

# **An Analysis of the Human Trafficking and Transportation (Control) Act, 2064**



## **A Dissertation Paper**

### **Submitted to**

Purbanchal University, Faculty of Law

Bright Vision Law College, Biratnagar

*Submitted in partial fulfilment of the requirement of BALLB 5<sup>th</sup> year*

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## **DECLARATION**

I hereby declare that this thesis, titled “An Analysis of the Human Trafficking and Transportation (Control) Act, 2064”, is the result of my original research work. It has not been submitted in whole or in part, for any other degree or professional qualification at any other institution. All sources of information have been duly acknowledged.

Subhash Lamichhane

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## LETTER OF RECOMMENDATION

To,

The Head of Department

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This is to certify that **Mr. Subhash Lamichhane**, a student of BA.L.L.B. 5th Year, Criminal Law and Justice Program of Bright Vision Law College, Biratnagar, Purbanchal University Biratnagar, has prepared and submitted this dissertation entitled "**An Analysis of the Human Trafficking and Transportation(Control) Act, 2064**" under my supervision. To the best of my knowledge, he has thoroughly addressed key aspects of the human trafficking and transpotation Nepal in this research work. He has sincerely worked carefully to complete this work. This research has been conducted following proper academic standards, and all sources have been duly acknowledged. I therefore, recommend this Dissertation for final evaluation.

I wish his success in his academic endeavor.

**Thank you.**

March, 2025

.....

( Mr.Tirtharaj Bhattraai )

Date:

## APPROVAL LETTER

This is to certify that this dissertation entitled “**An Analysis of the Human Trafficking and Transportation(Control) Act, 2064**” prepared and submitted by **Mr. Subhash Lamichhane**, for the partial fulfilment of the requirement of the bachelor of BA.LL.B in Criminal Law and Justice in conformity to the rules and criteria of Dissertation Paper laid down by Purbanchal University. Therefore, this dissertation Paper has been accepted after the presentation of the paper and the Viva Voce Examination by a team of three-member evaluation committee as a part of the said degree.

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## ACKNOWLEDGEMENT

This Dissertation Paper is prepared on the topic “**An Analysis of the Human Trafficking and Transportation(Control) Act, 2064**” has been prepared for the partial fulfilment of the requirement of the BA.LL.B Degree and submitted to Purbanchal University through Bright Vision Law College, Biratnagar.

First and foremost, I am sincerely grateful to my supervisor, **Mr.Tirtharaj Bhattra**i for his invaluable guidance, constructive feedback, and continuous encouragement throughout this research journey. His insightful suggestions and critical evaluations have significantly contributed to the quality of this work. I extend my heartfelt appreciation to Chudamani Acharya Sir, the Campus Chief of Bright Vision Law College for providing me useful suggestion, comment and academic guidance.

I am also indebted to my friends and classmates for their unwavering support, valuable discussions, and motivation throughout this research process. Special thanks to my family for their patience, love, and encouragement, which have been my source of strength during this academic endeavour.

Lastly, I acknowledge all the authors, researchers, and legal experts whose works have served as references for this study. Without their contributions to the field, this research would not have been possible. Despite my best efforts, any shortcomings or errors in this dissertation remain my own.

**Subhash Lamichhane**

## ABSTRACT

Human trafficking is a severe transnational crime and a fundamental human rights violation that persists despite national and international legal frameworks. Nepal, as a source, transit, and destination country, remains highly vulnerable due to economic disparities, political instability, and porous borders. The **Human Trafficking and Transportation (Control) Act, 2064 (2007)** serves as the principal legal framework to combat trafficking in Nepal; however, challenges in enforcement, judicial interpretation, and victim protection continue to hinder its effectiveness.

This study provides a critical analysis of the Act, its implementation, and its alignment with international legal standards. By examining judicial decisions, legislative frameworks, and policy gaps, the research evaluates the strengths and weaknesses of Nepal's legal response. Through a qualitative and doctrinal methodology, including an assessment of Supreme Court rulings, legal provisions, and secondary sources, this study highlights key obstacles in law enforcement, victim rehabilitation, and cross-border trafficking prevention. Findings suggest that while Nepal has made legislative advancements, weak enforcement mechanisms, lack of inter-agency coordination, and socio-cultural stigmas continue to impede progress. The study recommends policy reforms, enhanced victim support mechanisms, and stronger regional cooperation to address trafficking challenges comprehensively. This research contributes to the growing discourse on human trafficking in Nepal and aims to provide actionable insights for legal and policy enhancements.

## **LIST OF ABBREVIATIONS**

BA.LL.B	Bachelor of Arts, Bachelor of Laws
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
D.N	Decision Number
et. al	et alia, and others
EU	European Union
GON	Government of Nepal
Govt.	Government of Nepal
GRETA	Group of Experts on Action against Trafficking in Human Beings
HMG	His Majesty's Government
ibid	above cited
ILO	International Labour Organization
MLAT	Mutual Legal Assistance Treaty
NGO	Non-Governmental Organization
NKP	Nepal Kanoon Patrika
SAARC	South Asian Association for Regional Cooperation
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime

## LIST OF STATUTES

S.N.	Name
1.	Human Trafficking (Control) Act, 2043 (1986)
2.	Human Trafficking and Transportation (Control) Act, 2064 (2007)
3.	Human Trafficking and Transportation (Control) Rules, 2065 (2008)
4.	National Criminal Code, 2074 (2017)
5.	National Criminal Procedure Code, 2074 (2017)
6.	The Constitution of Nepal (2072) (2015)
7.	The Mulukī Ain of 1854 (1910)
8.	The Mulukī Ain of 1963 (2020)



## LIST OF INTERNATIONAL CONVENTIONS AND TREATIES

S.N.	Name
1.	Abolition of Forced Labour Convention (No. 105, 1957)
2.	ASEAN Convention against Trafficking in Persons (2015)
3.	Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979)
4.	Convention on the Rights of the Child (CRC, 1989) and its Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (2000)
5.	Council of Europe Convention on Action against Trafficking in Human Beings (2005)
6.	EU Directive on Preventing and Combating Trafficking in Human Beings (2011/36/EU)
7.	Forced Labour Convention (No. 29, 1930) and its 2014 Protocol
8.	International Labour Organization (ILO) Conventions Ratified by Nepal
9.	SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002)
10.	The Global Plan of Action to Combat Trafficking in Persons (2010)
11.	United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol, 2000)
12.	Worst Forms of Child Labour Convention (No. 182, 1999)

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6	Goma Paanchkoti v. GoN	2072
7	Lokbahadur Karki v. GoN	2072
8	Lakpa Tamang v. GoN	2072
9	GoN (Dhamaya Nagbanshi) vs Som Bd Tamang	2073
10	Bhagirath Dahal, Nirmala Dahal v. GoN	2074
11	GoN v. Sukumari Lama et. al	2075
12	Raj Kumar Sonar v. GoN	2076
13	Basant Rawal v. GoN	2076
14	Shyamkumar Ram v. GoN	2076
15	Shyamkumar Ram v. GoN	2076
16	Kalpana Bhandari vs GoN	2078
17	Laxman Thapa vs GoN	2078
18	GoN vs Iman Tamang (Deepak)	2079
19	Bal Bahadur alias Bam Bahadur Sarki vs GoN	2079
20	GoN vs Bhimakumari Tharu (Chaudhari)	2079
21	Adv. Chandrakanta Gyawali vs Office of the Prime Minister et.al	2080

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# CHAPTER I

## INTRODUCTION

### 1.1 Background of Study

Human trafficking is a grave violation of human rights and one of the most heinous transnational crimes affecting millions of people globally. It involves the recruitment, transportation, transfer, harbouring, or receipt of persons through coercion, fraud, deception, abuse of power, or force for the purpose of exploitation. Victims of trafficking are often subjected to forced labour, sexual exploitation, organ trade, and other forms of servitude.

