
HUMAN TRAFFICKING IN NEPAL – AN OVERVIEW*

Abstract

This research article on human trafficking in the newly-formed democracy of Nepal, attempts an in-depth analysis of the data presently available on the estimated number of people annually trafficked, along with the national and international legal framework to regulate and curb such menaces. This, being a subject of contemporary relevance, requires immediate international attention and a strong, transparent database of organized crimes committed against women and children within and across the borders of Nepal. Human trafficking has been classified into three broad categories – rural, urban and cross-border based. The causes and effects of this gross breach of human rights have been analyzed along with the blurring lines between definitions, that has resulted in further exploitation of those trafficked. The authors, here, have attempted to study the available conventions, legislations and case-laws on human trafficking in the country as well as international bodies, and have tried to observe the prevailing trends in governmental action or the lack of it thereof. This involves studying the extent of governmental and non-governmental undertakings and their corollaries.

Keywords - Human Trafficking, Nepal, Earthquake, Maiti, Prevention, Human Rights, conventions, protocol, migration, poverty, Economic Freedom.

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STRUCTURE AND CHAPTERIZATION

The approach to this paper has been done in the following fashion. Firstly, the issue of migration has been addressed. The authors have studied the causes and types of migratory patterns, along with government remedies or the lack of them thereof. Secondly, the pattern of trafficking has been studied; the modus operandi adopted by the traffickers in order to carry out the process of cross-border trafficking. Subsequently, the transition from human trafficking to prostitution has been laid out, with the aid of available government statistics, and comparative global data. The chapter following that comprises case studies and the aftermath of the 2015 earthquake, and preventive methods adopted by the Nepal government and international governing institutions, in addition to rescue operations conducted by one prominent NGO called Maiti Nepal. Lastly, the paper concludes with an overview of the legal assistance in the form of statutory provisions and landmark case-laws and precedents, followed by a detailed case study of Maiti Nepal.

1. INTRODUCTION

Flesh trade has become a global problem over the recent years. An increasing number of men, women and children have been trafficked to the extent that ‘Some estimates claim that the profits from this trafficking eclipse the profits from the underground trade in arms and narcotics’¹.

Article 3 of the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons* defines trafficking as ‘the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.’²

This article forays into the complexities of flesh trade in Nepal, along with a study on the background of said trade in the region, and available* statistical representation of the same. It should, however be noted

¹ Jyoti Sanghera and Ratna Kapur, *An Assessment of Laws and Policies for the Prevention and Control of Trafficking in Nepal* (The Asia Foundation, December 2000)

² United Nations, *Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime* (2000)

*It is noteworthy that the data provided on the secondary platforms are sporadically updated and hence, forming the subject of one of the issues in this article

that considering the transformation in administration over the past decade, there has been little addition to the already negligible data available on public domains.

According to *Maiti Nepal*, a Non-Governmental Organization (talked about in length in the subsequent sections) devoted to combating trafficking in women and children; Nepal has seen increasing trends in trafficking over the recent years. Trafficking is not a recent development in Nepal and even though it is a prevalent criminal activity, not much is being done to address the problem, and if attempts are made, not much success has been achieved in curbing the activity. A recent study by the *National Human Rights Commission of Nepal* says that the country, which has population of twenty-two million people, witnesses an annual trafficking rate of broadly around six thousand five hundred³ people annually.

The Trafficking in Persons Report, 2011 compiled by the US State Department⁴ confirms that Nepal is mainly a source country for men, women and children subjected to forced labour and sex trafficking. Trafficking destinations can be broadly classified into *within Nepal, Nepal to India and Nepal to other countries*. Flesh trade from Nepal to India dates back to an era when Nepal was under autocratic rule⁵. Largely, Nepali girls and women are trafficked to India for prostitution. In raids conducted on Bombay brothels, the Indian police took into custody over 200 minor Nepali girls, bringing to light the underbelly of the sex-trafficking trade⁶.

As concern over sex trafficking appeared on the international agenda, the degree of funding for interventions in Nepal increased. This also led to an increase in the number of NGOs. Though this is definitely an advancement, no reliable database of NGOs exists today and there is no standard way of tracking their activities, expenditures, or administrative costs. Only a handful of programs have been developed and sustained over time, and for a majority of NGOs, anti-trafficking is merely a one-time initiative.

