurant. During the first shift I am allowed to wear at least a two-piece dress. Sometimes I work the second shift from 10pm to midnight. During the second shift, I have to dance naked. The customers pour beer all over my naked body and please themselves by licking the alcohol. Only the fact that I am doing this for the future of my children keeps me going.”

— Dance restaurant worker (IN ILO 2006b: 45)

The sex trade inside Nepal has been taking place since the Malla period four to five hundred years ago (Demand for Legal Acceptance of Sex Trade 2004). Entire Nepali communities, such as the *Baadi* community in mid-Western Nepal, are known as sex workers by caste and profession. The *Rana* kings are said to have taken concubines and prostitutes from primarily the *Tamang* and other ethnic communities. Sometimes, they brought these women to India with them, starting the first known and recorded external sex trafficking from Nepal (Asman 2008).

Other cultural traditions exacerbate the situation by objectifying girls and women. The gift of a virgin girl to her new husband, called *kanyadaan*, is an important aspect of Hindu marriages and grants the girl's father spiritual credit. Another tradition called *Deuki* is one of buying and offering virgin girls to the temples (Thapa 2006). Conversely, many Nepalis believe that the current sex trade in Nepal became prevalent primarily due to Westernization and the influx of foreigners (Nepal 2004). But this argument does not hold much weight considering that the Maoist insurgency created the greatest recent migration of impoverished women and children

into the cities while impeding tourism, and many of the sex workers' customers are Nepali.

The current situation of Nepal's internal sex trade has not been significantly researched. Two relevant studies on the situation are the ILO's A Study of Girls and Women Employed in the Restaurants of Selected Cities in Nepal and Internal Trafficking among Children and Youth Engaged in Prostitution. Reports in 1999 stated that over 2,650 girls and women are involved in prostitution in Nepal (Suwal and Amatya 2002: i). The ILO estimated that the number of prostituted girls under 16 years of age in Nepal rose to around 5,000 by 2002 (Suwal and Amatya 2002: 1). According to a 2005 Gorkha Patra newspaper account of a UNICEF Report, over 5,000 women and children are involved in the sex trade inside Nepal—1,000 of whom are centered in the Kathmandu Valley. A 2004 article called the "Flesh Trade in Kathmandu" said the District Police Office in Hanumandhoka estimated that 25,000 to 30,000 women participate in sex work in Kathmandu alone. Thus, the numbers range from 5,000 to 50,000 men, women, and children involved in Nepal's sex trade. From these sources and my independent research and interviews, I conservatively estimate that around 20,000 sex workers are involved in Kathmandu Valley's sex trade alone.

Within Nepal, sex workers work and solicit clients in a variety of situations including massage parlors, *dohori* clubs, restaurants, hotels, bars, and the street. Usually, each place of work brings a different level of prestige and economic status. Independent mistresses are at the very top of the economic rung of sex workers. Usually, these women are from the upper economic class and are the best paid (Amatya 2007). The massage parlor workers involved in prostitution are also generally well paid because they have a definable skill in massage (Amatya 2007). Street-based sex workers are often the lowest class of sex worker because they do not

have another job on the side. Waitresses and dancers who are sex workers lie somewhere in between.

CAC Nepal's health center for STI/HIV high-risk individuals, primarily including female sex workers, sees around 150 patients a month (Sharma 2007). These sex workers range in age from 14-45 years old, but 14-26 year olds are most common. The health center also provides STI and HIV prevention, care and management services for sex workers' male clients, who are usually bus and taxi drivers, carpenters, or day laborers, and men having sex with men.

Since 1991, restaurants have emerged as popular entertainment venues in the big cities of Nepal (ILO 2006b). These restaurants can be categorized in the following ways:

- 1) Ordinary restaurants where customers go to enjoy food and drink;
- 2) Dohori clubs where customers enjoy food, drink, and traditional Nepali folk songs by male and female folk musicians (ILO 2006b);
- 3) Cabin restaurants where customers (predominately male, but some couples) go for food and drink in private cubicles, called cabins, where they are served by female waitresses; and
- 4) Dance restaurants where primarily male customers go to eat, drink, and be entertained by female and, sometimes, male dancers.

These restaurants are characterized by their various stages of dress (or undress) and social stigma. Restaurant workers, who wear everyday dress, and *dohori* club workers, who wear typical Nepali folk dress, are not always stigmatized. Sex work is more associated with cabin and dance restaurants, but not all cabin and dance restaurant workers are sex workers.

Sex work can be something that comes along with the occupation, however. Usually economic necessity forces a cabin or dance restaurant worker into prostitution. A cabin restaurant waitress tells her story in such terms:

“I received a message after I finished my day’s work at the cabin restaurant that my three-year-old child had fallen from the roof. The doctor told me [...] that a CT-Scan was need[ed]. I did not have enough money to pay for the scan. I asked my employer for an advance on my salary but he refused. At the same time, one of my regular customers came and I asked him to help me. He was ready to help provided that I spend the night with him” (IN ILO 2006b: 45).

The story of a cabin or dance restaurant worker using her sexuality to provide for her children as a single mother is a common one.

The cabin restaurant I visited, a typical cabin restaurant, was set up into a line of small private booths and two rooms for larger parties. Nine women waitresses, all *Tamang* and not originally from Kathmandu, worked at the restaurant. They did not have education above a tenth grade level and said that they did not have access to other job options. None of them would have chosen this profession if they had other options, and most wanted to use this job to save money for a different profession later.

They came to Kathmandu from the villages with their friends to find a job and ended up in this profession. They said that their boss helped them if their customers treated them poorly and that they had not faced any difficulty from the police, but their boss was close while we interviewed them. The boss said that the police often come to raid the place because most cabin restaurants participate in immoral activities, but he assured us that his did not. When a customer causes a problem, the boss can call the police, but he must often pay a bribe to get them to help. An ILO survey seconded

this statement: a Kathmandu policeman said, “We collect a ‘monthly allowance’ from restaurants to supplement our low salary” (IN ILO 2006b: 46).

There are about 800 registered cabin restaurants in Nepal with seven to twelve waitresses working at each restaurant (Rana 2007), amounting to around 5,000 - 7,000 cabin restaurant waitresses in Nepal. A counselor at *Saathi*, an organization that works to provide support, training, and counseling to cabin restaurant waitresses in Kathmandu, said that about 90% of the 400 women they serve have STDs and about 99% have children (*Saathi Workers* 2007). Many are single mothers because they lived with a man to whom they were not married, got pregnant, and then the man left.

Most cabin restaurant waitresses work from around noon to 9 pm and are paid 2,500-3,000 Nepali rupees (NRs) a month plus a meal or two every day and the tips they receive. In an ILO survey of 200 girls and women working in dance, *dohori*, and cabin restaurants, most reported earning 200 NRs or below per day in tips (2006b: 26). In Kathmandu, it takes at least about 5,000 to 10,000 NRs per month to survive, the *Saathi* workers said. Pleasing the customer is the ultimate goal of the waitresses, and often they must take on sex work to make ends meet. Most of the waitresses do not like their job but have few other options.

There are no job qualifications other than being beautiful and 18 to 25 years old³, so the cabin restaurant bosses say. Cabin restaurant waitresses’ main job is to sit with the customer and raise his bill as high as possible. The waitresses can also order food and drink, and the customer is supposed to pay for everything. Even if the waitress is not hungry or thirsty, she orders something and then either gives it to someone else or puts the bottles back at the bar for resale. The food and drinks are

³ The *Saathi* counselor said that most cabin waitresses are aged 17-25, but a few are 14-16. Upon our visit to a cabin restaurant, Subba asked a waitress how old she was. She looked to her boss for the answer, and her boss answered for her. Subba said that the girl was probably only 15 or 16, but her boss said she was 18-20. If *Saathi* find girls aged 14-16, they rescue them, place them in shelters if they cannot find the family, and provide them with education.

two to three times more expensive than the food and drinks at other restaurants. The waitress must also clean up at the end of the night.

Cabin restaurant customers pay for the companionship the women give to them. A male customer told a surveyor, “If we just came to eat and drink then why would we pay such high prices? We bear this loss for sexual pleasure” (IN ILO 2006b: 46). They are almost always young to middle aged Nepali men. Sometimes, customers will request to have the same waitress each time, and fights ensue between customers who want the same waitress. At busy times, waitresses can serve up to three tables at a time. The biggest problem most cabin restaurant waitresses face at the restaurant is that they must pay the customer’s bill if the customer leaves without paying and that they have no paid holidays. Outside the restaurant, they face a social stigma. One cabin restaurant waitress said that she would like the government to give them ID cards to make their occupation more credible and accepted.

According to a 2006 newspaper report, there are 200-300 dance restaurants in Nepal, fifty percent of which present vulgar dancing (Dhital 2006). Dance restaurants are also stigmatized by society, and men go to eat, drink, and watch female and, sometimes, male dancers engage in provocative dancing. As the night progresses, the female dancers start to show more skin. After the dances, the dancers will often go off stage to sit with the customers. Other hostesses are in the audience, providing services very similar to those of cabin restaurant waitresses.