In Nepal, human trafficking has been a persistent issue due to economic vulnerability, political instability, and geographical factors. Nepal's open border with India, lack of employment opportunities, and socio-cultural discrimination against women and marginalized communities have made it a major source country for human trafficking. Victims, particularly women and children, are trafficked for forced labour, prostitution, domestic servitude, and even organ trade.

Human trafficking is a significant human rights violation and a pressing socio-economic issue in Nepal. The country has long struggled with trafficking, particularly of women and children, who are often forced into labour, sexual exploitation, and other forms of abuse. Nepal's geographical location, economic challenges, and social factors contribute to the prevalence of trafficking. Many victims come from poor rural areas and are lured with false promises of employment, education, or marriage, only to be exploited in neighbouring countries, especially India, as well as in the Middle East and other regions.<sup>1</sup>

The root causes of human trafficking in Nepal include poverty, illiteracy, gender discrimination, and lack of employment opportunities. Political instability and weak law enforcement further exacerbate the issue, making it difficult to prevent trafficking and prosecute traffickers effectively. The trafficking of girls from Nepal into India for forced prostitution is perhaps one of the busiest slave trafficking routes anywhere in the world.

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<sup>1</sup>"Human Trafficking in Nepal." Wikipedia, The Free Encyclopaedia, Retrieved 2025 March [https://en.wikipedia.org/wiki/Human\\_trafficking\\_in\\_Nepal](https://en.wikipedia.org/wiki/Human_trafficking_in_Nepal).

Although estimates suggest that 5,000–10,000 Nepali women and girls are trafficked to India each year<sup>2</sup>, the Women's Rehabilitation Centre (WOREC) documented 77 cases during Fiscal Year 2080/81, highlighting the gap between reported and estimated cases.<sup>3</sup>

To combat this issue, Nepal has enacted **the Human Trafficking and Transportation (Control) Act, 2064 (2007)**, which provides a legal framework for the prevention, investigation, and prosecution of trafficking crimes. The emergence of the Human Trafficking and Transportation Act of 2064 marks a significant milestone in addressing these systemic challenges, reflecting decades of accumulated legal, sociological, and human rights research. The law criminalizes trafficking and transportation of individuals for exploitation and prescribes strict penalties for offenders. Additionally, it recognizes the rights of victims and provides measures for their rehabilitation and protection. Prior to the 2064 Act, human trafficking was typically addressed through fragmented legal mechanisms that often failed to provide holistic protection for victims or comprehensive strategies for prevention. Earlier legislative attempts were characterized by:

- Narrow definitions of trafficking that predominantly focused on sexual exploitation
- Limited jurisdictional frameworks
- Insufficient international cooperation mechanisms

The 2064 Act represents a paradigm shift, acknowledging human trafficking as a multidimensional global challenge that requires integrated legal, social, and economic interventions.

Despite legal frameworks and international efforts, human trafficking continues to thrive due to weak enforcement mechanisms, lack of awareness, corruption, and social stigma. Therefore, a comprehensive analysis of the existing laws and judicial interpretations is essential to evaluate the effectiveness of Nepal's legal response to human trafficking.

Efforts to combat human trafficking in Nepal involve government initiatives, non-governmental organizations (NGOs), and international agencies working to rescue victims, raise awareness, and strengthen legal frameworks. Despite this legislative framework, stakeholders have identified limitations in the Act, particularly its narrow definition of human

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<sup>2</sup> Koirala A, Banskota HK, Khadka BR: Cross border interception – A strategy of prevention of trafficking women from Nepal. Int Conf AIDS: 15. 2004, Jul 11–16

<sup>3</sup> Women's Rehabilitation Centre (WOREC). Anbeshi: Annual Factsheet on Gender-Based Violence against Women and Girls 2024. WOREC Nepal, 22 Nov. 2024, [worecnepal.org](http://worecnepal.org).



trafficking, which primarily focuses on physical exploitation and prostitution. Critics argue that the Act should encompass broader forms of exploitation, including labor trafficking, to align with international standards such as the Palermo Protocol, a United Nations convention against transnational organized crime that Nepal approved on June 16, 2020.<sup>4</sup>

Human trafficking is a serious breach of human rights and a major transnational crime affecting millions of people worldwide. The United Nations Office on Drugs and Crime (UNODC) defines human trafficking as "the recruitment, transportation, transfer, harbouring, or receipt of persons by means of threat, use of force, coercion, abduction, fraud, deception, abuse of power, or giving payments or benefits to a person in control of the victim, for the purpose of exploitation" (UNODC, 2020). Exploitation includes forced labour, sexual exploitation, domestic servitude, and organ trade, among other forms of servitude.

In August 2024, the Alliance against Trafficking in Women and Children in Nepal (AATWIN) presented a proposal to amend the Act, emphasizing the need to address labor exploitation, protect victims' privacy, and safeguard child rights. Government officials acknowledged the evolving nature of human trafficking methods and stressed the shared responsibility of the state, law enforcement, and other stakeholders in combating this crime.<sup>5</sup>

According to the International Labour Organization (ILO), there are approximately 50 million people worldwide living in conditions of modern slavery, with human trafficking contributing significantly to this number (ILO, 2022). Women and children make up the majority of trafficking victims, with sexual exploitation being the most common form of trafficking (UNICEF, 2021).

Thus, this study aims to analyse the effectiveness of the Human Trafficking and Transportation (Control) Act, 2064 in addressing human trafficking in Nepal, identifying its strengths and weaknesses, and assessing its impact on victims and society. By evaluating the Act's provisions, enforcement mechanisms, and gaps, the research seeks to provide insights into potential policy improvements and legal reforms necessary to enhance Nepal's efforts in combating human trafficking.

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<sup>4</sup> CESLAM. (20 Aug, 2024.). *Demand to amend Human Trafficking and Transportation (Control) Act*. Retrieved from <https://ceslam.org/updates/demand-to-amend-human-trafficking-and-transportation-control-act>

<sup>5</sup> Radio Nepal. (2024, August 18). *Demand to amend Human Trafficking and Transportation (Control) Act*. Online Radio Nepal. Retrieved from <https://onlineradionepal.gov.np/en/2024/08/18/387040.html>

## 1.2 Statement of the Problem

- Are Nepalese courts effectively interpreting and applying the provisions of the Act to combat human trafficking?
- Are existing legal provisions sufficient to prevent and address human trafficking?

## 1.3 Literature Review

**World Bank. (2021). Vulnerability to Human Trafficking in Nepal: From Enhanced Regional Connectivity. World Bank Group.**

This study explores the relationship between increased regional connectivity and the vulnerability to human trafficking in Nepal. It establishes a baseline of knowledge on human trafficking, aiming to understand how enhanced transportation networks may inadvertently facilitate trafficking activities. The report provides insights into the socio-economic and infrastructural factors that contribute to trafficking and offers recommendations for mitigating these risks in the context of regional development.

**Winrock International. (2021). Understanding Human Trafficking Risk Factors in Nepal's Foreign Employment Sector.**

This comprehensive report delves into the risk factors associated with human trafficking within Nepal's foreign employment sector. It reviews the national legal framework, including the Human Trafficking and Transportation (Control) Act, 2064, and examines how gaps in legislation and enforcement contribute to trafficking vulnerabilities. The study also analyses deceptive and coercive recruitment practices, offering policy recommendations to strengthen protections for migrant workers against trafficking.