³ NHRC Nepal, Trafficking In Persons Especially On Women And Children In Nepal, National Report 2012-13 (2014)

⁴ Trafficking in Persons Report, Department of State, United States of America, June 2011 < <http://www.state.gov/documents/organization/164452.pdf> > Last Accessed on August 30th, 2015.

⁵ Human Rights Watch, Report (1995)

⁶ Ramyata Limbu, Girls 'Rescued' from Brothels in Limbo in Bombay, IPS News, May 9th 1996 < <http://www.ipsnews.net/1996/05/nepal-girls-rescued-from-brothels-in-limbo-in-bombay> > Last Accessed on August 31st, 2015.

2. MIGRATION AND TRAFFICKING

The reasons for migration in Nepal can be attributed to the acute poverty that a majority of its population lives in. Nepal is one of the poorest countries in the world and most people in Nepal lack economic freedom and opportunity. The country is ranked 152 out of 178 countries in the Index of Economic Freedom⁷.

Accursed with poverty and little or no exposure to possibility, the people in Nepal are easy prey to traffickers, which is not difficult to believe, given The per capita GDP of Nepal is 762 US dollars⁸; Most trafficked persons are deceived into believing that they would find better livelihoods if they were to leave their country. Its low GDP and economic status puts twenty- three percent of its population below the international poverty line, i.e., 23% of its population earns less than 1.25USD per day. To better understand this, one needs to look at the migratory pattern between Nepal and India. Though there is no official data to show the extent of migration from Nepal, a census from the year 1997 puts it at 660,000⁹ people, most of them are women. The fact that there is no official record of these people going missing or no way to keep track of their wellbeing outside the country exacerbates the situation. Most of those migrated people have settled in India¹⁰. It was only in the year 1998 that migration was recognized as a national problem by the then government of his majesty Dipendra Bir Bikram Shah. The ninth government plan released in 1998, said ‘even now, however, the scale and significance of the phenomenon appear not to have been appreciated by national policymakers or politicians (or, indeed by the major bilateral and international development agencies), and there is no coherent program to increase the benefits of the remittance economy or to reduce the very real social cost of foreign labor migration as part of Nepal’s overall development strategy’¹¹. Keeping a close watch on migration is very important in order to keep track of the welfare of those who have migrated.

To understand the dynamics of trafficking in the guise of migration, it should be pointed out that trafficking involving migration could be of two types –

⁷ ‘Nepal’ (2015 Index of Economic Freedom) <<http://www.heritage.org/index/country/nepal>> Last accessed on 31 August 2015

⁸ Final Economic Survey Finance Ministry of government of Nepal for the fiscal year 2014-15

⁹ Catrin Evans and Pankaja Bhattarai, ‘Anti-Trafficking Intervention Approaches in Nepal’ (Asia Foundation, December 2008)

¹⁰ Ibid

¹¹ Ibid

1) A person volunteers to migrate to a different city for work and upon arriving at the destination realizes that they have been deceived about the nature of the work. Ergo, here, what started out as migration turns into trafficking.

2) A person may willingly migrate to a genuine place of work and may then be trafficked from there. So, in this case the first act of travel – the voluntary one, cannot be termed as trafficking, but the second one, the one involving the forcible movement, is clearly trafficking.

This point of difference is crucial for any rescue operation or anti-trafficking intervention, given the fact that it is possible to traffic workers from both, their home base (usually a rural setup) as well as the work base (usually an urban setup). Another area that is worthy of notice is the distinction between legal and illegal migration. More often than not, the people trafficked under the veil of migration (illegal migrants), upon interception by state authorities, are charged with crime of illegal migration and unfortunately the crimes committed against them go un-addressed.

2.1. TRAFFICKING AND PROSTITUTION

Sex trafficking is composed of two key aspects: human trafficking and sexual slavery.¹² Sexual exploitation may not always be an additional factor in trafficking cases, there are other drivers like forced domestic labour, industrial labour etc.

The Global Alliance Against Trafficking in Women (GAATW) takes into view that women have the right to choose their mode and nature of employment, and subsequently to engage in prostitution.

*“It is not prostitution that the anti-trafficking framework opposes, but the violation of rights that may occur while involved in that work. Although a woman may enter into prostitution by choice, she does not choose the exploitative conditions she is forced to endure. It is therefore the exploitative conditions and not the sex work itself that needs to be targeted”*¹³ This goes on to prove that while prostitution isn't backed by legislatures as a legitimate means of livelihood, the girls and women involved in the occupation are exploited and mistreated, more so than in other potential career prospects.