Both *Saathi* and CAC Nepal said that the waitresses and dancers are almost always exploited by the restaurant owners, who often force the women to please the customers sexually and do not pay on time. One dancer noted, “At first, the owner supplied the cigarettes and beer to us complimentary. After we became addicted they stopped supplying us and now we pay to fulfill our urge just like the customers” (IN

ILO 2006b: 46). Many of the clients of sex workers also exploit them, not paying for sex or hurting or stealing from them.

Saathi workers say that the police, army, and taxi drivers exploit cabin restaurant waitresses the most. A dancer describes an incident of corruption:

“One night one of my female colleagues did not have enough time to remove her make-up. We were rushing back to our residence when the police stopped us to check our vehicle. Unfortunately, she had forgotten to carry her identity card. Using that as an excuse the police threatened to punish her. When she requested their leniency, the police told her to dance for them. She had to oblige” (IN ILO 2006b: 45).

In my interview with the police, they did not deny that many of the lower level policemen were corrupt. The police said that the main problem is an overall lack of training for policemen. But they are trying to fight this problem by having a special task force on policing the police at cabin and dance restaurants.

Cabin and dance restaurant workers usually migrate from poor villages into Kathmandu because of poverty, the Maoist insurgency, or a husband who left or widowed them (Dhital 2006; *Saathi Workers* 2007). The root of the sex trade is the lack of value of women in Nepal (Basnyat 2007; Holland 2007). Thus, poverty, a desire for a high paying job, and lack of education and other job options—which all stem from the root of discrimination against women—are the main material reasons women go into the sex trade and restaurant industry in Nepal. The *Saathi* counselors said that they view the internal sex trade as a type of internal trafficking in Nepal because there are often no other options for these women and girls (*Saathi Workers* 2007).

Sex work provides “easy money,” more money than they would get doing hard day labor⁴ (Amatya 2007; *Saathi Workers* 2007). Therefore, many of the women would not leave these professions unless offered a job that was not hard physically and still gave them a similar salary. In addition, this profession becomes habitual to many women, and they become addicted to alcohol, drugs, or sex (*Saathi Workers* 2007). Many say they are involved in a different profession to avoid the social stigma placed on cabin and dance restaurant and sex workers (Dhital 2006).

Almost 17% of the 200 women and girls surveyed by the ILO were 14-17 years old, the majority (53.5%) being 18-21 years old (2006b: 8). When asked why they left their previous job, the most girls and women (24%) listed that they left because there was better income in this profession and the next most popular answer (20%) was that their duties in their current job were easier (18). Seventy-eight percent of the girls and women wanted to change jobs after they had become a cabin restaurant or dance worker, an additional 12.5% answering they were unsure (ILO 2006b: 39). Only 9.5% responded they did not want to change jobs. The top two reasons for wanting to change jobs were the negative attitude of society toward the profession and the lack of prestige of the job. Almost 87% of the girls and women would not encourage others to join the profession. Seventy-six percent reported being sexually harassed by customers, and another 28% were harassed by the community and/or the police (ILO 2006b: 38).

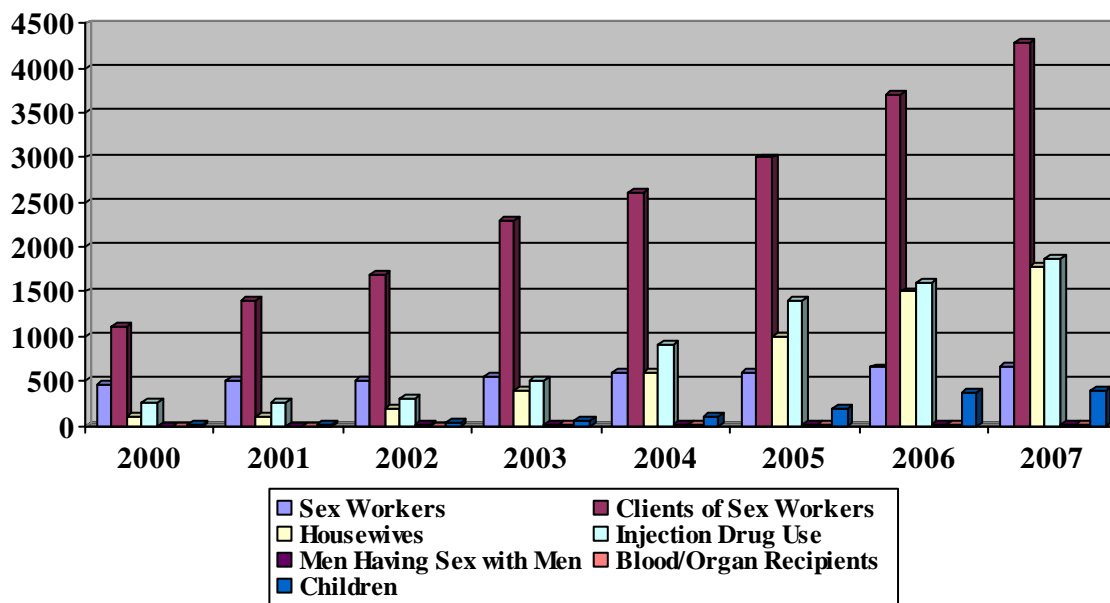
The CAC Nepal clinic said that the most common health problems, including STDs/STIs among female street-based sex workers they treated were the following (from most to least common): non-gonococcal cervicitis—the most common of all gynecological disorders, an inflammation of the cervix usually caused by an infection;

⁴ Åsman (2008) reported that the Tamang brothel workers and returned workers referred to theirs as “easy work.”

trichomonas vaginalis; syphilis; gonococcal urethritis; and candidiasis (Sharma 2007). The least common are ano-genital wart and genital herpes. The most common STD among the male clients of sex workers was gonococcal urethritis.

According to the Ministry of Health and Population and National Public Health Laboratory in 2007, 665 Nepali female sex workers are HIV positive. In addition, 4,133 male and 103 female clients of sex workers have HIV. Probably because many of the sex workers' clients are married, 1,730 housewives and 376 children were infected by 2007. The chart below provides a breakdown of known HIV/AIDS cases in Nepal since 2000:

Table 5.1.1 HIV and AIDS Status by Risk Groups from 2000-2007



(Source: Ministry of Health and Population 2006; National Public Health Laboratory 2007)

The above chart shows that even though there was not a significant increase in the number of sex workers with HIV/AIDS over the last seven years, the number of clients with HIV/AIDS has greatly risen. These results could show that there was a rise in the demand for the sex trade in Nepal and thus a rise in clients. The number of housewives contracting the disease also rose along with the number of sex worker

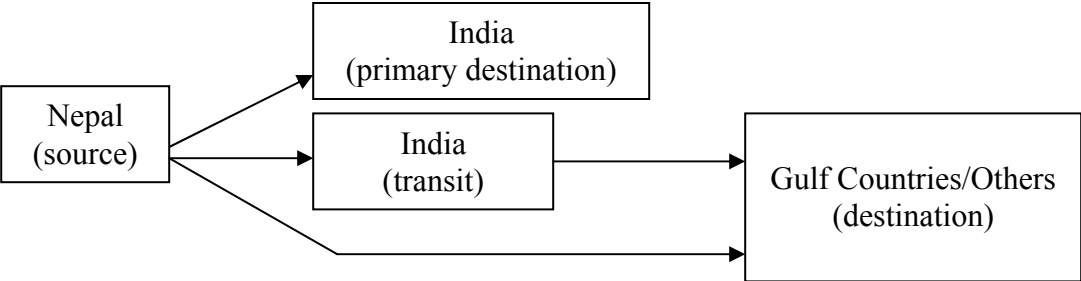
clients. The age groups showing the most HIV/AIDS infection for both men and women were first 30-39 years (3,351 total people), then 25-29 years (2,189 people), and last 20-24 years of age (1,492 people) (NPHL 2007). In Nepal, there are fewer females (3,020) than males (7,136) with HIV/AIDS (NPHL 2007) even though there are more female than male sex workers.

5.2 Sex Trafficking Situation from Nepal

“I am afraid what will happen if people know what I’ve gone through. I’ll never trust anyone again.” – Survivor of sex trafficking (IN TDH 2007)

Projections on how many Nepali women and children are trafficked for sex outside of Nepal vary greatly. NGOs still estimate from five to twenty thousand women and children are trafficked (not just sex trafficked) from Nepal to India alone each year (Adhikari et. al 2001; Pokharel and Tamang 2007; Pradhan 1997), but these figures have been quoted for the last ten years without much significant research. Currently, then, between thirty to two hundred thousand Nepali women and children may be working in the brothels of India (Adhikari et. al 2001; Pokharel and Tamang 2007). Nepal is known as a major source country for human trafficking in South Asia (Sangroula 2001; Farr 2005). Most Nepali women and children are sex trafficked to India, but Gulf countries, Thailand, Malaysia, Vietnam, and Hong Kong are other possible destinations (Farr 2005).