**Sapkota, B. (2019). Human Trafficking Trends. Research Nepal Journal of Development Studies, 2(1)**

The main objective of this study is to analyse the emerging global trend of human trafficking. Variables from existing theories were drawn to formulate a comprehensive view of the process followed during the commitment. Factors from terrain characteristics to border patrols help to determine trafficking routes by either facilitating or impeding the rapid clandestine movement of people. Additionally, political, social and economic factors within a society or region can either 'push' or 'pull' victims into a situation of trafficking. The basic

argument is that, since human trafficking involves a high contingent of role players from a variety of backgrounds, a single explanation for its cause cannot exist in the globe.

**Bhagat, Ayushman. "'Who is not an agent here?': The Collateral Damage of Anti-Trafficking in Nepal." *Antipode* vol. 55,1 (2023): 70-89. doi:10.1111/anti.12882**

This article examines the unintended consequences of anti-trafficking policies in Nepal, particularly the 2008 Human Trafficking and Transportation (Control) Act. It critiques how anti-trafficking measures often criminalize mobility facilitators, such as brokers or transporters, while failing to address systemic issues like poverty and gender-based violence that drive trafficking. The study emphasizes the need for a nuanced understanding of "traffickers" and calls for more critical attention to how anti-trafficking laws impact vulnerable populations navigating international labour migration.

**Richardson, D., Poudel, M., & Laurie, N. (2009). Trafficking and Forced Labour in Nepal: A Review of the Literature.**

This literature review provides an in-depth analysis of the existing research on trafficking and forced labour in Nepal. It examines various dimensions of the issue, including socio-economic drivers, legal frameworks, and the effectiveness of intervention strategies. The authors highlight the need for a nuanced understanding of trafficking that considers local contexts and the lived experiences of affected individuals.

**Dhungel, R. (2021). Unpacking Human Trafficking from Neoliberalism and Neo-conservatism Paradigms in Nepal: A Critical Review. *Molung Educational Frontier***

This theoretical review examines the trafficking of women and children in Nepal through the lenses of neoliberal and neoconservative paradigms. It critically analyses how socio-economic marginalization and oppression contribute to human trafficking. The paper emphasizes the need for participatory action research involving trafficking survivors to develop integrative strategies addressing human trafficking in Nepal.

**Thapa, P. (2015). Human trafficking in Nepal: Changing dimensions. *Asian Journal of Women's Studies*, 21(4), 450–459.**

This article explores the evolving nature of human trafficking in Nepal, highlighting the shift from solely being a source country to also becoming a transit and destination country. It discusses the intersection of trafficking with foreign employment and examines the

challenges posed by natural disasters, such as earthquakes, in exacerbating vulnerabilities. The role of organizations like the Forum for Women, Law and Development (FWLD) in combating trafficking is also analysed.

**Upadhyay, S., Arora, K., & Sanu, S. K. (2024). Post-Earthquake Human Trafficking in Indo-Nepal Terai Region and Cross-Border Integrated Response Mechanism. *Current World Environment***

This study examines the surge in human trafficking cases in the Indo-Nepal Terai region following the 2015 earthquakes. It discusses how natural disasters exacerbate vulnerabilities, leading to increased trafficking incidents. The paper also proposes a cross-border integrated response mechanism to effectively combat trafficking in disaster-affected regions.

**Kumar, A. (2020). Status of Human Trafficking as Modern-Day Slavery in South Asia. *Research Nepal Journal of Development Studies*, 3(1), 91–99**

This article provides a comprehensive overview of human trafficking in South Asia, characterizing it as modern-day slavery. It explores the socio-economic and political factors contributing to trafficking in the region, with a particular focus on Nepal. The study emphasizes the need for regional cooperation and robust policy frameworks to combat trafficking effectively.

## **1.4 Literature Gap**

While there has been extensive research on human trafficking in Nepal, several gaps persist that require further exploration. One notable gap is the limited analysis of judicial interpretations. Although existing literature provides insights into human trafficking laws, it lacks a comprehensive examination of how Nepalese courts interpret and apply these laws in real cases. This study addresses this gap by thoroughly analysing judicial decisions, highlighting inconsistencies and gaps in legal interpretations. Additionally, previous studies have paid limited attention to how Nepal's legal framework aligns with international conventions, particularly the Palermo Protocol and other global anti-trafficking instruments. This research evaluates Nepal's legal provisions in relation to certain conventions, identifying areas that require harmonization for improved effectiveness. By addressing these gaps, this research aims to provide comprehensive insights that contribute to policy reforms, enhance victim protection mechanisms, and improve Nepal's overall efforts in combating human trafficking.

## **1.5 Objective of the Study**

- To analyze the conceptual framework of human trafficking and its implications in Nepal.
- To analyze the Supreme Court decisions and the enforcement of the 2064 Act between 2061 and 2080?

## **1.6 Significance of the Study**

Human trafficking in Nepal is a serious crime and a major human rights issue that affects thousands of people. The increasing number of trafficking cases, along with weak law enforcement, highlights the urgent need for a thorough review of the current legal system. This study aims to provide insights for policymakers by analysing the challenges and gaps within the legal and institutional frameworks and offering evidence-based recommendations to strengthen anti-trafficking measures. Additionally, it examines the role of judicial decisions in shaping the implementation of anti-trafficking laws by analysing landmark cases and judicial interpretations to understand how court rulings influence law enforcement and legal developments. Raising awareness among key stakeholders, including law enforcement agencies, non-governmental organizations, and the general public, is another key focus of this research, as it encourages a collaborative approach to addressing human trafficking. Furthermore, this study contributes to academic research on human trafficking and transportation in Nepal by expanding existing knowledge and providing a foundation for future studies and policy development.

## **1.7 Methodology**

This study adopts a doctrinal methodology to analyze legal texts and judicial decisions, suitable for evaluating statutory provisions and their interpretations. Twenty Supreme Court cases (2061-2080) were selected based on their relevance to key provisions of the 2064 Act and their impact on legal precedents, sourced from Nepal Kanoon Patrika (NKP).

### **Research Design**

The study employs an analytical and doctrinal research methodology, focusing on statutory laws, case laws, and legal interpretations.

### **Sampling**

Uses a non-probability judgmental method to select relevant case laws and legal texts.

## **Source of information**

Primary Sources: Human Trafficking and Transportation (Control) Act, 2064, Supreme Court decisions and international conventions.

Secondary Sources: Books, journal articles, government reports, and research papers.

## **Method of analysis**

Descriptive and analytical methods will be applied. Qualitative Analysis will be carried to identify patterns and relationships.

## **1.8 Organization of the Study**

This thesis is structured into six main chapters, each addressing key aspects of human trafficking and transportation in Nepal.

Chapter One: General Background – This chapter provides an introduction to the study, outlining the research problem, reviewing relevant literature, and defining the objectives and methodology adopted for the research.

Chapter Two: Evolution and Development of Human Trafficking Laws in Nepal – This chapter examines the historical development of anti-trafficking laws in Nepal.

Chapter Three: Conceptual Framework of Human Trafficking – It explores the fundamental concepts of human trafficking, including its definitions, various forms, underlying causes, and social, economic, and Impacts.

Chapter Four: National Legal and International Frameworks – It provides an analysis of international conventions and treaties related to human trafficking and examines Nepalese statutory provision especially Human Trafficking and Transportation (Control) Act, 2064 to assess their alignment with global legal standards.

Chapter Five: Judicial Decisions on Human Trafficking Cases in Nepal – This chapter analyses significant rulings of the Supreme Court of Nepal, evaluating their impact on legal interpretations, policy implementation, and the overall judicial approach to trafficking cases.

Chapter Six: Analysis, Finding and Conclusion– The final chapter summarizes the key analysis of research and findings of the in context of Nepal's efforts in combating human trafficking and improving law enforcement mechanisms.