Albeit the fact that many states distinguish between guilty and innocent women at the heart of their legislations on prostitution and trafficking, and that a multiplicity of conventions presently acknowledge

¹² Kara, Siddharth (2009). *Sex Trafficking: Inside the Business of Modern Slavery*. Columbia University Press

¹³ Groupe Development and the European Commission, *Mobility Smuggling And Trafficking along The Indo-Bangladesh Border* (2005)

the need to protect the rights of trafficked prostitutes¹⁴, not a single international convention promotes the rights of all women involved in sex work. Within a human rights framework, it is morally impossible to decide who ‘deserve’ protection and who do not.

The Nepal government neither criminalizes prostitution; nor has it legalized prostitution. Even though there are laws that work against trafficking in persons, the fact that there are no laws on prostitution, results in the inexistence of official data that can help distinguish voluntary prostitution from the one that traffickers impose on their victims.

2.2. TRAFFICKING IN WOMEN AND CHILDREN

The UNICEF reports that around 7000 women and girls are trafficked to India every year and around 200,000 are now working in Indian brothels¹⁵. Most girls who are trafficked are from very poor families in rural areas where they are lured by false marriages and the promises of employment or education.

The range of the ages of women and girls that are trafficked is as extensive as 12 years to 29 years. One thing to keep in mind before going forward is that most anti-trafficking movements and programs place women and children under the same category. That is to say, women are infantilized and are represented as having little agency, leading to a need for paternalistic affiliations. Therefore, anti-trafficking interventions need to demarcate the two groups and recognize the rights of an adult woman, and give her the right of discretion when it comes to choosing a dignified livelihood, regardless of the subjectivity of the term ‘dignified’. Contrarily, there is an international agreement that trafficking in minor girls and prostitution is a crime, and by implication, they should be removed from exploitative situations and given protection and support without question, i.e., even if there are signs of the girls’ involvement in said sex trade.

2.3 LACK OF CURRENT DATA ON TRAFFICKING

Increasing initiatives by NGOs and private groups in holding intervention programs has led to a growth in the number of rehabilitation homes to rescue women and children unwillingly trafficked to the brothels in

¹⁴Ibid

¹⁵UNICEF reports 7,000 Nepali women and girls trafficked to India every year, UN Gift, March 9th 2014, <<http://www.ungift.org/knowledgehub/en/stories/September2014/unicef-reports-7-000-nepali-women-and-girls-trafficked-to-india-every-year.html>> Last accessed on 30th August 2015

metropolitan India which exceed 2,00,000 as of 1998, a figure which is also roughly “estimated” by the UNICEF. To better understand this, one needs to look at the migration pattern of people from Nepal. Though there is no current official data to show the extent of migration from Nepal, a census from the year 1997 puts it at 660,000¹⁶ people, most of them women. The fact that there is no official record of these people going missing or no way to keep track of their wellbeing outside the country, makes it very easy for traffickers to get away with their crime. This fault can only be attributed to the successive Nepal governments, only because of the lack of will and inefficiency on their part.

3. TRAFFICKERS

A 2009 report by World Bank states: Traffickers often originate from the same places or localities from where girls and women are trafficked. They can be both men and women, and most often they are the people that the victim knew such as neighbors, relatives, friends, and even parents.¹⁷

Best of the available data on trafficked women can be provided by the various non-governmental organizations working in Nepal; most notable amongst them being Maiti Nepal. These valuable inputs are obtained from their active field experiences. There are instances wherein many NGO workers go from door to door across several villages inquiring about the number of women that have migrated. However, this system does not yield reliable results. More efforts, on a larger scale, are required to gather reasonably reliable data.

Findings from interviews and interrogation of rescued victims show that trafficking happens through a large network of social connections. There are instances of victims of trafficking themselves turning into traffickers and eventually strengthening this vast network of trafficking. Trafficking is mostly initiated through brokers or pimps who act as well wishers to the victims and are known to their families on a personal level.