Figure 5.2.1 Sex Trafficking Transit Points



Looking at the reported disappearances of Nepali women and children to the Nepali police may be a good indicator of how many migrate or are trafficked and/or kidnapped without the knowledge of their relatives or guardians.

Table 5.2.1 Reported Disappearances 1998-2003 and 2005-2006

Fiscal Year	Group	# Disappeared	# Found	Total Disappeared
1998/9	Women	223	14	305
	Boys	41	5	
	Girls	64	4	
1999/2000	Women	533	98	951
	Boys	351	101	
	Girls	364	98	
2000/1	Women	710	109	1177
	Boys	456	152	
	Girls	372	100	
2001/2	Women	712	80	1399
	Boys	559	109	
	Girls	434	117	
2002/3	Women	530	44	1263
	Boys	605	38	
	Girls	248	38	
2005/6	Boys	533	95	(Boys & Girls only)
	Girls	524	90	872

(Source: Nepal Police *Disappearances* 2060 and 2063 2003 and 2006a)

In and after 1999, the numbers of reported disappearances rose significantly. Women were most likely to disappear and then boys. Because many Nepali girls are

sold by their parents in trafficking rather than kidnapped and because Nepali girls are taught to be submissive and not to go far from home, the lower numbers of girl disappearances make sense. However, the graph above may only represent a fraction of the trafficking or kidnapping that actually occurred because the families would not report if they sold their daughter or wife or may not report anyway because reporting may tarnish the family's reputation. United Marxist and Leninist party parliamentarian Asta Laxmi Shakya said that, often, you could tell which families in a village sold their daughter by the type of roof on their house (Shakya 2007). Tin roofs usually meant that the daughter had been trafficked; whereas, straw roofs meant the daughter had not. Many families did not know what they were selling their daughter into, but, even if they did, it meant the difference between a straw and a tin roof (Shakya 2007).

Sex trafficking victims are subjected to conditions of slavery and serious physical abuse. Often held in debt bondage for up to 5 years or more, they can be raped, tortured, beaten, exposed to AIDS, and are in constant fear of arbitrary imprisonment. They must service between three and twenty-five customers in one day. Customers pay from 1,000 to 2,000 Indian rupees (\$23-45) for a night or from 150 to 300 Indian rupees (\$4-7) for half an hour (Panta 2003). The characteristics customers in the Indian market seek are best described by a male, Nepali trafficker:

“Usually girls of Mongolian faces are highly sought after by clients. Therefore, if we were able to take Nepali girls aged 16-19 years with Mongolian faces, long hair, slim body, separate and proper hips, fair skinned, medium height, such girls would fetch one lac [100,000] Indian Rupees. On most occasions, we earn 50,000 to 80,000 Indian Rupees and the rate depends on the age and appearance of the girl.” (IN Pokharel and Tamang 2007)

Many victims of trafficking are from remote hill villages and poor border communities of Nepal who are sold by their parents or lured by local recruiters, relatives, or neighbors promising jobs or marriages. A male trafficker imprisoned in Kathmandu describes one of his trafficking techniques: “I am 26 years of age. I have sold 70 girls so far. I was the one who had sold 16 girls in school uniform in India. They were taken in the pretext of ‘Educational Tour’ for which I had hired a bus. All of them were sold in a same brothel” (IN Pokharel and Tamang 2007: 28). Nepali women and children are sold into brothels for amounts ranging from 50,000 to 120,000 Indian rupees (Adhikari et. al 2001; TDH 2005). In the five to six years the girl is in debt bondage to the brothel, the owner makes a minimum of 2,000,000 Indian rupees, or \$45,455 (Panta 2003). The girls’ purchase price plus interest often becomes the debt the trafficked victim must pay off before being freed by her pimp or madam. If the girl wants to continue afterward, the brothel owner charges up to 50% of the girls’ earnings for the use of the room (Panta 2003). After they are too old to be sex workers, they may act as madams or brothel owners and continue the cycle while making personal profits. After becoming a brothel owner for a time, some women return home with gold, and some do not (Asman 2008).

Many high-caste Hindu government and NGO leaders believe that very few Nepalese voluntarily return to Nepal after freedom from slavery or debt bondage (TDH 2005). After returning from brothels, the Hindu victims are not readily accepted by their families or society because Nepali Hindu society emphasizes a woman’s sexual purity as sacred (Sangroula 2001). Her presence in the home could tarnish the family’s reputation. Additionally, the returned victims might have been exposed to the HIV virus, and even if they do not have HIV/AIDS the family considers them to be unclean (Sapkota 2007). Social stigmas extend to trafficked victims’ children. Many organizations with whom I spoke said that until ten years ago

the government also stigmatized trafficked victims. The government did not want to have a policy that would bring HIV/AIDS victims back into Nepal. One contact said that the government even said that they did not want to make Nepal a garbage dump where the HIV/AIDS trash came to die and spread the disease further. However, now the government is active in trying to fight sex trafficking and provide rehabilitation and reintegration into Nepal for those who have been trafficked.

The other side of the story is rarely mentioned in Hindu circles. Many Nepali girls who come back to Nepali rehabilitation centers flee to become prostitutes again in India because they find the centers too restrictive and overbearing. Women in the ethnic groups in Nepal (i.e. Tamang) often bring back their wealth to their families and become regarded members of society because they can pay for their parents' funeral rites (Asman 2008). Sometimes these women are sought after as brides when they return. Some girls see Nepali women returning to the village with gold and want a similar life (Asman 2008). Because women must have a male relative take them across the Nepali border (for "protection" according to Hindu circles and laws), girls sometimes willingly find traffickers to forge papers and traffic them to India or other countries in order to escape an early marriage, abuse, or village life (Asman 2008). In the Christian community, Peace Rehabilitation Center finds husbands for their returned victims without HIV/AIDS.

5.3 Nepali Laws Pertaining to Sex Work and Trafficking

In Nepal, the policies that address the sex trade mostly lie in anti human trafficking acts. For detailed text and other laws pertaining to marriage, sex, and the sex trade, see appendix 2.

5.3.1 Former Nepali Laws on Sex Work and Trafficking

The Constitution of the Kingdom of Nepal (2047 BS or 1990 AD), makes trafficking in human beings, slavery, serfdom, or forced labor in any form prohibited and punishable by law. The *Muluki Ain* or National Code (2020 BS or 1963 AD), declares making someone a slave, trafficking in human beings outside the country for sale, and taking minors under age 16 without parental consent illegal. The Human Trafficking Control Act (2043 BS or 1986 AD), defines human trafficking as:

- Selling a human being
- Taking someone to a foreign country with the intention to sell them,
- Making someone a prostitute or luring, threatening, coercing, tempting, or forcing someone into prostitution⁵
- Helping, encouraging, attempting, or making arrangements for the above offenses.

The maximum punishment in the 1986 Act is 20 years imprisonment for some of the harsher crimes, and the minimum is 5 years.

The major problems with the above acts include that they only criminalize the selling and not the buying of a human beings, that they did not anticipate the traffic in human organs, and that they give minimal punishments for any of these offenses (see appendix 2 for more details). Another problem is that the police are not equipped to handle the highly organized crime of human trafficking. Even though the police have now been approved to have women and children cells in 38 districts, these cells are not fully devoted to anti human trafficking initiatives and do not deal with the trafficking of men.

⁵ This provision was very rarely used, but one intention of it was to prohibit brothels.

5.3.2 Nepali Laws on Related Law Enforcement and Treaties

Even though none of the above acts criminalizes prostitution or dance/cabin restaurants, some police still harass the workers at these establishments. A cabin restaurant waitress explains:

“One day a police officer visited the restaurant and ordered a bottle of beer. As I served him, he asked me to sit down with him, which I did. I did not know that he was a police officer. A few minutes later, another police officer on duty came and arrested me. I cried and asked them to let me go, but they kept me in custody over night. The next morning, I was released from custody with a warning” (ILO 2006b: 46).

However, police raids of public places are acceptable under the Public Offense Act 2027 BS. If someone does get arrested for prostitution, it is usually under this act, with a punishment of up to 10,000 NRs for breaking the peace or vulgar gestures or activities in public places. Police can use this act to raid public places for prostitution (i.e. hotels, massage parlors) because the place is supposed to be used for activities other than prostitution. For example, the Kathmandu police raided six massage centers and captured 27 men and women doing illegal sex work in 2004 (Police Raid Six Massage Centers 2004).

The Nepal Treaty Act of 1991 makes international instruments to which Nepal is a party supercede domestic law (Pradhan-Malla 2004: 9). For pertinent instruments Nepal has ratified see appendix 2. This act means that the international conventions on commercial sexual exploitation and anti human trafficking found in appendix 2 should override Nepalese law. However, these regional and international conventions have not been well incorporated into Nepali law, practice, or police enforcement.