## **1.9 Limitation of the Study**

The limitations of this study are outlined as follows:

- This study primarily focuses on the Human Trafficking and Transportation (Control) Act, 2064, with a brief analysis of international frameworks.
- The research is limited to judicial decisions from Nepalese courts, excluding extensive field studies or victim interviews.
- This study does not focus on statistical analysis or the collection and examination of related data. Data-driven insights and statistical evaluations are excluded from the scope of this study.
- This study doesn't focus on foreign employment aspects and its law in relation to human trafficking.

## CHAPTER II

# EVOLUTION AND DEVELOPMENT OF HUMAN TRAFFICKING LAWS IN NEPAL

## 2.1 History of Human trafficking in Nepal

Nepal's struggle with human trafficking, particularly the sexual exploitation of women and children, represents a complex interplay of historical inequality, socioeconomic vulnerability, and systemic governance failures. Over the past decade, trafficking cases have surged by 500%, with an estimated 1.5 million Nepali at risk as of 2024<sup>6</sup>. The open border with India, entrenched patriarchal norms, and post-conflict displacement mechanisms have perpetuated cycles of exploitation, while recent trends reveal alarming expansions into forced labor, online scams, and transnational organ trafficking.<sup>7</sup> Despite legislative efforts such as the Human Trafficking and Transportation Control Act 2064, Nepal's downgrade to the U.S. Tier 2 Watch List in 2024 underscores persistent gaps in victim protection, prosecution efficacy, and cross-border coordination.<sup>8</sup>

### 2.1.1 Feudal Legacies and Early Exploitation (Pre-1950)

Human trafficking in Nepal traces its origins to the Rana dynasty (1846–1951), which institutionalized caste-based oppression and restricted education to elite groups. By 1950, female literacy stood at less than 1%, creating a population reliant on subsistence agriculture and vulnerable to exploitation.<sup>9</sup> The Ranas' collusion with regional elites enabled the trafficking of lower-caste women to Indian brothels under the guise of domestic servitude, a practice that continued post-regime collapse.<sup>10</sup> This period established trafficking networks that exploited Nepal's geographic and social marginalization. The traditional Kamaiya system

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<sup>6</sup> The Kathmandu Post. *Nearly 1.5 Million Nepali at Risk of Human Trafficking While 35,000 Trafficked Last Year: NHRC Report*.

<sup>7</sup> Sirish Gurung Research Assignment (R17): Research Paper September 6, 2021. Sex Trafficking In Nepal: A Rising Concern For All In Nepal

<sup>8</sup> Nepal's Silent Crisis: Human Trafficking Under the Spotlight, The Asia Foundation

<sup>9</sup> Sirish Gurung Research Assignment (R17): Research Paper September 6, 2021. Sex Trafficking In Nepal: A Rising Concern For All In Nepal

<sup>10</sup> Dhungel, Rita. "Unpacking Human Trafficking from Neoliberalism and Neoconservatism Paradigms in Nepal: A Critical Review." *Molung Educational Frontier*, vol. 11, 2021, pp. 188–211.



exemplified early forms of trafficking, where predominantly low-caste individuals were bound to landowners through generational debt. This practice effectively transformed human beings into economic commodities, with entire families trapped in cycles of bonded labor and sexual exploitation.

### **2.1.2 Feudal Post-Rana Migration and the India-Nepal Open Border (1950–1990)**

The 1950 Indo-Nepal Peace and Friendship Treaty formalized an open border, facilitating unrestricted movement but also enabling traffickers to transport victims to Indian brothels unchecked.<sup>11</sup> During the Panchayat era (1960–1990), rural-urban migration intensified as carpet factories in Kathmandu recruited displaced women, many of whom were later trafficked to Mumbai and Kolkata's red-light districts.<sup>12</sup> By the 1980s, an estimated 5,000–7,000 Nepali women and girls were trafficked annually to India, with traffickers often posing as legitimate labor recruiters.<sup>13</sup>

### **2.1.3 Civil War and its Aftermath (1996-2006)**

The decade-long Maoist insurgency led to widespread displacement, exacerbating vulnerabilities to trafficking. Displaced individuals, particularly women and children, faced heightened risks of exploitation. The conflict also saw an increase in internal trafficking, with rural girls being lured to urban centres under false pretences and subsequently exploited in the sex industry.<sup>14</sup> Both Maoist insurgents and state security forces were implicated in trafficking practices. Child soldier recruitment and sexual violence became strategic tools, further normalizing human commodity exchange. The Maoist insurgency displaced over 200,000 individuals, disproportionately affecting women and children from rural regions. Conflict-induced migration destabilized communities, forcing many into bonded labor or sex work to survive.<sup>15</sup> Post-war transitional justice mechanisms neglected trafficking victims,

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<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Amnesty International. *Nepal: Children Caught in the Conflict*. July 2005

<sup>15</sup> Dhungel, Rita. "Unpacking Human Trafficking from Neoliberalism and Neoconservatism Paradigms in Nepal: A Critical Review." *Molung Educational Frontier*, vol. 11, 2021, pp. 188–211.

allowing criminal networks to expand into Gulf countries under the pretext of foreign employment.<sup>16</sup>

#### **2.1.4 Post Conflict (2006- )**

Post-conflict Nepal witnessed efforts to address human trafficking, including the enactment of the Human Trafficking and Transportation (Control) Act in 2064, which criminalized various forms of trafficking and emphasized victim support. Despite these measures, challenges persist. Economic hardships continue to drive labour migration, often leading to exploitation. The open border with India remains a conduit for traffickers. Marginalized communities, especially indigenous women and girls, are disproportionately affected, comprising nearly 70% of trafficking cases. Recent reports indicate that human trafficking remains a significant problem in Nepal, with women and girls being trafficked for sexual exploitation to India, the Middle East, Malaysia, and other destinations.

#### **Scale and Demographics (2018–2024)**

According to the report, released by the National Human Rights Commission on 2019, aspiring migrant workers, Nepalese working abroad, people in the adult entertainment sector, girls and women from rural areas, missing persons and child labourers are among the groups most vulnerable to trafficking. This makes Nepal a source, as well as a transit and destination for human trafficking. The National Human Rights Commission (NHRC) reported 35,000 trafficking victims in 2018, including 15,000 women, 15,000 men, and 5,000 children.<sup>17</sup> By 2024, trafficking cases had diversified

**Labour Exploitation:** 70% of victims were trapped in overseas labour sectors, notably in Middle Eastern construction and domestic work.<sup>18</sup>

**Sex Trafficking:** 15,000–20,000 Nepali women remain in Indian brothels, with 1,000+ rescued annually by NGOs.<sup>19</sup>

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<sup>16</sup> Nepal's Silent Crisis: Human Trafficking Under the Spotlight, The Asia Foundation

<sup>17</sup> The Kathmandu Post. *Nearly 1.5 Million Nepali at Risk of Human Trafficking While 35,000 Trafficked Last Year: NHRC Report.*

<sup>18</sup> Ibid

<sup>19</sup> Ibid

Emerging Trends: Cyber-trafficking schemes targeting tech-savvy youth and forced marriages to Chinese nationals have risen sharply, with 44 women repatriated from China in 2023 alone.<sup>20</sup>

### **Geographic Hotspots and Transit Routes**

Nepal's 1,751 km open border with India remains the primary trafficking corridor, with poor surveillance enabling 231 trafficker arrests in 2020—a 2,700% increase from 2014.<sup>21</sup> Provinces 2 and 5, characterized by high poverty and low literacy, supply 60% of trafficking victims, while Kathmandu serves as a transit hub for Gulf-bound migrants.<sup>22</sup>