As mentioned before, another form of trafficking happens through the promise of marriage, where a broker marries a young woman and then later sells her to a brothel or to another broker after

¹⁶ Catrin Evans and Pankaja Bhattarai, ‘Anti-Trafficking Intervention Approaches in Nepal’ (Asia Foundation, December 2008)

¹⁷ World Bank Report on “Social Development Notes- Conflict, Crime and Violence” (No.122 December 2009) <http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1239390842422/6012763-1239905793229/Human_Trafficking.pdf> Last accessed on 31st August 2015

their crossover to India. The NGOs and the authorities in Nepal¹⁸ believe that these brokers operate through an extensive network using sophisticated methods for their trafficking operations. The modern age advents of the cellular phone and the Internet being their most trusted aides. Carpet manufacturing factories are said to be one of several such fronts.

‘The extent of familial involvement in trafficking is a cause of much controversy in Nepal. In certain communities sex work is a customary practice and continues to this day. In other communities in a few districts, notably Nuwakot and Sindupalchowk, there has likewise been a tradition of sending girls to ‘service’ the ruling classes in Kathmandu that, in time, has changed into involvement in commercial sex’¹⁹. These communities practice commercial sex work as source of income and are sometimes part of the trafficking nexus themselves.

In other situations the family might not even be aware of the fact that their daughters are involved in commercial sex work. Though the parents might accept the meagre amount of money from the brokers for the labor that their child is going to be put into, they might not be aware that their child would be trafficked thereafter and pushed into sex trade.

To better understand the above theories, let us take a case study:

A 19 year old girl was trafficked out of Nepal and sold to a brothel in Agra, India by a relative. The girl was promised a job by the relative who told her that one of his own daughters was working in India sending him money every month. Eventually the girl escaped the brothel and managed to get back to her home in Nepal. She managed to file a case in the Sindhupalchok district court against her relative and was able to get justice. The court sentenced the trafficker to 170 years of imprisonment. The words of the girl shed some light on the status of women in Nepal: *‘I think violence against women is more prevalent in Nepal. For example; our society perceives that women should not do this, women cannot do that, there is no way that a woman can do it, etc. Everyone thinks that women cannot do anything. Our society thinks that only men are capable of doing everything... I don’t have idea about other countries but Nepal is a country where violence against women exists. Men are engaged in consuming alcohol and beating their wives..... There is lack of education among women due to which they don’t have any knowledge....we,*

¹⁸ NHRC Nepal, Trafficking In Persons Especially On Women And Children In Nepal, National Report 2012-13 (2014)

¹⁹ Catrin Evans and Pankaja Bhattarai, Anti-Trafficking Intervention Approaches in Nepal (Asia Foundation, December 2000)

*women of Nepal, cannot even step out of our houses. People will start criticizing when we step out of our houses’.*²⁰

It is acknowledged internationally that the cause of trafficking in Nepal cannot be attributed solely to its poverty. If one carefully studies trafficking from the local grass root level, it can be understood that gender discrimination, ignorance and naivety of the rural folk, lack of education, poverty and lack of economic opportunities in rural areas, along with consequent marginalization of particular social groups all together create a setting highly conducive to trafficking.

Like other women who enter prostitution, women who are trafficked are also affected by social problems such as alcoholism, divorce, death of the family head or the main bread winner in the family. They may lack the necessary social support that is essential to maintain their personal wellbeing and that of their families. It is taken for granted that a girl or woman who is trafficked is naïve, shy and usually ignorant in the ways of the world.

It has been observed by the National Human Rights Commission of Nepal that ‘Age, caste/ethnic groups, education and wealth seldom determine the knowledge on Laws. This especially holds true for the *Human Trafficking and Transportation Control Act, 2007*. Proportionally more young women than the older ones, more women from ‘upper caste’ groups than the disadvantaged groups, more women with at least SLC level education than illiterates or with only primary education tend to have more knowledge on the *Human Trafficking and Transportation Control Act, 2007*²¹’.

3.1. 2015 EARTHQUAKE AS A CAUSE FOR TRAFFICKING

Adding to the woes of Nepal was the massive earthquake that struck the country in April and the huge aftershock in May, 2015. The earthquake, also known as the *Gorkha Earthquake*, brought with it debilitating destruction claiming more than 8,800 lives, destroying over half a million homes, leaving twenty-eight thousand injured, over a million displaced and rendering over six hundred thousand homeless²².