5.3.3 Latest Nepali Law on Sex Work and Trafficking

The Bill Controlling Human Selling and Trafficking of 2063 BS (2006 AD) was ratified in the summer of 2007 (see appendix 1 for the translation of this bill as of May 2007). This bill was in the process of discussion and modification in Parliament during my field research period in Nepal in Spring 2007.⁶ The bill criminalizes the purchase of sexual services (see appendix 1, column 2, part 4). However, none of the people I interviewed discussed this matter. The significant differences between this bill and the 1986 Act are the following: this bill offers a better and broader definition of human trafficking, gives harsher punishments for traffickers, sellers, AND buyers of humans or human organs, allows the police to search and arrest traffickers without a warrant, provides for a government rehabilitation center, promotes the victims' privacy in reporting and throughout the case, and allocates compensation for the victim. The maximum punishment is up to 20 years imprisonment and 100,000-500,000 NRs fine, while the minimum punishment can be as little as 1 month imprisonment (for sex worker's clients).

Some significant problems arise from this bill. Most of these problems were discussed at the Forum for Women, Law, and Development (FWLD) and Daywalka Foundation sponsored National Consultation on the Anti-Trafficking Bill on March 30, 2007. Problems include the following: children are defined as people under 16, not under 18; this bill might make it too easy for the police to arrest innocent so-called traffickers; punishments are harsher for someone who sells or buys a person outside the country than inside the country (they should be the same); and only Nepali

⁶ Currently, no translation of this act is available in English. Therefore, if this bill was amended after May 2007, this representation is not wholly accurate. For the purposes of my analysis, I will consider the bill provided in appendix 1 to be the version ratified in the summer of 2007.

citizens⁷ count as victims. There is also no mechanism for making police stop exploiting and harassing sex workers or for implementation of this policy.

UML Parliamentarian Shakya said that the new bill would become more organized and change somewhat from the version written in appendix 1 by the time it was passed by Parliament⁸ (Shakya 2007). For example, she believes that the age of children would be defined as less than 18 years of age instead of under age 16. The MWCSW and most NGOs wanted the bill to pass so that at least the police can start enforcing it (Raja 2007).

The Maoist party's parliamentarian Jayapuri Gharti believes the anti-trafficking bill is not complete, but it is a good start (Gharti 2007). She takes a harder line on sex work than the Nepali Congress or UML's parliamentarians. She noted that sex should only be between a husband and a wife or those in mutually consenting love relationships. Her view is that the Maoist party would be in favor of criminalization of prostitution (Gharti 2007). She believes that all sex workers face economic compulsion and sexual exploitation and would not willingly choose to be in the sex trade (Gharti 2007).

5.4 Law Enforcement

“During the years I spent in custody waiting for my court case, I shriveled like a dying tree. Now I have freedom and I am flowering into a different person.” – Survivor of sex trafficking (IN TDH 2007)

Implementation is the greatest problem concerning any type of Act passed in Nepal. Retired Inspector General of the Police Dr. Govind Thapa posits that the problem of corruption and lack of enforcement in the police stems from the way the

⁷ People can only become citizens of Nepal at the age of 16. Thus, whether this bill covers those children trafficked under age of 16 is left open to speculation.

⁸ I am unsure whether the age of adulthood was changed to 18 in the passed Act.

police was set up in 1951, when the Rana regime reformed the police force through an amalgamation of the militias (Thapa 2007). The ideology of this reformation was that the police were devoted to protecting the government in all circumstances, not to helping the people. Even now, the police have conflicting ideas of the interim government that will probably not be settled until the new elections take place and Constitution is written. In addition, they have been actively involved in dealing with the Maoist insurgency and other political rights demonstrations so they have not had as much time to devote to anti trafficking measures as they did previously.

Justice in Nepali courts can be a long and harrowing process for a victim of sex trafficking or sexual exploitation. If a victim goes to police, the police have to go to the nearest court and gain permission to investigate before they can issue a warrant for an accused trafficker's arrest. By the time the police obtain permission, the traffickers usually leave or change their identity. In addition, the police have to take the victim's statement in front of a public prosecutor, and the victim's statement must be verified by the court.

The court system usually takes a long time to decide trafficking cases and asks the victim to recount the story of being trafficked many times. In addition, the victim is cross-examined and grilled by the defense in the determination of whether she was raped and trafficked (Thapa 2004). The women and children's cell police deputy superintendent Pooja Singh said that the police do not have any counseling rooms or appropriate equipment for recording the victim's testimony (Singh 2007). Even though the 1986 anti human trafficking act lays the burden of proof on the offender, the victim is often the one who bears this burden in actuality. Any woman sex worker is treated as if she somehow put herself in the position to be exploited. In this way, the police and courts often treat victims as criminals.

The following chart shows how many human trafficking cases in general were reported to the Nepali police and courts from 1997 to 2006:

*Table 5.4.1 Number of Trafficking Cases Reported to Police and Courts 1997-2006*⁹

Fiscal Year	Police	District Court	Appellate	Supreme
1997/8	130	317	159	41
1998/9	110	291	126	53
1999/2000	120	321	234	59
2000/1	90	244	152	67
2001/2	40	136	142	74
2002/3	54	367	72	134
2003/4	56	432	43	131
2004/5	72	(unknown)	(unknown)	(unknown)
2005/6	97	(unknown)	(unknown)	(unknown)

(Source: Nepal Police *Human Trafficking Cases Reported 2063 2006b* and Chief Attorney's Office Annual Report 2003)

Of the thousands of men, women, and children reportedly trafficked each year, only a few cases are actually taken to justice. From 2001-2005, the Maoist insurgency most likely contributed to the police's lack of human trafficking cases because the police were busier during this time. The significant difference between the number of projected incidences of trafficking and the actual court cases of trafficking could be due to lack of willingness of the victim to file the case and the lack of rescue of the

⁹ There were significant differences between the English and Nepali versions of these statistics. The English version did not reach before the year 2001. In addition, in the year 2002/3, the English version seems to give the police force more credibility than the Nepali statistics. For example, the English version lists 72 cases reported to the police versus the 54 reported cases in the Nepali text. For the purposes of this paper, I will use the Nepali version translated by Sunita Subba and me. Again, these statistics only account for those cases reported to the police and courts. The numbers of actual trafficking cases are probably in the thousands, but because of many reasons people fail to report the majority of them to the police.

trafficked victims. Many trafficked victims fail to file cases because they lack confidence in the police and justice system and fear social stigma, bribes, threats, the perpetrators, or personal shame (Thapa 2004). Because many times the person was trafficked by a family or community member, family and social pressures also play a large role in lack of reporting.

The large disparity between the numbers of trafficking cases filed with the courts and the police may be due to the fact that NGOs are filing court cases for victims of human trafficking without filing the complaint with the police first. This issue could also play an important role in why the police are not seeing as many cases of human trafficking reported to them. Many times the trafficked victims feel more comfortable having an organization take the case to the court instead of the police.

Table 5.4.2 Percentage of Successful Human Trafficking Cases in Courts 1997-2006

Fiscal Year	District Court	Appellate	Supreme
1997/8	66%	24%	42%
1998/9	68	20	71
1999/2000	69	16	55
2000/1	67	26	64
2001/2	61	19	50
2002/3	58	25	39
2003/4	50	33	53

(Source: Chief Attorney's Office Annual Report 2003)

The above chart shows that there may have been an increase in official cases where someone was falsely accused. Sometimes, a false victim accuses another person of trafficking as a means of revenge. A study on male sex traffickers in Kathmandu prisons said that in a few instances, innocent people were convicted of trafficking due to misinterpretation of the charges, insufficient probing on the charges,

or the accuseds' ignorance about the right of appeal to higher courts (Pokharel and Tamang 2007). The same study found that about 56% of the 110 imprisoned male traffickers studied did not have a lawyer during their trial (36). In addition, 72% reported mental or physical torture during custody (31). However, most of the time, the traffickers do not get the punishments they deserve and can easily pay a bail fee or bribe to be quickly released from prison.

5.5 Considerations of Legal Regulation and Policy in Nepal

5.5.1 Thoughts on Legal Regulation

Almost everyone with whom I talked said that legalization of sex work was not possible in Nepal at present. Some said that it may come someday when the discrimination against women in Nepal ends and when women can choose prostitution as a profession instead of by compulsion. However, from my preliminary research, most prostitutes do not willingly choose the profession when they have other similarly salaried options. The CAC Nepal doctor thought the sex trade should be regulated somehow because she sees how many female sex workers are being exploited by their clients and thinks that stopping the sex trade is impossible (Sharma 2007). However, most said that sex work should never be legally regulated.

Many of my interviewees reasoned that sex work is not and can never be a respectable occupation. Sadhana Ghimire from the Kathmandu School of Law said, “The words profession and occupation should connote a job by which you work hard to earn a respectable living. It should be something you are proud of. Because of social stigma, no one would ever be able to say they were a sex worker without some shame attached. In addition, sex is meant for mutual satisfaction, but sex workers do not receive this satisfaction” (Ghimire 2007).

Other respondents believed that sex work is a type of slavery—it is always exploitation and rape. It is a market where pimps, traders, and buyers earn money from the bodies of women, and clients purchase sex workers and their bodies for sexual acts the sex workers do not desire to commit (Sangroula 2001). In addition, sex work continues the cycle of discrimination against and exploitation of women. It gives men license to think that women are objects to be bought and sold (Sangroula, 2001).