## **2.2 Evolution and Development of Human Trafficking Laws in Nepal**

### **2.2.1 The Mulukī Ain of 1854 (1910)**

Human trafficking was declared an offence during the reign of King Rana Bahadur Shah in the 18th century. Subsequently, the National Code of 1854 prohibited the slave trade, human trafficking, and the act of separating children from mothers and selling them. Chapter 82 of the Muluki Ain 1910 (1854), which deals with enslaving or selling a person under Nepalese law during that period. The chapter lays out various rules regarding slavery, debt bondage, and servitude, including:

#### **1. Voluntary Enslavement within Family**

- Allowed for family members of Enslavable castes who mutually agree to enslave one member. If two family members (e.g., father-son, siblings) from an enslaveable caste chose to have one person enslaved while the other remained free, this was considered valid if done before a legal authority.
- Requires official documentation and a ritual of oil anointing
- Protections for minors under 16, who cannot be legally enslaved

#### **2. Slave Children and Redemption Rights**

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<sup>20</sup> Ibid

<sup>21</sup> Sirish Gurung Research Assignment (R17): Research Paper September 6, 2021. Sex Trafficking In Nepal: A Rising Concern For All In Nepal

<sup>22</sup> Dhungel, Rita. "Unpacking Human Trafficking from Neoliberalism and Neo-conservatism Paradigms in Nepal: A Critical Review." *Molung Educational Frontier*, vol. 11, 2021, pp. 188–211.

- Children born to a female slave owned by a Sacred Thread-wearing or Alcohol-drinking caste member have limited redemption rights
- Parents or coparceners can redeem. However, if the master attempted to sell them to a third party, the father or his family had the right to buy and free them, but with limitations (e.g., daughters past age 11 could not be redeemed).

- Restrictions on selling redeemed children

### **3. Wage Labor and Contract Terms**

- Servants without specified contract duration can leave at any time
- Servants with fixed-term contracts must complete their agreed service
- Penalties for early contract termination
- Provisions for wage payment and dispute resolution
- A servant on a fixed-term contract was bound to serve the agreed time, even if they found better wages elsewhere. If wages were unpaid, the employer was required to compensate the worker with additional penalties.

### **4. Slave Pricing and Valuation**

- Standardized pricing based on age and gender
- Specific rates for slaves from 3 to 60 years old
- Fines for false claims of ownership

### **5. Debt Bondage Restrictions**

- Only the individual who agreed to servitude could be bonded; family members were not automatically included.
- Restrictions on accepting daughters as bondservants. Daughters could not be taken into debt bondage since they did not inherit paternal property.
- Protection of family members after a bondservant's death

### **6. Legal Rights and Protections**

- Slaves can be punished for crimes, but with specific legal constraints. Slaves who committed capital offenses were executed. Slaves could be punished like free individuals for lesser crimes, but their property could not be confiscated.
- Protections against illegal enslavement of free persons

- Mechanisms for slaves to challenge their status in court

## **7. Emancipation and Caste Considerations**

- Specific rules for emancipating slaves
- Complex provisions for individuals who change caste status
- Protections for children born to slaves from higher-caste fathers

## **8. Additional Protections**

- Prohibitions on enslaving children under 16
- Penalties for illegally selling or purchasing slaves
- Mechanisms for verifying and challenging slave status

The provisions in Chapter 82 of the **Muluki Ain (1910/1854)** regarding the enslavement or sale of individuals provide insight into the complex and historically entrenched practices of human trafficking and slavery in the region. The laws reflect a deeply ingrained system of caste-based slavery, which allowed individuals, often from lower castes, to be enslaved or sold as property. The provisions permitted voluntary enslavement, where individuals or their family members could, of their own volition, enter into servitude, either as a result of debt or as a familial arrangement, with rituals like the anointing of oil symbolizing the entry into slavery. The sale of individuals, particularly children, was heavily regulated, with age limits (e.g., no one under 16 could be enslaved) and restrictions on who could be a valid seller or buyer.

Historically, these laws are indicative of ancient practices where caste systems, social hierarchy, and economic disparities played a central role in human trafficking. The regulation of such practices through formal legal channels, like the *adālata* (court) or *thānā* (police station), suggests an institutionalized form of slavery and human trafficking, which was largely accepted and codified. The ability to redeem or free enslaved individuals, particularly in cases of wrongful enslavement, and the punishment for wrongful sales, point to an attempt to balance human trafficking practices with a legal framework, though it still maintained the system of enslavement in a structured, though morally contentious, manner. Such laws, deeply rooted in caste discrimination and socio-economic conditions, reflect the grim reality of human trafficking in ancient legal systems, where people could be commodified, sold, and subjected to harsh conditions based on their birth or debt status.

## 2.2.2 The Mulukī Ain of 1963 (2020)

Nepal's first provision on Human Trafficking was in Mahal 11 of Part 4 of the Muluki Ain, Jiu Masne Bechneko Mahal. Jiu Masne translates to destruction of one's body and 'bechne' translates to the sale of the body. Four acts had been defined as a crime under this chapter

- (a) Taking a person outside the country with a purpose of selling such person (No. 1)
- (b) Buying or selling a person (No. 1)
- (c) Trying to separate a child under the age of 16 or a person of unsound mind or removing them from the guardianship or protection of their guardian without the consent of their guardian (No. 2)
- (d) Causing someone to be a Kamara/Kamari/Slave or bonded labour (कमारा, कमारी, बाँधा) (No.3.)

Punishment as Per Muluki Ain 2020<sup>23</sup>

No.	Provision	Details	Punishment
1	<b>Human Trafficking and Sale</b>	No person shall lure or take another person outside Nepal with the intention to sell them, nor sell outside Nepal.	- Caught before the sale: Imprisonment for 10 years. - Caught after the sale: Imprisonment for 20 years.
2	<b>Separation of Minors or Mentally Unsound Persons</b>	No person shall separate or lure a minor (under 16) or mentally unsound person from their guardian without consent.	- Fine up to 500 Rupees. - Imprisonment for up to 3 years. - Or both fine and imprisonment.
3	<b>Sub-Servants, Slavery, and Bonded Labor</b>	No person shall make another a Kamara, Kamari (sub-servant), slave, or bonded labour.	- Imprisonment from 3 to 10 years. - Possible compensation ordered from the offender to the victim.
4	<b>Aiding in Human Trafficking</b>	Any person who aids in committing the offences in points 1, 2, or 3.	- Half the punishment of the principal offender.
5	<b>Void Sale and Fine for Sellers</b>	If a person is sold or bought as per points 1 and 3, the amount involved in the transaction shall be void.	- Seller liable to a fine equal to the amount involved in the sale. - In addition to the punishment in points 1 & 3.

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<sup>23</sup> Muluki Ain, 2020 B.S. (11th amendment in 2059/06/10)

The provisions under Chapter 11 of the Muluki Ain 2020 (1963) on human trafficking show a significant evolution in Nepal's approach to human rights and exploitation. Historically, human trafficking laws in ancient times, such as in the Muluki Ain of 1910, were less comprehensive and focused primarily on controlling slavery and forced labor, often permitting such practices under certain conditions. In contrast, the Muluki Ain 2020 reflects a modern, human rights-oriented approach, with strict penalties for trafficking and exploitation, particularly the sale of persons outside Nepal. The punishment for trafficking offenses has been significantly strengthened, from 5 years in the 1910 version to up to 20 years in the 2020 law.

Changes from the 1910 to the 2020 Muluki Ain include the broader scope of protection, including specific provisions against separating minors or mentally unsound persons from their guardians, and the clear criminalization of slavery and bonded labor, practices that were not fully addressed in earlier laws. The shift highlights Nepal's alignment with international human rights standards, prioritizing the protection of vulnerable individuals and reflecting the global move away from practices like slavery and forced labor.