²⁰ NHRC Nepal, *Trafficking In Persons Especially On Women And Children In Nepal*, National Report 2012-13 (2014)

²¹ Ibid

²² National Planning commission, Nepal, *Nepal Earthquake 2015: Post disaster Needs Assessment: Vol: B: Sector Reports* (2015)

Amidst all this chaos, the youngsters of Nepal are now at a risk of another calamity: Child trafficking. According to UNICEF²³ since 25th April 2015, at least 245 children have been intercepted while being trafficked or being placed in poorly regulated orphanages where these young children could be at risk of unregulated adoption, exploitation, and atrocious abuse. Loss of livelihoods and exacerbated living conditions only make it easier for the traffickers to convince parents to send their young ones away into what they are led to believe are better lives. According to estimates there are forty to fifty²⁴ young girls and women being rescued on a daily basis, by Maiti Nepal in collaboration with the government authorities on the Indo-Nepal border, post the earthquake. This is a higher figure than that of twelve girls being rescued prior to the earthquake.

As a measure, the government has suspended international adoption after the earthquake and has banned children from traveling between districts without a parent or guardian. The registration of new orphanages has been suspended and organizations cannot take in new children without governmental authorization.

4. RECOMMENDATIONS AND PREVENTIVE METHODS

Trafficking can be curbed effectively with adequate legislations and the efforts of NGOs. An innovative mode of vigilance and prevention is something NGOs in Nepal now term as “Community Surveillance”. The idea behind this lies essentially in sensitizing local groups to trafficking, making them receptive and responsive to local affairs in order to equip them to take action in case of any suspicious circumstances. There also needs to be a clear cut demarcation between trafficked women and voluntary sex workers, in the absence of which rescue groups inadvertently compromise the rights of adult women.

There have been undocumented instances reported by NGOs where brokers accompanying groups of girls have been intercepted and brought for questioning. The government may increase its stronghold over the situation by means of intervention and questioning by authorities, should the situation appear to be doubtful. The most effective solution in pursuit of immediate relief is to work on more advanced, more reliable modes of documentation and monitoring in order to maintain effectiveness on the kinds of interventions experimented with, at different levels, in both – rural and urban setups.

²³Nepal Earthquakes: UNICEF speeds up response to prevent child trafficking, UNICEF- Press Center, June 19th 2015 <www.unicef.org/media/media_82328.html> Last Accessed on 31st August 2015.

²⁴Damayanti Datta, 'Tremor of Trafficking' *India Today* (Noida Aug 10 2015) <<http://indiatoday.intoday.in/story/the-tremor-of-trafficking/1/455225.html>> Last accessed on 30th August 2015

4.1. IMPROVING LIVELIHOODS THROUGH VOCATIONAL TRAINING PROGRAMMES

RURAL:

With regard to trafficking, the underlying assumption is that a stable economic scenario in rural areas will, in the first place, prevent migration. Income and employment generation should be the first step forward. Community based interventions along with a multiplicity of NGOs have initiated awareness programs via co-operative credit societies and income generation plans such as animal husbandry, easy finance to buy goats/cattle/chickens, to develop vegetable gardens, to set up cottage industries etc. This indirectly aims at preventing the fundamental reason for trafficking –to migrate in search of a better livelihood.

URBAN:

Rural anti-trafficking programs can target only the first stage of trafficking: migration. They are unable to entirely exterminate workplace-based exploitation in larger cities. Hence, there is a dire need for greater focus on the cities.

4.3. BORDER BASED INTERVENTIONS

The main objective of border site prevention programs is to intercept women/girls who are being trafficked. Recent anti-trafficking activities have been classified primarily under policy and research development, legislative, health and education, income and employment generation, and rescue and rehabilitation programs. Out of the twenty-six India-Nepal border-crossing points, one organization - Maiti Nepal, is conducting anti-trafficking vigilance programs at three of them.

Border surveillance is primarily an immigration strategy used all over the world, but also doubles out as an anti-trafficking mechanism. Those lacking the specific documentation required for entry into another country are identified as illegal immigrants and numerous legal processes are set in motion to assess their situation. This is a standard procedure at most of the border check-posts. However, in the case of India and Nepal, where no formal documentation is required, border regulation and culling out trafficked individuals out of illegal immigrants is a highly complicated task.

Another disturbing issue at hand is that there seems to be no form of systematic follow-up program of the detainees, i.e. the potential victims of trafficking intercepted at the border. The information on these women/girls is not consistently documented. Therefore at this stage, based on the evidence available, it is difficult to assess the appropriateness and effectiveness of border-based prevention programs in existence. However, the figures sourced by Maiti Naipal, as of today, stand at 2398 (rescued and rehabilitated women and children)²⁵.