According to Ghimire, legalization could increase sex trafficking by making the black market for younger and younger girls more profitable (2007). Commodification would make the price of sex go lower and lower and increase the demand for younger and younger women in the market because younger women always have a higher price. For example, in an Indian brothel, a client must pay 100% more if he wants to sleep with a new girl and an additional 50% if he wants to sleep with a completely new girl (Panta 2003).

Sex workers find a modicum of safety in being unknown. Legalization would pinpoint who the sex workers are so they would be vulnerable to public discrimination (Amatya, 2007). Legalization may not change the public stigma against sex workers. In a society where sex is a taboo topic, many people could not accept sex as someone's profession without embarrassment. Communities would not want to associate themselves with the brothels that would spring up.

Interestingly, 60% of the thirty Nepali sociology and anthropology master's students I surveyed said they thought society's views about sex workers would change if sex work were legal, with 70% thinking that Nepali society's current opinion of sex workers is that they are bad people. However, fewer (37%) thought sex work should be legal, and only 33% said that sex workers would be accepted by their families and in their communities if sex work were legal.

Legalization and legal regulation does not hamper the pimps and brothel owners, while exploiting the sex workers (Holland 2007). Pimps and brothel owners are still the ones making the profits, maybe more so because the sex workers cannot work as independent agents in the closed, legal market, but would have to move into the illegal, underground sex trade, which would almost certainly continue. Most sex workers do not want to open themselves up to public discrimination, government regulation, or taxes.

Legal regulation makes sex work an option that looks more viable and attractive than it really is. Legalization may tell young people that they do not need other skills because it gives women the option to have an unskilled job for easy money, making it more difficult for them to find a job to support themselves after their limited time slot in the world of sex work has expired (Ghimire 2007). This time slot is usually about six years for a trafficked girl in an brothel setting (Panta 2003). Just as cabin and dance restaurant waitress may be lured into the job for the money without knowledge of the actual situation they will face upon entering, girls and women could be enticed into the sex trade by seeing their friends' better economic status and want to join the trade without knowing the emotional and health consequences that would result.

Finally, legalization and regulation of the sex trade is seemingly impossible for the Nepali government and police force at this time. Because the Nepali government is still reeling from political upheaval, the government cannot provide its people simple necessities like food, water, petrol, and education. In addition, the Nepali police do not have enough resources to fight even human trafficking at this point.

5.5.2 Thoughts on Policy

For the above reasons, it seems that the time is not right for the legal regulation of sex work in Nepal; it may never be. Finding a better approach than either full legal regulation or complete criminalization is possible. Most of the people I interviewed

believed that, although Nepal's new anti-trafficking act is on the right track, more should be done. My interviewees listed some notable ideas and policy requests, which I have included below. The ideas presented below are mostly those of my interviewees—they do not necessarily promote my views and do not constitute my policy recommendations to the Nepali government.

Amatya firmly believed that free and compulsory education should be established in Nepal (2007). This idea was one of *Shakti Samuha* Trafficking Survivors' demands (for their other demands, see appendix 3). From my interview at CAC Nepal, I found that girls often must leave school earlier than boys because parents only have limited funds and decide to spend them on their boys, who will take care of them in their old age and not move away when married (the man lives in the parental home even after married). School should be free and mandatory for both girls and boys (Amatya 2007). This compulsory education should have rudimentary legal training. If society does not know the laws and how to report violations of them to the police, then there is no point in having laws. The education system should also teach awareness about trafficking, sexual exploitation, and child abuse.

Policies should be made to focus on gender equality, cutting off sex trafficking and the sex trade at its source. The Maoist party strongly believes that elections should represent every sector by the percentage of people in Nepal within that sector, including gender, region, ethnicity/caste, and economic/social status (Gharti 2007). Everyone must participate. Only when people can start treating each other as equals and respecting each other can they get the right to not be sold into prostitution (Gharti 2007). Along with gender equality, there must also be help provided to single mothers and victims of commercial sexual exploitation or trafficking.

The government should criminalize the clients of sex workers.¹⁰ No one has addressed the demand side of the sex trade or sex trafficking—the clients of sex workers (Ghimire 2007). The sex workers are often the ones who are punished by the police, even though the current laws say nothing about sex work (Amatya 2007). The customer is never punished, even though the customer is the exploiter (Amatya 2007). The HIV/AIDS graph shows that the numbers of clients with HIV/AIDS has been steadily increasing; whereas, the numbers of sex workers with HIV/AIDS have not. The criminalization of the clients may put a damper on the numbers of clients willing to take the risk of punishment.

The customers have a different opinion. One male customer described the difficulties closing cabin and dance restaurants or criminalizing clients would present: “The desire to intermingle and have sexual relations with the opposite sex is a natural phenomenon. We would seek alternate places to gratify ourselves if there were no female employees in these restaurants” (ILO 2006b: 46). Prostitution will always have some demand.

The government should make stricter anti human trafficking and anti commercial sexual exploitation laws and make them separate acts. In my survey for trafficking survivors that the *Maiti* Nepal staff answered, the staff believed the survivors would want life imprisonment without bail for the traffickers: “We, the survivors would be happy if we could cut the flesh of the criminals and put some salt and chilly powder in his cuts so that he has the feeling of torture which we had to undergo in the brothel.” One Indian brothel owner reported paying 500,000 Indian rupees in a year to the Nepali police and justice system to get a group of brokers out of prison (Panta 2003). *Maiti* Nepal thinks that brokers and traffickers should not be able to give bail. Sex work, commercial sexual exploitation, and human trafficking are

¹⁰ The 2006 anti human trafficking bill criminalizes the clients of sex workers.

lumped together in the 2006 trafficking bill. They should be separate so that the police and the public can better distinguish between these acts.

The police force should be better trained, an anti human trafficking specific force should be created, and new policing regulations should be created and well distributed. The Nepali police want more privacy in reporting so that victims can tell the police without the entire community knowing about their predicament (Singh 2007). Both Thapa and the Nepali police desire a special unit to be created to deal only with trafficking cases (Singh 2007; Thapa 2007).

NGOs, the police, and government need more accountability and coordination by law. NGOs often work in response to their funds and have no long-term vision (Raja 2007). They often begin with a great goal but then get caught in the drama to be publicized so that they can be awarded more funding (Raja 2007). There are currently about fifty organizations working on anti-trafficking and women's rights issues in Nepal, but nothing has really changed. In addition, there are at least five women and children trafficking victims' rehabilitation centers—Serve Nepal, *Shakti Samuha*, Peace Rehabilitation Center, ABC Nepal, and *Maiti Nepal*—and they are not all filled to capacity.

The police should be working with these organizations, and there should be government funding to fill the rehabilitation centers already built before creating a government rehabilitation center. Male and female victims of commercial sexual exploitation should also have a place to go. Currently, the following organizations are working with the needs of current sex workers: Serve Nepal, CAC Nepal, *Saathi*, and WOREC. Victims should be treated with utmost care and concern.

There should be regional and international collaboration in policing trafficking. Thapa believes there should be a “SAPATH, South Asia Professionals Association” against trafficking in human beings to foster cooperation in South Asia (2007). Even

after the SAARC convention against trafficking, there has been no improvement in the situation. A “SAARCPOL, a SAARC police force like asianpol or europol,” should also be created (Thapa 2007). Trafficking problems cannot be solved single handedly.

CHAPTER 6: CONCLUSION

“I want to help all those who need help, like God has helped me. I was only rescued because the police thought I was a minor. Otherwise, I’d still be there. The police say they can’t find my home. I’ve got nowhere to go. I’m not angry. I just want to stand on my own feet and forget those times.” – Survivor of sex trafficking (IN TDH 2007)

6.1 Author’s Policy Recommendations to Nepal

Because current law and social policy in Nepal are changing constantly and because the people’s basic needs are still yet to be met, a holistic approach must be taken toward prostitution and sex trafficking. Policymakers’ main concerns regarding prostitution and sex trafficking policy should be to encourage policies that stop sex trafficking and promote the prostitutes and sex trafficked victims’ best interest and safety. With good prevention and support policies, prostitution and sex trafficking could be greatly lessened. My recommendation consists of four levels, starting with the structural basis of gender equality; moving toward economic and legal bases by which women can be educated, move independently, and have access to more job opportunities; and finally ending with enforcement of those policies and punishment of those who commit the crimes of commercial sexual exploitation and sex trafficking.

At the structural level, free and compulsory education must be instituted in Nepal for all children—male and female, rich and poor, and of every caste and ethnic group. This education should include basic legal knowledge, such as how to report a case to the police; how to read, write, and speak Nepali; and how to protect and take care of oneself. Education in Nepal should also consist of technical education, rather than only book learning, teaching the older children how to work in a specific industry, such as mechanics, carpet weaving, or agriculture. In addition, the legal age of marriage should be made age 16 or older, and if Nepal wants to comply with the

international definition of adulthood the government should change the legal age of marriage to age 18 or older. No one should be allowed to give their daughter in marriage before the age of 16 because some young girls seek to be trafficked rather than marry at young ages (Asman 2008) and because girls (especially aged 12-15¹¹) should not be having children because of emotional and health risks.