### 2.2.3 Human Trafficking (Control) Act, 2043

The Human Trafficking (Control) Act was then enacted in 2043/07/24 which did not exactly repeal Chapter 11 of the Muluki Ain but did state that in the matters regulated by the Act, the Act would prevail over Muluki Ain. This Act in Sec 4 defined the following four acts as trafficking and Sec 8 defined the punishment:

<b>Act of Trafficking</b>	<b>Punishment</b>
(a) Buying or selling a person for any purpose	10 to 20 years imprisonment
(b) Taking a person across the border for buying or selling	5 to 10 years imprisonment
(c) Getting a woman to engage in prostitution by any means of coercion, force, undue influence, or any other means	10 to 15 years imprisonment
(d) Conspiracy, Aiding, Abetment, or Attempt to any of the acts described above	5 years imprisonment

The Act provided that the police had to take the permission of the court immediately after an FIR or complaint of the crime of trafficking was filed and the police could carry out the investigation only after such authorization. Similarly, the Act introduced the provision of

certifying the statement of the survivor of such an offense 24 hours within the statement recorded at the District Attorney's Office. This provision is the most important subject matter discussed and deliberated in the case laws of Human Trafficking and Transportation which shall also be discussed in detail in this report. Section 7 of the Act provided the matters on burden of proof stating that if a person who is not a close relative or guardian is caught taking a woman out of the country and a complaint is received that the purpose of such travel is for selling, then the person caught has the burden of proof to show that the travel was not for the purpose of trafficking. Similarly, the burden of proof that the certified statement is false was also shifted on the defendant.

#### **2.2.4 Human Trafficking and Transportation (Control) Act, 2064 (2007)**

The Human Trafficking and Transportation (Control) Act, 2064 [hereinafter the 2064 Act] replaced the Human Trafficking (Control) Act, 2043. The 2064 Act emerged as a response to Nepal's ratification of international conventions and mounting pressure from civil society. Departing from its predecessor's narrow scope, the law adopted a victim-centric approach, aligning partially with the UN Palermo Protocol's definition of trafficking.

This Act tried to expand the scope of Human Transportation and Trafficking. However, after the enactment of this Act, we can note that there has been a lot of confusion in distinguishing the crime of Trafficking and Transportation. Further, the earlier law classified the forcible engagement of an individual into prostitution as one of the crimes separately, but this Act defined it as an act of trafficking. This has caused a lot of confusion which shall be demonstrated in the examples and case laws cited below. Following the enactment of this Act, we see that most convictions concern Transportation rather than Trafficking. This may also be because of active police intervention, where the process of trafficking does not occur due to the intercept of the police and concerned stakeholders in the transportation phase. While this has made the process of punishing anyone with the intention of trafficking much easier, there is ambiguity and confusion as to which charge is appropriate for anyone found crossing the border with the intention of trafficking a person. The Human Trafficking and Transportation (Control) Act 2064 has been amended six times, with the most recent amendment on 2080-12-30.

We will examine the details of this Act in the next chapter of this dissertation.



## CHAPTER III

### CONCEPT OF HUMAN TRAFFICKING AND TRANSPORTATION

#### 3.1 Introduction to human trafficking

**Human trafficking** is a severe crime and a grave violation of human rights that involves the recruitment, transportation, transfer, harbouring, or receipt of people through force, fraud, or coercion for the purpose of exploitation. This exploitation may include forced labour, sexual slavery, organ trafficking, or involuntary servitude. Victims are often deceived with false promises of employment, education, or a better life and are then subjected to inhumane conditions, abuse, and restricted freedom. Human trafficking is a global issue that affects millions of people, particularly women and children, and is driven by factors such as poverty, lack of education, political instability, and demand for cheap labour and sexual exploitation. Governments and international organizations work together to combat this crime through strict laws, awareness campaigns, and victim support programs.

Human trafficking is a grievous violation of human dignity, a ruthless trade that preys upon the vulnerable, stripping individuals of their freedom and reducing their hopes and dreams to commodities. It is the silent theft of innocence, where souls are trapped in unseen chains, their cries often unheard by a world too distant to notice. In this cruel cycle, traffickers exploit poverty, ignorance, and desperation, turning human lives into mere means of profit. Yet, within this tragedy lies an undeniable truth — the resilience of the human spirit, yearning to break free, to reclaim its lost dignity, and to rise from the shadows of oppression into the light of justice and hope.

Black's Law Dictionary defines **human trafficking** as:

“The act of recruiting, harbouring, transporting, providing, or obtaining a person for labour or services, through the use of force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”<sup>24</sup>

Any individual who commits any of the following acts shall be considered to have engaged in human trafficking:<sup>25</sup>

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<sup>24</sup> Black's Law Dictionary, 11th Edition.

<sup>25</sup> Sec 4(1) of Human Trafficking and Transportation (Control) Act, 2064 (2007)

- (a) Selling or purchasing a person for any purpose;
- (b) Inducing or forcing someone into prostitution, whether or not there is any benefit involved;
- (c) Extracting a human organ, except as otherwise permitted by law;
- (d) Engaging in prostitution.

Section 4 of the **Human Trafficking and Transportation (Control) Act, 2064 (2007)** defines several acts as human trafficking in Nepal. It considers it human trafficking to sell or purchase a person for any purpose, including exploitation or forced labor. The law also criminalizes the act of inducing or forcing someone into prostitution, irrespective of any financial gain. Additionally, the extraction of human organs for trade, unless explicitly authorized by law, is also classified as human trafficking. Lastly, the law treats engaging in prostitution as an act of trafficking. Essentially, this section outlines a range of exploitative activities involving the illegal trade and exploitation of individuals.

**The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol, 2000)** defines human trafficking as:

“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, or giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”<sup>26</sup>

Human trafficking as a modern form of slavery that violates human rights and undermines human dignity.<sup>27</sup> It is often linked to organized crime and transnational networks.<sup>28</sup>

Human trafficking is often conducted by organized crime syndicates that operate transnationally. These networks work across borders, often using sophisticated methods to recruit, transport, and exploit victims. Traffickers may use fraudulent documents, manipulate legal loopholes, and bribe officials to facilitate the movement of victims, making it difficult for law enforcement to track or dismantle trafficking operations.

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<sup>26</sup> United Nations. (2000). Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol). Retrieved from <https://www.unodc.org>

<sup>27</sup> Gallagher, A. (2010). The International Law of Human Trafficking. Cambridge University Press.

<sup>28</sup> Shelley, L. (2012). Human Trafficking: A Global Perspective. Cambridge University Press.

These criminal organizations profit enormously from trafficking, often using the same methods and infrastructure that are used in other illegal activities, such as drug trafficking or arms smuggling. The global nature of trafficking means that law enforcement agencies and governments must cooperate at international levels to disrupt these networks and prevent the trade in human lives.

Human trafficking remains one of the most horrific human rights abuses in the world today. It is a form of exploitation that dehumanizes individuals and strips them of their dignity. Human trafficking is a global issue, with victims being trafficked both within their countries and across borders. The International Labour Organization (ILO) estimates that over 40 million people worldwide are victims of human trafficking, with women and children making up the majority of those affected.<sup>29</sup>

### **3.1.1 Key Aspects of Human Trafficking**

**Coercion and Deception:** Human trafficking often begins with deception or coercion. Traffickers frequently prey on vulnerable individuals, offering false promises of a better life, good job opportunities, or education. Once the victims are in the traffickers' control, they are often forced into situations where they have little or no freedom, and are subjected to physical, emotional, and sexual abuse. Traffickers may use threats of violence or other forms of manipulation to ensure compliance.

