

FULBRIGHT MONTHLY LECTURE SERIES

Human Trafficking in Nepal

What Have Changed, and What Not?

Tuesday, January 30, 2018
3 - 5 p.m.

USEF-Nepal Auditorium
Gyaneshor, Kathmandu



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Human Trafficking: Legal Framework, Mechanisms and Reforms

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What is Human Trafficking?

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- A Person is made to do an entirely different work other than agreed or promised
- Intention to sell the person for manifold purpose
- Exploitation
- Absence of Consent. (Consent of minors are discarded while the consent taken under coercion, undue influence, misrepresentation is no consent at all)

What is not Human Trafficking?

- Foreign Employment
- Migration in search of opportunity
- Migration
- Illegal Immigration

AMP Approach

Act+ Means+ Purpose = Human Trafficking

Act connotes What?

Marriage, relationship, False promise of work through any kind of acts

Means Connote How?

Coercion, Vulnerability, Undue influence

Purpose connote Why?

Exploitation, Forced Prostitution, slavery,

Legal Framework and Mechanisms

1. Constitution of Nepal

Article 16: Right to live with dignity

Article 21: Right of victim of crime(Newly added)

Article 29: Right against exploitation

(3)“No person shall be subjected to trafficking nor shall one be held in slavery and servitude”

(4) “ No one shall be forced to work against his/her will”

Article 38: Rights of women
Specifically sub art. 3

Article 39: Rights of the child
Specifically sub art. 5

**2. Human Trafficking and Transportation
(Control) Act 2064 (2008)**

Section 5: Reporting the case (Confidential if
one wishes)

Section 9: Burden of proof to the accused

Section 10: Right to Keep Separate Legal
Practitioner

Section 11: Provision of translator and interpreter
(Amended by the Some Gender Equality Act 2016 which states that Nepal Gov shall bear the expenses to the translators and interpreters.)

Section 13: Rehabilitation Centers

Section 14: Rehabilitation Fund

Section 16: Exemption from Punishment

Section 17: Compensation

Sub sec. 1

(Amended by the Some Gender Equality Act which states that incase the perpetrator is unable to compensate the victim, the court shall in accordance to Section 14 shall compensate the victim from the Rehabilitation Fund)

Section 20: Confidentiality of the informant

Section 25: Prohibition against disseminating any information of the victim

Section 26: Security

Sub sec. 1

(Amended by Some Gender Equality Act which states daily allowance to be provided to the witness (through the gov side) by the gov attorney office, however prior given by the police office)

3. Convention on the Elimination of All forms of Discrimination Against Women 1979 (CEDAW)

Article 6

“States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”

4. Convention on the Rights of the Child 1989 (CRC)

Article 11

“States Parties shall take measures to combat the illicit transfer and non-return of children abroad.”

Some Gaps and Weaknesses in the Law

- Lack of clarity in difference between Human Trafficking and Human Transportation. For instance : unlike the definition enumerated by the Palermo Protocol 2000), the definition provided by HTTCA 2008 seems to be vague.

For instance: Only talks about trafficking in person out of the country and within.

- The definition of ‘Exploitation’ under sec 2 (e) of the Act is very narrow that overlooks the labour exploitation, child labor and other forms of exploitation.
- Survivors of human trafficking are often asked to reappear in court even after the authentication of his/her statement even though the law does not make it necessary.

- Lack of Extradition Treaty between Nepal and destination countries.
- The individual unable to understand the official language is to request to District Committee for a translator. However no DCCHT has created a roster of translators or interpreters.
- The law is unclear as to the responsibility to rescue the victim that has further dilly dallied the situation.
- No compensation has been received yet.
- Although a pseudonym or case number is used in formal documents, throughout the prosecution procedure the name or other personal information of the complainant is often revealed: either in the investigation procedure, in the court room, or even by the media

Reforms to be made

- Amend the HTTCA 2008
(However proposed draft has already been prepared but yet to pass)
- Ratify the Palermo Protocol 2000. Why?
(MoWCSW has requested the MoHA)
- Effective Implementation of law
- DCCHT, NCCHT has to be restructured in accordance with the new federal structure.
- Make the new law parallel to the changing patterns of Human Trafficking
- Arrangements for Interim Relief during the court proceedings to the victims.

Landmark judgment of the Supreme Court

Meera Dhungana Vs. Prime Minister and Office of Council of Ministers, 2068 B.S., Writ No. 2068-ws-0046

Petitioners in the case demanded that the provision in the Human Trafficking and Transportation Act to imprison the person/witness who does not cooperate in the court procedure or gives unfavorable statement in the court is not appropriate, is discriminatory and is against the Interim Constitution and therefore should be declared void. Petitioners also demanded appropriate orders in regard to witness protection.

Court Verdict:

- Ordered to review Section 15 (6) of Human Trafficking and Transportation Act and to make legal provisions to punish those who intentionally file wrong case or change statement to assault others.
- Victim to be compulsorily informed by concerned Government Attorney Office and concerned police office regarding the charge sheet, prosecution, investigation of the case by providing duplicate copy of the charge sheet.
- A separate Compensation Fund to be established and to appropriate necessary amount in the budget of fiscal year 2071/72. Witness to be provided with the amount from concerned police office.
- To provide and cause to provide security to the complainant in case if demanded by the person from the concerned office.

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