Second, policies promoting business must be made, and women should be able to migrate as freely as men do. Business incentives could include lax export policies or decreased taxes. With the political conflict and Maoist-inflicted taxes on top of government taxes, businesses (such as carpet and garment factories and print shops) have been closing down in Nepal, thus making the limited job supply even smaller. Women need to have job options other than hard labor, prostitution, begging, and dance and cabin restaurant work. These policies should make women independent of male caretakers. They should be able to choose their own work options and be able to migrate outside of Nepal without a male relative's consent. These policies will empower women to make their own life decisions without reliance upon male structures, thereby, enabling them to survive even if their male relatives disappear or die.

Third, Nepal should decriminalize the sex trade in Nepal, making prostitution legal but not regulated differently than other business ventures, and maintain status quo on its policies criminalizing the pimps or madams that force someone into prostitution and sex traffickers. The sex workers and the clients of sex workers should not be criminalized. Because there are already enough rehabilitation centers for sex trafficked victims, Nepal should cut its policy of creating a governmental rehabilitation center for only sex trafficked victims. Instead, the government should

¹¹ The most common childhood marriage ages in Nepal.

institute a support system for any prostitute or sex trafficked victim who would like to leave the trade.

Fourth, judges and police must ensure that these policies are enforced without harming the prostitutes or sex trafficked victims. Stricter regulation must be made of the police officials. Police officers who aid and abet trafficking and/or prostitution or harms or blackmails a prostitute should be harshly punished and fined. If the police bribe, beat, or torture anyone (including the accused), they should be punished. The police should be paid a higher salary so that bribing businesses such as massage parlors and cabin restaurants is not necessary. In addition, interregional and international cooperation is needed in stemming the demand for sex trafficked women and children and in policing sex traffickers, buyers, and pimps.

Nepali policy is on the right track, but at present the law enforcement officials, police, and judges must unite to make sure sex traffickers and pimps are caught and punished. The above policy changes will not only help in the prevention of prostitution and sex trafficking but also enable women to choose a better life if they desire. But policy must not stop at prevention, it must also insure enforcement and help for those who have been trafficked and sexually exploited. In this way, Nepal can better fight prostitution and sex trafficking.

6.2 The Price

The cost of sex trafficking and the sex trade is great to Nepal. Trafficking is a highly organized crime that seems to be gaining in popularity despite all the voices against it, and the sex trade continues to grow and thrive. Only by uniting the voices will the root problems of gender discrimination and poverty be solved. There is hope. Many organizations, such as many of those organizations I mention in this paper, are doing a good job in their realm of expertise. People like the workers at *Saathi*, Serve

Nepal, Peace Rehabilitation Center, and CAC Nepal dedicate time and money to listen and care for sex workers and sex trafficking victims. However, the ease of getting caught up in funding wars, talks, laws, and publicity should be fought against, when the fact is that a human life cannot and should not be sold or bought at any price.

Governments should decriminalize prostitutes because the prostitutes are being actively exploited and abused and should not be punished any further by the legal authorities. Governments should criminalize all parties involved in trafficking anyone for sex and the pimps or madams that force someone into unwilling prostitution. This approach appears to be the best policy decision in maintaining sex trafficked victims and prostitutes' rights while decreasing organized crime related to prostitution and sex trafficking.

Decriminalization does not mean complete government laxity in policy related to prostitution-specific business. No one under the legal marriage or drinking age should be allowed to prostitute because, if the government does not think the person has enough judgment to get married or drink alcohol safely, that person is certainly not old enough to sell sex. Instead of punishing or sending underage prostitutes back to abusive homes or governmental programs, these young people should be referred to non-governmental organizations specifically designed to help victims of sexual abuse, trafficking, and prostitution. Legal-age prostitutes should not have to undergo any additional surveillance by the police, such as filing fingerprints or a prostitute ID card or undergoing regular government health examinations. However, health services and HIV/AIDS and STD testing should be available to sex workers.

The policies suggested above should be used in combination with support-oriented policies. Basic advancements such as compulsory education and support structures for poor women may prove to best prevent prostitution. Governments should allow prostitutes and sex trafficked victims a mechanism by which they can

leave the sex trade if they desire by directing them to private organizations set up for rehabilitation. By correctly differentiating between the criminals and the victims, prostitution and sex trafficking law will not only be more ethical but also help in the prevention of true crime and exploitation.

Whether decriminalization betters the situation of prostitutes and sex trafficked victims should serve as the evaluation measure used to determine its effectiveness. In the end, if decriminalization is a credible policy, prostitutes and sex trafficked victims should have better access to the police and medical and rehabilitation services, the sex trade should not be controlled by pimps, and the women who join the sex trade should have more choice as to where, when, and how to sell sex. Decriminalization may or may not have any bearing on decreasing the numbers of sex trafficked women and children. However, it should allow these women and children better access to justice against their traffickers; and, by default, eventually decrease the numbers of women and children trafficked for sex.

Nepal is on the right track, but it needs the donors, NGOs, police, parliamentarians, government, and society to be sensitive to the needs of sex workers and victims of trafficking in the Nepali context. Sometimes that means ending the imperialist notions of foreign people and countries that they know what is best for Nepal, and sometimes it takes humility on Nepal's part in understanding that some old traditions, like gender discrimination, are wrong and do not work. But the price of a life is worth it.

APPENDIX 1: BILL CONTROLLING HUMAN SELLING AND TRAFFICKING

2063 BS (2006)

—Enacted in the summer of 2007—

Translated by Sunita Subba. Kathmandu: MWCSW, May 2007.

A roughly translated outline of this bill is provided below:

Column 1

Part 2: Definitions—

- “Fault”—see part 3
- “Rehabilitation center”—see part 13
- “Victim”—one who is sold and trafficked or forced to do prostitution
- “Children”—someone below 16 years of age
- “Exploitation”—making someone a slave or bonded laborer, making someone do a job or taking internal organs against his or her wishes by force
- “As stated”—all the above meanings should be applied to the same words used in this bill

Column 2

Part 3: Fault—Anyone who buys or sells humans and/or traffics humans is “at fault”

Part 4: Definition of Human Trafficking—

- Buying or selling a human being
- Taking someone into prostitution or making someone a prostitute (whether or not the offender received benefits)
- Taking or buying human organs
- Forcing someone to provide service or labor against his or her wishes
- Buying a prostitute’s services
- Taking someone into a foreign country with the intention to buy or sell them

- Human trafficking is done using any of the following methods, in Nepal or abroad: Forcing or persuading someone to become a prostitute, cheating, bribing, forcing, threatening, kidnapping, using someone for bonded labor, taking advantage of someone's poor situation, misusing power, giving attraction to parents, controlling, or luring someone to do any of the above offenses

Part 5: Who Can Complain

- Anyone who has had a fault, according to part 3, perpetrated against them can complain to the nearest police station
- Complainant can keep his or her name confidential

Part 6: Complaint Process

- Police must send the complainant to the district court to prove his or her case
- If the case is of wider scope than the district court, the district court must send the case to a higher court for processing
- The complainant does not have to come to court, but he or she must have proof

Part 7: Search, Seizure, and Arrest—Police can immediately arrest and search without a warrant for human trafficking cases if there is probable cause

- Police can search and seize the house, land, vehicles, and/or other personal possessions of the accused during the search process
- Police can forcefully break and enter if someone tries to prevent access to search and seizure
- Police can arrest the accused without warrant
- Police can use the accused person's house, land, vehicles, and/or other personal possessions as proof of evidence
- Police can only break and enter the accused person's property in front of local people or witnesses

Part 8: Imprisonment and taking action—Accused can be imprisoned

Part 9: The accused must provide proof if he or she is not at fault

Part 10: Accused can have a personal lawyer

Part 11: Accused can have a translator/interpreter if the accused pays for such services

Column 3: Rescue, Rehabilitation, and Reunion

Part 12: Rescue of victims of trafficking—If any Nepali citizen is trafficked abroad, the Nepal government will rescue them

Part 13: Rehabilitation Center—

- A rehabilitation center should provide mental and physical treatment, social rehabilitation, and family reunion for victims of trafficking
- If government thinks it is necessary, it can establish a rehabilitation center, but NGOs can also establish rehabilitation centers
- NGO rehabilitation centers can receive support from the Nepali government
- The government center will
 - Try to reunite the victim with his/her family and society
 - Provide medical care and counseling
 - Not force victims to do jobs or activities against the victim's wishes

Part 14: Rehabilitation Center Trust

- Nepali government will establish a trust to fund the rehabilitation center
- The budget will come from Nepal government, donor agencies, individuals, and other organizations and from the fines paid by guilty offenders