4.4. AN OVERVIEW

Various NGOs in Nepal are dedicated to combating trafficking, their major areas of work include research and documentation of trafficking; advocacy and lobbying for policy reform; awareness raising in the communities; establishment of helpline services; establishment and operation of community surveillance system; empowerment of community and vulnerable groups such as girls and women; legal services for survivors; facilitation of cross-border rescue, raids, and repatriation; and establishment of rehabilitation centers for rescued survivors where they can have safe shelter, receive medical and legal aid, counseling, and learn other trade skills.²⁶

There is still a need for developing conceptual clarity, in order to facilitate transparent and easily accessible documentation. There is also a need for consistent flow of funding; which needs to be brought to the attention of the state authority or an interim body to pursue the case.

The absolute lack of meaningful impact assessment makes it almost impossible to assess the effectiveness and viability of current interventions. Therefore, there is an urgent need for organizations to formulate appropriate monitoring and evaluation mechanisms.

Having said all this, interventions that are community based or workplace based, and those that aim at capacity building/training hold greater promise for change towards the better than one-time sensitization initiatives.

²⁵ NHRC Nepal, Trafficking In Persons Especially On Women And Children In Nepal, National Report 2006-2007

²⁶AWO International Regional, <http://www.awo-southasia.org/about-us.html>, last visited on 25 January 2016

5. MAITI NEPAL - AN OVERVIEW

Maiti Nepal is a non-governmental organization established in 1993 in furtherance of the crusade against human trafficking, child prostitution, flesh trade, and numerous other forms of exploitation and torture. The organization was founded by Anuradha Koirala²⁷, a Nepalese social activist, recognized globally for her philanthropy.

The organization operates through a widespread network across the country, working in collaboration with the Indian Police and various NGOs in India to improve rescue and repatriation operations, devising effective ways to rehabilitate trafficked women and children in transit homes²⁸, Maiti presently has over 350 women and children staying in its various homes. Women and girls there are provided vocational training to instill self-confidence and a sense of security. Maiti also runs a hospice in the Jhapa District of Nepal for HIV positive people, which is based on a self-sustaining model through residents' farming and fishing.

Recently, Maiti has been able to link up with a Civil Hospital²⁹ which is willing to take up HIV-positive women. Maiti Nepal carries out prevention work in Chitwan, Sindhupalchowk and Sunsari and has a rehabilitation programme for returnees, based in Kathmandu. Maiti also has a centre in Mumbai, which facilitates rescue and repatriation work, and serve as a home for HIV positive women and girls.

The Child Protection Centre³⁰ in Kathmandu at present houses 256 children from the age of 0-19 years old and facilitates provision of food, shelter, medical assistance, counseling from trauma, helps identify parents and re-integrate them with family, motivate trafficked girls to help them identify criminals and provide these girls with formal education. On an average, the number of domestic violence cases exceeds thousand annually, whereas the cases of trafficking and rape reach 50 each. Since the establishment of Maiti, over 900³¹ traffickers have been brought under judicial custody.

²⁷ "Anuradha Koirala was named CNN Hero of the Year 2010 for her work in field on prevention of human trafficking in Nepal

²⁸ Maiti Nepal, since its inception, has established a number of transit homes across the country, including Pashupatinagar, Ilam, Kakarvita, Jhapa district, Birgunj, Parsa, Nepalgunj, Bake, Dhangadi, Kailali, and six other districts.

²⁹ A Civil Hospital is a general hospital run by the government where patients are usually treated free of cost or at a subsidised/ minimal cost. These hospitals usually have both out- and in -patient wards.

³⁰ Sonja Balbalika Griha

³¹ Legal Assistance of Maiti Nepal (Maiti Nepal) <http://www.maitinepal.org/index.php?content=contentpage&id=38&pagename=Legal_Assistance_of_Maiti_Nepal> Last accessed on 4 September 2015

The Information and Resource Centre of Maiti Nepal, established in 2002, works towards disseminating information in furtherance of anti-trafficking intervention programs and rehabilitation movements. It undertakes the initiative of publishing Maiti's Newsletter, cooperating with allied organizations in research on the subject and creating a stable, reliable database in order to document statistics for future references. In addition to receiving funding from various sources across the world in the form of donations and endowment funds, Maiti Nepal intends to generate funds for itself through various proposed activities such as agricultural farming, diversification of hand-made products and turning the Maiti transition homes and guest houses into a hotel.