**Exploitation:** Exploitation is the end goal of human trafficking, whether for labour, sex, or other forms of servitude. Victims are often stripped of their dignity and subjected to inhumane conditions. Their traffickers may force them to work long hours without pay, in unsafe and unhealthy environments, or under the constant threat of harm. In the case of sex trafficking, victims may be sold into prostitution, pornography, or sexual slavery.

**Control and Isolation:** Once traffickers have gained control over their victims, they often isolate them to prevent escape or intervention. This isolation can be physical (through confinement or restricted movement) or psychological (through threats or manipulation). Victims are made to feel as if they have no choice but to comply with the demands of their traffickers, who may hold their passports or identification documents, further controlling them.

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<sup>29</sup> ILO (2022). Global Estimates of Modern Slavery. Geneva: International Labour Organization

### 3.1.2 Victim Demographics:

- **Women and Girls:** Women and girls are disproportionately affected by human trafficking, particularly for sexual exploitation. Gender inequality, discrimination, and limited access to education and economic opportunities make women and girls prime targets for traffickers.
- **Children:** Children are vulnerable to trafficking for forced labor, sexual exploitation, and use in illegal activities such as drug trafficking or child soldiering. Children, especially from disadvantaged backgrounds, are often manipulated or abducted for these purposes.
- **Migrants and Refugees:** Migrants, especially those fleeing conflict or seeking better economic opportunities, are particularly at risk of being trafficked. Traffickers exploit the desperation of people who may not fully understand the risks involved in migration, especially when traveling to countries where they have no support network or legal protections.

Human trafficking is a multi-dimensional problem that demands a comprehensive, coordinated global response. It is an egregious violation of human rights that leaves lasting physical, emotional, and psychological scars on its victims.

### 3.2 Introduction to human Transportation

Human transportation as a crime refers to the illegal movement of individuals from one location to another, often through coercion, fraud, or deception, with the intent of exploiting them for labour, sexual services, or other forms of abuse. This crime can involve the abduction, smuggling, or recruitment of individuals, sometimes across borders, without their consent or through manipulation.

Black's Law Dictionary defines **transportation** as:

“The act or business of carrying persons or goods from one place to another, by land, water, or air.”<sup>30</sup>

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<sup>30</sup> (*Black's Law Dictionary, 11th Edition*).

Any individual who commits any of the following acts shall be considered to have engaged in human transportation: <sup>31</sup>

- (a) Taking a person out of the country for the purposes of buying and selling.
- (b) Taking an individual from their home, place of residence, or from any other person using methods such as enticement, inducement, misinformation, forgery, deceit, coercion, abduction, hostage-taking, influence, threat, abuse of power, or other means of manipulation, fear, or coercion, with the intent to exploit them through prostitution. This also includes taking such individuals within Nepal or abroad and handing them over to others for the same purpose.
- (c) Directly or indirectly gaining illegal benefits or other advantages by using or attempting to use any Nepali citizen, foreign citizen, or stateless person to issue fake or forged documents, or to facilitate the illegal entry or exit of persons into or out of Nepal through human trafficking or related activities.
- (d) Using any means or methods to facilitate the entry or exit of any person into or out of Nepal for the purpose of human trafficking, utilizing Nepal's routes.

Under Section 4 of the *Human Trafficking and Transportation (Control) Act, 2064 (2007)*, human transportation includes taking a person out of the country for buying or selling, using coercion, deception, or influence to move individuals within or outside Nepal for exploitation, gaining illegal benefits through forged documents or facilitating illegal entry or exit, and using Nepal's routes for trafficking purposes.

Human trafficking is closely related to this crime, as it also involves the exploitation of people through force, fraud, or coercion. The main difference between human transportation and trafficking lies in the focus on the movement of individuals versus the exploitation itself. While human transportation refers to the physical act of moving victims, trafficking emphasizes the exploitation that occurs once the individuals reach their destination. Despite these nuances, both crimes are often interconnected, as transportation is frequently the first step in a broader trafficking scheme, with the ultimate goal being the victim's exploitation in various forms.

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<sup>31</sup> Sec 4(2) of Human Trafficking and Transportation (Control) Act, 2064 (2007)

In a case GoN (Dhanmaya Nagbanshi) v. Som Bahadur Tamang<sup>32</sup>, As per 2064 Act, Section 3 of this Act prohibits human trafficking and transportation, while Section 4(1) criminalizes human trafficking. Section 4(2) further defines what constitutes trafficking, specifying it separately from human trafficking. Additionally, Section 15 outlines different punishments for each type of offense. This distinction in the law clearly indicates that human trafficking and transportation are treated as two separate criminal acts, even though they often occur together. The absence of one does not negate the existence of the other. While the law prohibits the buying, selling, or use of individuals for trafficking, prostitution, or exploitation, it cannot be assumed that every instance of buying, selling, or use in prostitution automatically fulfils the purpose of trafficking. However, if the intent is to traffic, it is considered human trafficking.

Human transportation as a crime is often understood as the illegal and unethical act of moving individuals, typically against their will or under fraudulent circumstances, with the purpose of exploiting them. This movement can take various forms, such as smuggling individuals across borders or transporting them within a country. In many cases, the victims of human transportation are manipulated or coerced into leaving their homes, whether by false promises of employment, a better life, or threats of harm. Human transportation is considered a criminal act due to the violation of individuals' basic rights, such as freedom of movement, and their right to make decisions about where they live and work.

### 3.2.1 Transportation Methods in Human Trafficking

Human trafficking is a complex global issue where perpetrators exploit various transportation methods to move victims across different locations. Understanding these methods is crucial for prevention and intervention efforts.

Category	Mode of Transport	Characteristics	Key Risks & Challenges
<b>Land-Based Transportation</b>	<b>Personal Vehicles</b> (Cars, Vans, SUVs)	<ul style="list-style-type: none"> <li>- Full control over victim movement</li> <li>- Quick route changes - Disguised as family or group travel</li> <li>- Blends into normal traffic</li> </ul>	<ul style="list-style-type: none"> <li>- Difficult to detect in routine traffic</li> <li>- Rapid movement across regions</li> </ul>
	<b>Buses</b>	<ul style="list-style-type: none"> <li>- Anonymity on long-distance routes</li> <li>- Less security screening</li> </ul>	<ul style="list-style-type: none"> <li>- Minimal tracking of passengers</li> </ul>

<sup>32</sup> GoN v. Som Bahadur Tamang, DN; 9677 NKP Volume Year 58(9) NKP 2073, Supreme Court of Nepal