Column 4: Punishment and Compensation

Part 15: Crimes and Punishments

- Human Trafficking: up to 20 years imprisonment and 100,000 NRs in fine
- Makes someone a prostitute: 10-15 years in prison, 50,000-100,000 NRs fine

- Buying/Selling Human Organs: 10 years prison, 200,000-500,000 NRs fine
- Forcing someone to provide service or labor against his or her wishes: 3 months-2 years prison, 50,000-100,000 NRs fine
- Buying a prostitute's services: 1-3 months prison, 2,000-5,000 NRs fine
- Trafficking abroad intentionally for prostitution or buying/selling purposes:
 - Trafficking Adults: 10-15 years prison, 50,000-100,000 NRs fine
 - Trafficking Children: 15-20 years prison, 100,000 NRs fine
- Internal trafficking:
 - Of Adults: 10 years, 50,000-100,000 NRs fine
 - Of Children: 10-12 years, 100,000 NRs fine
- Exploiting someone, or the intention to exploit someone
 - Inside Nepal: 1-2 years prison and 50,000-100,000 NRs fine
 - Abroad: 2-5 years prison and 50,000-100,000 NRs fine
- Making someone a prostitute without any benefit to himself/herself
 - 7-10 years prison
- Separate and combined sentences will be given for separate offenses
- 25% extra punishment for people in respectable, high, governmental position
- 10% extra punishment for officials who sexually abuse family members
- 25% extra punishment for repeat offenders
- Once someone files a case, and they significantly change the story in subsequent retellings: 3 months-1 year prison

Part 16: No Punishment

- If a victim tries to escape his/her assailant, and he/she hurts or kills the assailant, the victim will receive no punishment

Part 17: Compensation

- When guilty person pays the fine, 50% goes to the victim

Column 5

Part 18: Seizure of Property

- By doing any of the above crimes, if the criminal has gotten money, land, or property, this money, land, or property will be seized by the government
- If the criminal uses any of his/her own property or land to commit these crimes, these possessions will also be seized.

Part 19: Reward

- If anyone informs about the offenders or rescues the victim, this person will receive 10% of the offender's fine.
- Money will be shared among the informants (if multiple).

Part 20: Victim Protection

- Whoever gives inquiry about an accused can be protected (all information must be kept confidential)

Part 21: The Accused

- If criminal accepts his fault and helps police find other criminals, his/her punishment will be lessened by 25%
- If accused gave false information, his/her case can be filed again
- The criminal cannot get a reduced punishment if...
 - The criminal comes back again for the same offense
 - If criminal traffics children

Part 22: If the government lawyer sees moral downfall of the accused, he/she can claim against the accused when the case is registered

Part 23: Government can establish national and district committees to control human trafficking and rehabilitate victims.

Part 24: If someone tries to hamper with research of a case, they must pay 10,000 NRs fine

Part 25: Someone who writes, publishes, advertises, or uses a case without the victim's permission must pay 10,000-25,000 NRs fine

Part 26: Victim's Protection System

- If the victim feels unsafe or that someone is taking revenge, police can provide security in the following ways:
 - Coming and returning from court
 - Victim can stay in police custody for a limited time
 - Victim can stay in rehabilitation center

Part 27: Inn Camera Case

- These cases shall be closed cases with no media presence, no public, and only those most directly involved in the case
- Closed hearing: private, only people allowed by the court can enter

Part 29: Right to Construct Rules

- Government can build rules to implement this law

Part 30: Rejection, Revision, and Defense

- Once passed by Parliament, this bill voids the 2043 BS law on human trafficking (or the Human Trafficking Control Act 1986)

APPENDIX 2: OTHER LAWS RELATED TO SEX WORK AND TRAFFICKING

Nepali Laws on Trafficking

- Constitution of the Kingdom of Nepal of 2047 BS, 1990 AD (as noted in Pokharel and Tamang 2007: 6-7)
 - Article 11(3)—Allows for laws to protect women, children, and other people normally discriminated against based on class, caste, ethnicity, education, or mental or physical incapacity.
 - Article 20—Trafficking in human beings, slavery, serfdom, or forced labor in any form is prohibited and punishable by law.
- *Muluki Ain* or National Code of 2020 BS, 1963 AD, Part 4, Chapter 11 (Paudel 2007)
 - Human Trafficking Provision:
 - Human Trafficking is defined as...Punishment is...
 1. Making someone a slave: 3-10 years prison and court can ask for compensation
 2. Trafficking in human beings outside the country for sale: 20 years prison. For attempted: 10 years prison.
 3. Taking minors under age 16 without parental consent: up to 3 years prison and/or 500 NRs fine
- Human Trafficking Control Act of 2043 BS, 1986 AD (Paudel 2007)
 - Interesting factors of this act:
 - Provision for extraterritorial jurisdiction—if a Nepali goes outside Nepal and commits this crime, he/she is still liable for punishment

- System for Verification of Victim’s Statements—if victim goes to police, the police have to go to the nearest court and gain permission to investigate
- Police have to take victim’s statement in front of a public prosecutor (victim’s statement must be verified by court)
- Burden of proof lies with the offender
- Regular Nepali system (outside this act):
 - Police are completely liable for the investigation
 - Police should take victim’s statements in their own way without presence of the prosecutor
 - After investigation, the police are finished and the prosecutor performs the rest of the case
 - Usually, the burden of proof lies with the plaintiff
- Human Trafficking Offenses...and Punishment
 - To sell a human being: 10 years prison
 - To take someone to a foreign country with intention to sell them: 5-10 years prison
 - To make someone a prostitute or lure, threaten, coerce, tempt, or force someone into prostitution (note: very rarely used, one intention of this provision was to prohibit brothels): 10-15 years prison
 - Anyone who helps, encourages, attempts, or makes arrangements for the above offenses: up to 5 years prison
 - If the sale price is known for the sale of a victim, the criminal will be fined for up to that amount

- The person who buys a victim cannot claim the amount he/she paid for the victim
 - Bill Controlling Human Selling and Trafficking 2063 BS (2006)—see appendix 1.
- Pertinent Nepali Laws Related to Sex, Sexual Harassment, and Marriage
- No law defines prostitution or makes it illegal in Nepal (Shrestha: 12).
 - Public Offense Act of 2027 BS (Paudel 2007)—If someone does get arrested for prostitution, it is usually under this Act
 - Punishment: Fine up to 10,000 NRs for
 - Breaking the peace
 - Vulgar gestures or activities in public places
 - Police can use this act to raid public places for prostitution (i.e. hotels, massage parlors) because the place is supposed to be used for activities other than prostitution
 - Marriage Law (Paudel 2007):
 - Both men and women can be married at 18 years old with parental or guardian consent or at 20 years old without consent.
 - Rape Law (Paudel 2007): If the victim is...the criminal receives...
 - Under 10 years old: 10-15 years prison
 - 10-13 years old: 8-12 years prison
 - 14-15 years old: 6-10 years prison
 - 16-20 years old: 5-8 years prison
 - 21 and over: 5-7 years prison
 - If offender is the husband: 3-6 months in prison
 - Anyone who has sexual relations with a child under the age of 16 years old, even if the child is willing, commits rape.

- Pedophilia Law (Paudel 2007)—Unnatural sex with a child under age of 16: 1 year or more prison and a fine.
- Civil Code: Sexual Harassment and Abuse, Part 4, Chapter 13 (Paudel 2007)
 - 1 year prison and 10,000 NRs fine and due compensation to the victim for
 - Touching someone’s sensitive organs or forcing someone to touch your sensitive organs, forcefully taking off someone’s clothing, taking them to a lonely place, showing vulgar pictures, making sexual gestures, teasing, unnatural activities, or touching with the intent of physical relations with someone without their consent or in public places
- Children Act of 1992 (Pradhan-Malla 2004: 20)
 - No one can use a child or use, take, or publish photographs of children for an “immoral profession.” Offenders can be charged with up to one year’s imprisonment and/or a 10,000 NRs fine.

Other Pertinent Nepali Laws

- Under Nepali law, you are considered an adult and can become a Nepali citizen at age 16 (Paudel 2007).
- There is no current Nepali law specifically against kidnapping (Paudel 2007).
- Labor Act 2048 BS (1991) and Labor Rules 2050 BS (Paudel 2007)
 - Ages 14-16 can only work 6 hours a day and 36 hours maximum per week, from the hours of 6 am-6 pm.
 - 16-18: if willing, they can work before 6 am and after 6 pm.
 - Over 18: all types of work
 - The only work provision for minors is the levels of weight that can be carried by certain age groups

- Nepal Treaty Act of 1991—International instruments to which Nepal is a party supercede domestic law (Pradhan-Malla 2004: 9).