6. LEGAL INTERVENTION AND ASSISTANCE

Owing to the fact that Nepal is going through a transition in government post the abolition of monarchy. Since trafficking is a priority issue in the country, in the Constitution³² a provision was inserted for immediate resort³³. It deals with all kinds of forced labour, and abolishes serfdom. The provisions of the constitution will seek to effectively deal with trafficking in human beings³⁴.

6.1. TRAFFICKING IN PERSONS AND TRANSPORTATION (CONTROL) ACT, 2007

This Act aims at preventing trafficking both – within Nepal and across its borders. An outstanding feature of the legislation is that the procedure laid down works both as a model for prosecution as well as protection. Unique utilities have been built into its enactment in order to discharge the burden of proof (by prosecution) with much more ease, which in theory, should lead to more convictions. Keeping in mind that traffickers may belong to some of the powerful elements of society, protection is provided in terms of fortification of whistleblowers, concealing their identity³⁵. The informant's identity is kept classified³⁶, as is the identity of the victim³⁷. Normally in criminal cases, only the defense has a right to representation. However, the statute provides that the victim be represented by a counsel of their choice as well³⁸. An empowering provision is the entitlement to a translator³⁹. Victims are entitled compensation from the

³² Constitution, Nepal <http://www.nepalembassy-germany.de/pdfs/Constitution_full_english.pdf> Last Accessed on January 24th 2015.

³³ Article 29: No one shall be trafficked in nor shall one be held in slavery or in servitude.

³⁴ The Constitution also makes specific provision of women's rights in Article 38 and the rights of children in Article 39

³⁵ Section 5

³⁶ Section 20

³⁷ Section 25

³⁸ Section 9

³⁹ Section 11

state⁴⁰, regardless of the conviction of offenders, and a rehabilitation fund is to be established by the government to facilitate these expenses⁴¹.

6.2. UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME⁴²

This convention is the main international instrument in the fight against transnational organized crimes. It is further supplemented by three Protocols, two of which target specific areas and forms of organized crime:

- 1) The protocol to prevent, suppress and punish trafficking in persons, and
- 2) Protocol of smuggling of migrants by land, sea and air. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, was entered into force on 25th December 2003.

It is the first ever global legally binding instrument with an agreed definition on *trafficking in persons*. The definition of trafficking under Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations 177 Convention against Transnational Organized Crime, 2000⁴³, covers the recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. An additional objective of the Protocol is to protect and assist the victims of trafficking with complete respect for their human rights.

7. CASELAWS - LANDMARK JUDICIAL PRONOUNCEMENTS

In addition to provisions in the Constitution and complementary legislations, case laws built up by courts also form part of the domestic law. Case laws also contribute in learning the course of direction that the law is taking and the interpretation the courts may make on any available provision of the law. The arena of trafficking is heavily reliant on the lower court systems to determine convictions, and the lower

⁴⁰ Section 17

⁴¹ Section 14

⁴² Adopted by the UN General Assembly Resolution-55/25

⁴³ United Nations 177 Convention against Transnational Organized Crime, 2000 (Herein after referred to as “the Protocol”)

judiciary is bound by judicial pronouncements, guidelines and interpretations laid down by the higher courts.

Nepal has had one prominent case which strengthened action against traffickers. The prosecution needed to prove if trafficking had taken place or not as in this particular case as, the victim was rescued before she was trafficked. In *Permanent Resident v HMGC on the FIR of Tara Devi Dahal*⁴⁴. Tara Devi was allured by a man who promised to marry her, with the help of his partner. She was taken across the border to India, where she stayed with him in a hotel for a few days before he took her to Patna and sold to a brothel for INR 16,000. She was made to have sexual intercourse with him on the pretext of marriage. The girl however was able to raise alarm and was rescued by the local authorities.

The question was, whether a crime had actually been committed under the Human Trafficking Activities (Control) Act for the sale of a woman abroad, since the sale did not actually go through and the parties were intercepted. Nevertheless, the court termed the act as trafficking. In *obiter*, the court also stated⁴⁵ “In a case like human trafficking, the statement of the victim-complainant needs to be considered trustworthy until otherwise proved by the defendant.” The court, then, upheld the sentencing which had previously been pronounced by the lower court⁴⁶.