Related Regional Instruments (to which Nepal is party)

- 2002 SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution
- 2002 SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia
- South Asia Strategy against Commercial Sexual Exploitation of Children and Child Abuse—2002 Yokohama Global Commitment from the Second World Congress against Commercial Sexual Exploitation of Children
- 2004 Promises Renewed and Reinforced from South Asia regional mid-term review of the Yokohama Global Commitment 2001

Related International Instruments (to which Nepal is party)

- UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)—ratified in 1963 (Pradhan-Malla 2004: 11)

CEDAW, often called the international bill of rights for women, affirms women’s equality to men and requires states to set up systems by which they can end all discrimination against women. This convention also affirms the reproductive rights of women and emphasizes that culture and tradition are influential in defining gender roles. CEDAW affirms women’s rights to acquire, change, or retain their nationality and the nationality of their children. States also agree to prevent and take action against trafficking and exploitation of women.

- Convention on the Rights of the Child (CRC)—ratified in 1990 (Pradhan-Malla 2004: 10)

CRC defines a child as anyone less than 18 years of age. It states that children have the inherent rights to life, nationality, health, and education and the

freedoms of thought, expression, and religion. Articles 34 through 35 require States to protect children from all sexual exploitation, including child prostitution, pornography, and trafficking.

- Stockholm Agenda for Action against the Commercial Sexual Exploitation of Children—adopted in 1996
- ILO Minimum Age Convention (No. 138)—ratified in 1997 (Pradhan-Malla 2004: 13)
 - The minimum age for completing compulsory schooling is 15 years
 - Hazardous work should not be completed by anyone less than 18 years old
- ILO Forced Labor Convention (No. 29) on Forced or Compulsory Labor—ratified in 2001
- ILO Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor—ratified in 2002 (Pradhan-Malla 2007: 12)
 - Children below 18 years of age should not be involved in the worst forms of child labor, including child slavery, trafficking, prostitution, and pornography.

Related International Instruments (to which Nepal is NOT yet party)

- CRC's Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography—signed in 2000 but not yet ratified.

The protocol prohibits the sale of children, child prostitution, and child pornography. It requires States to criminalize these acts, ensure jurisdiction over offences, and provide for the extradition of offenders. It also promotes the provision of support to survivors of commercial child sexual exploitation

and cooperation between States in the capture of offenders (Pradhan-Malla 2004: 10).

APPENDIX 3: TRAFFICKING SURVIVOR'S DEMANDS TO THE NEPALI
GOVERNMENT

Shakti Samuha Document. Translated by Sunita Subba. April 2007.

- I. Compulsory education and skillful employment.
- II. Government rehabilitation center for victims of trafficking.*
- III. Free health treatment for victims of trafficking.*
- IV. Right of food, shelter, clothing.
- V. Punishment for traffickers and buyers.*
- VI. Special health right—right and guarantee to live an anti-violent life.
- VII. Children of trafficked victims need free health, security system, and education.
- VIII. Right of citizenship should be able to be given to the children from the mother as well as the father.**
- IX. Compensation should be given to victims of trafficking.*
- X. Alternative employment and protection should be given.*
- XI. Domestic trafficking must be inside the law.*
- XII. Pimps must be punished for a long time—life imprisonment.
- XIII. The people within society bothering or stigmatizing survivors of trafficking should be punished.
- XIV. The country has to confirm affected single women's fundamental rights.
- XV. The government has to have access to information about affected people inside and outside the nation.
- XVI. Government should do research with the intention to stop human trafficking.
- XVII. Affected victim's case should be held in a private *inn camera* court.*

* These requests were granted when the 2006 Anti trafficking bill was passed.

** This right was partially granted recently, but still some minor exceptions exist.

- XVIII. Labor negotiations and collaborations should be held between source and destination countries.
- XIX. Victims of human trafficking should be given the right to spread information about trafficking and work at cross-border checkpoints.
- XX. During the legal process, the person's family and helpers should be protected from society's harm.
- XXI. The nation should confirm the right to confidentiality for survivors.*
- XXII. Government has to work hard to solve the problem and develop an effective policy program and plan in coordination with victims.

APPENDIX 4: RESEARCH INSTRUMENTS

Sample Interview Questions:

Government Officials, Parliamentarians, Activists, and NGOs

1. What do(es) you/your organization do concerning the sex trade/sex trafficking in Nepal? What is your area of focus/particular programs in your organization?
2. What are the current laws pertaining to the sex trade in Nepal? Where can I find these laws?
3. How are these laws enforced? How could they be better enforced?
4. How do sex workers come into the trade? How/why do they leave it?
5. How/why are women trafficked? What could be done to prevent it?
6. What is the typical description (i.e. caste, location of origin) of a sex worker?
7. Can you give me an overview of what a typical day in the life of a sex worker/trafficked victim is like in Nepal? Can you describe the typical salary, hours in the workweek, working conditions?
8. How does the government determine the difference between sex workers who choose to be sex workers and those who have been trafficked?
9. Are there other viable job options for sex workers? What are they?
10. Do(es) you/your organization support the legalization of sex work in Nepal? Why or why not?
11. Would a legal sex trade in Nepal offer sex workers safety from physical and sexual assault? Why or why not?
12. If sex work were legal, would the current public stigma on sex workers change? Why or why not?
13. If sex work were legal, would sex workers have better access to police/health services? Why or why not?

Nepali Police

1. How many cases of sex trafficking have you recorded?
2. How many arrests of sex workers/pimps/traffickers have been recorded?
3. How does the police enforce Nepal's policies on the sex trade/sex trafficking?
How could enforcement be done better?
4. How do you determine who was trafficked vs. who chose to be in the sex trade?
5. How do sex workers come into the trade? How/why do they leave it?
6. How/why are women trafficked? What could be done to prevent it?
7. Would a legal sex trade in Nepal offer sex workers safety from physical and sexual assault? Why or why not?
8. If sex work were legal, would the current public stigma on sex workers change?
Why or why not?
9. What kinds of policies would you suggest to the government regarding sex work?
10. If sex work were legal, would sex workers have better access to police/health services? Why or why not?

Cabin Restaurant Waitresses

1. Where are you from?
2. How long have you been working here?
3. Did you have training? Where?
4. What are the qualifications to work here?
5. How many waitresses work here?
6. How/why did you become a waitress?
7. Do you like your job? Why/why not?
8. Is your job respected (by the public, your boss, customers, the police)?
9. What services do you provide to your customers?

10. What do you do each day?
11. How much salary do you earn?
12. How long do you work each week?
13. How many customers do you have per day?
14. What types of customers come here?
15. Do you ever suffer abuse from your customers? If so...
16. If you are abused at work, where do you go for help?
17. Do these people usually help you?
18. Do you ever interact with the police in your job? What kind of interactions are they? What is your opinion of the police?
19. What kinds of policies would you ask for the government to create to make your job better or more respected?

Survivors of Trafficking Questions Handout

1. How much salary do sex workers earn per customer in a week?
2. How many customers do they have per day?
3. Do sex workers suffer physical, verbal or emotional abuse from their boss or customers? If so...
 - a. Who usually abuses them?
 - b. What kind of abuse?
 - c. How often?
4. If someone was abused at work, where did they go for help?
5. Do sex workers ever interact with the police? What kind of interaction did they have?
6. Would someone want to choose sex work as an occupation if they knew what the job actually is?

7. Do you think that a legal sex trade in Nepal would offer sex workers safety from physical and sexual assault? Would they have better access to police and health services? Why or why not?
8. If sex work were legal, would the current public stigma on sex workers change? Why or why not?
9. What do you think the government/police force should do about the sex trade/sex trafficking in Nepal?
10. What kind of laws should you ask the Nepali government to make regarding sex work, trafficking and trafficking victims?

TU Student Survey:

1. Your Department: Anthropology/Sociology Political Science
Other(*specify*) _____
2. Age: _____
3. Caste/Ethnic Group: Brahmin Chhettri Newar Tamang Magar
Other(*specify*) _____
4. Religion: Hindu Buddhist Ba'hai Muslim Christian Other(*specify*) _____
5. What is your opinion about sex workers in Nepal?
“Sex workers are...” (*Check all that apply*)
 - Victims
 - Agents of their own fate
 - Bad people
 - Honest workers
 - Other (*specify*) _____
6. What is Nepali society’s opinion about sex workers?
“Sex workers are...” (*Check all that apply*)

- Victims
- Agents of their own fate
- Bad people
- Honest workers
- Other (*specify*)_____

7. In your opinion, what should be done about sex workers in Nepal?

“They should be...” (*check all that apply*)

- Punished If so, how? _____
- Saved If so, how? _____
- Taught about other work
- The sex workers’ boss should be punished
- Other (*specify*)_____

8. Do you think the sex trade should be legal in Nepal? (*Check one*)

- YES NO I DON’T KNOW

Why or why not? (*Write your own opinion*)

9. If sex work were legal in Nepal, what would you think about sex workers?

(*Write your own opinion*)

10. If sex work were legal, do you think the current public views about sex

workers would change? (*Check one*) YES NO I DON’T KNOW

Why or why not? (*Write your answer in the space below*)

11. If sex work were legal, would sex workers be accepted by their families and in

their communities? (*Check one*) YES NO I DON’T KNOW

12. If sex work were legal, do you think sex workers would have better access to

the police and to hospital services? (*Check one*) YES NO

I DON’T KNOW

Why or why not? (*Write your answer in the space below*)

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