In yet another case – *Urmila Thapa Magar*⁴⁷, a woman who claimed to have been trafficked, had agreed to go with an acquaintance to another part of Nepal. However, the intention of the acquaintance was to take her across the border. A timely police check prevented cross border trafficking. When the case was brought to court in Nepal, the issue was whether there was cross border trafficking or not. This was a crucial point of fact, since the woman continued to remain within the territorial boundaries of Nepal and hadn't crossed over to India. The court held that the crime of cross border trafficking (this had a higher penalty in the laws of Nepal) would be proved to have taken place if two parameters were fulfilled:

- 1) Trafficking is proved, and
- 2) If it can be shown that trafficking was for the purposes of taking the person to another country.

Therefore, the trafficking within the territory of Nepal, itself was sufficient, and there was in fact, no necessity for the person to actually be taken across the borders, to pin liability on the trafficker.

⁴⁴ Criminal Case No. 1042 of 2051 BS

⁴⁵ Ibid para 28

⁴⁶ South Asia Regional Initiative/ Equity Support Program, ‘Landmark Decisions on Violence Against Women and Children in South Asia’ <http://www.childtrafficking.com/Docs/judge_woman_childvio_0607.pdf> Last accessed on 1 September 2015

⁴⁷ *Urmila Thapa Magar v Krishna Prasad Pudasaini*, Criminal Appeal no 1610 of the Year 2051 BS

7.1. FLAWS IN THE LEGAL FRAMEWORK ON TRAFFICKING IN NEPAL

There are two classifications under which gaps can be pointed out – first, in the arena of Prosecution, Protection and Prevention, and second, with regard to implementation of specific articles under the discussed protocols. The need of the hour is to bridge these gaps. The non-implementation of protocols has had an impact on anti-trafficking programs primarily due to the following reasons:

- Non-ratification of the UNTOC⁴⁸ and Protocols, which proves to be a major hindrance as a multiplicity of enabling provisions of the treaties cannot be availed of.
- Absence of a comprehensive definition of the term ‘trafficking’.
- There is an immense lack of gender sensitivity. Despite the fact that there are laws to protect women’s rights, this does not always translate into a sensitive law.

⁴⁸ United Nations Convention against Transnational Organized Crime, in effect from 29 September 2003 is a multilateral treaty against organized crimes

8. CONCLUSION

Internal economic problems push the population of Nepal into migrating to other countries to find decent work. Most trafficked people are either tricked or conned into believing that they would find better lives outside their country. As discussed in the previous sections, human trafficking has been broadly categorized into rural, urban, and cross-border based. Each site raises different issues, employs different approaches and target groups. Other factors that are of concern are the lack of political will and the absence of a stable political scenario to combat trafficking. Furthermore, the judiciary and civilian police structure are neither trained nor provided with the necessary aides to fight this epidemic. It is to be duly noted that only as late as 1995 did his Majesty's Government in Nepal form a Ministry dedicated to the welfare of women and children, the issue of trafficking being one of its important mandates.

To sum up, the major observations are that despite considerable anti-trafficking activity in Nepal, there have been negligible amounts of documenting, monitoring and evaluation of the progress, the effectiveness and the feasibility of said prevention and protection programs. The lack of quality research and information is a serious issue and needs to be addressed immediately. There needs to be more emphasis on collecting qualitative and quantitative measures of trafficking by adopting rigorous research methodologies by the government. However, it is difficult to generate scientific data due to the social stigma attached with sexual exploitation that is usually the result of trafficking and due to the clandestine nature of the trafficking trade.

A long term solution would be to move from a paradigm of rescue and rehabilitation to an approach that is more holistic and at the same time protects and promotes the rights of women. As it is understood, most of the women and girls who are rescued need the support of counseling and also need to be given adequate care for their wellbeing. Practical solutions such as stronger research databases and proactive governmental monitoring along with enactment and effective implementation of regulations - such as decentralization and delegation of vigilantism, along with monitoring and documentation, especially at the rural levels - need to be brought about in countries that are worst affected by trafficking which applies to Nepal also. Anti-trafficking strategies need to shift from the age old principles of trying to protect women to bringing about a change in their lives. We need to aim at reviving and imbuing in them the idea of economic rights along with their political, social and most importantly their basic human rights.