		<ul style="list-style-type: none"> <li>-Affordable for mass transport</li> <li>-Crosses state/national borders</li> </ul>	<ul style="list-style-type: none"> <li>- High volume of travellers masks trafficking</li> </ul>
	<b>Trucking Networks</b>	<ul style="list-style-type: none"> <li>- Some truckers may assist trafficking</li> <li>- Highways provide extensive mobility</li> <li>- Truck stops serve as transfer points</li> <li>- Routes span multiple regions/countries</li> </ul>	<ul style="list-style-type: none"> <li>-Large, unregulated movement</li> <li>-Isolated truck stops enable exploitation</li> </ul>
<b>Air Transportation</b>	<b>Commercial Flights</b>	<ul style="list-style-type: none"> <li>- Enables international transport</li> <li>- Use of legal travel documents -Victims lured with false job/marriage offers - Airports with weaker security exploited</li> </ul>	<ul style="list-style-type: none"> <li>- Difficult to detect fake travel documents</li> <li>- Speed of air travel limits intervention</li> </ul>
	<b>Private Aircraft</b>	<ul style="list-style-type: none"> <li>- Used by wealthy trafficking networks</li> <li>- Less screening &amp; documentation required</li> <li>- Flexible routes</li> <li>- Minimal security checks</li> </ul>	<ul style="list-style-type: none"> <li>- Private ownership reduces oversight</li> <li>- Cross-border movement with little detection</li> </ul>
<b>Maritime Transportation</b>	<b>Cargo Ships</b>	<ul style="list-style-type: none"> <li>- Large vessels allow for easy concealment</li> <li>- Complex international shipping routes</li> <li>- Minimal passenger tracking - Extended time at sea reduces detection</li> </ul>	<ul style="list-style-type: none"> <li>- Limited inspections of cargo</li> <li>- Global shipping routes complicate monitoring</li> </ul>
	<b>Fishing Vessels</b>	<ul style="list-style-type: none"> <li>- Operate in international waters with little oversight</li> <li>- Transfer victims between jurisdictions</li> <li>- Remote locations hinder intervention</li> </ul>	<ul style="list-style-type: none"> <li>- Difficult to track or intervene</li> <li>- Victims trapped at sea for extended periods</li> </ul>

### 3.2.2 Connection of Human Transportation to Human Trafficking

The connection between human transportation and human trafficking is significant, as the two often go hand-in-hand. Human trafficking encompasses a broader scope of exploitation, which includes not only the transportation of individuals but also the subsequent use of those individuals for forced labour, sexual exploitation, or involuntary servitude.

Trafficking involves not just the movement of victims but also their exploitation upon arrival at a destination. It is a crime that involves control, manipulation, and abuse, where traffickers exert power over victims through threats, force, and deceit.

The key difference between human transportation and trafficking lies in the stage of the crime being addressed. Human transportation primarily refers to the act of moving victims from one location to another, which could be done for various reasons—sometimes even for purposes not directly related to exploitation. For example, it could involve illegal immigration or smuggling, but when exploitation is involved, it becomes human trafficking. On the other hand, trafficking focuses on the victim's situation after they have been transported, where they are subjected to various forms of abuse or exploitation, such as forced labor or sex trafficking.

Despite these differences, the two crimes are intrinsically linked, with human transportation often serving as the first step in a trafficking operation. Once victims are transported to a different location, they are often forced into situations of exploitation, which can be long-lasting and devastating. Therefore, while human transportation can exist as a standalone crime, it frequently becomes part of a larger network of trafficking, which sustains and perpetuates the abuse. Both crimes are severe violations of human rights and are prosecuted globally, as they involve severe physical and psychological harm to victims. Combatting both human transportation and trafficking requires coordinated international efforts, strong legal frameworks, and effective victim support systems to ensure that those who fall prey to these crimes receive justice and assistance.

Human transportation and human trafficking are deeply interconnected, as traffickers often exploit legitimate transportation systems to move and exploit victims. Public and private transport networks, including buses, trains, airplanes, and even trucks, are frequently used by traffickers to transport victims across cities, regions, and international borders. These systems provide traffickers with the anonymity and efficiency needed to avoid detection, especially when combined with fraudulent documents such as fake passports or visas. Traffickers also exploit legal loopholes, such as misusing tourist or work visas, to bring victims into countries under false pretences. In some cases, corruption within the transportation sector further enables trafficking, as complicit officials or workers may facilitate the movement of victims in exchange for bribes or other incentives.

The rise of technology and online platforms has further complicated this issue, as traffickers now use the internet to recruit victims and arrange transportation through legitimate services.



Vulnerable populations, such as migrants, refugees, and those in dire economic situations, are particularly at risk, as traffickers often lure them with promises of better opportunities before exploiting them. Global supply chains also play a role, as victims are frequently transported to work in exploitative conditions in industries like agriculture, manufacturing, and domestic labour.

### **3.2.3 Elements Required to Prove the Crime of Transportation:<sup>33</sup>**

- The individual must be taken away from their place of residence or home to a different location.
- The act must be carried out using coercion, inducement, threat, or similar means.
- The purpose of transportation must be for exploitation or engaging the person in prostitution.

### **3.3 Major Forms of Human Trafficking and Transportation**

Human trafficking is a severe crime against humanity and involves the exploitation of individuals through force, fraud, or coercion. It manifests in various forms, each targeting vulnerable populations for profit. Below are the primary forms of human trafficking:

#### **Sex trafficking**

Sex trafficking is when someone uses coercion, force, or fraud to cause a commercial sex act with an adult or causes a minor to commit a commercial sex act.<sup>34</sup> A commercial sex act includes prostitution, pornography or sexual performance done in exchange for an item of value, such as money, shelter, food, drugs, or clothes.<sup>35</sup>

Definition: The exploitation of individuals for commercial sex acts through force, fraud, or coercion.

Victims: Primarily women and children, but men can also be victims.

Examples: Forced prostitution, pornography, escort services, and sex tourism.

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<sup>33</sup> Study of Supreme Court Judgments on Foreign Employment and Human Trafficking, People Forum for Human Rights(People Forum), 2022

<sup>34</sup> "What is Sex Trafficking? - Shared Hope International". Shared Hope International. Retrieved 2016-03-24.

<sup>35</sup> Ibid

Methods: Victims are often lured with false promises of jobs, relationships, or a better life, then trapped and forced into the sex trade.

### **Forced labour**

Forced labor refers to "situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers, or threats of denunciation to immigrant authorities."<sup>36</sup> Elements of forced labor include deception, exploitation and abuse, violating the International Labor Organization Declaration on Fundamental Principles and Rights at Work, adopted in 1998. In Nepal, slavery was one of the oldest forms of forced labor.<sup>37</sup>

Definition: The exploitation of individuals for labor or services through force, fraud, or coercion.

Victims: Men, women, and children, often from marginalized communities.

Examples: Forced labour in agriculture, construction, domestic work, manufacturing, and fishing.

Methods: Victims may be subjected to debt bondage, confiscation of documents, or threats of violence to keep them working under exploitative conditions.

### **Child Trafficking**

Child trafficking involves the use of children for the purpose of exploitation in various ways. It is a serious crime and a severe violation of human rights. It is irrelevant whether a child appears to have "consented" in some way to being exploited, especially when force, deception, coercion, or abuse of power or vulnerability are being used.<sup>38</sup> Over the past 15 years, the proportion of children among detected victims has tripled. Approximately one in every three trafficking victims detected is a child. While both girls and boys are affected overall, human trafficking impacts children differently depending on their gender and location. Girls are mainly trafficked for sexual exploitation, while boys are mostly trafficked for forced labour.<sup>39</sup>

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<sup>36</sup> "The meanings of Forced Labour". [www.ilo.org](http://www.ilo.org). 2014-03-10.

<sup>37</sup> "Forced Labour of Adults and Children in the Agriculture Sector of Nepal"

<sup>38</sup> Explainer: Understanding Child Trafficking, UNODC

<sup>39</sup> Ibid

Definition: The exploitation of children for labor, sex, or other purposes.

Victims: Children under the age of 18.

Examples: Child soldiers, forced begging, child marriage, and exploitation in the sex trade.

Methods: Children are often abducted, sold by families, or lured with false promises of education or employment.

## **Organ Trafficking**

Human trafficking for organ removal is surrounded by myths and misconceptions. In movies, it's often portrayed as a person waking up in a bathtub filled with ice, missing a kidney. However, the reality of this crime is far more complex, and these myths hinder our comprehension of how traffickers operate. It is a form of trafficking in which individuals are exploited for organs. Although victims often appear to have consented to the removal of their organs, their consent is invalid when deception, fraud or abuse of a position of vulnerability is involved. In such cases, they are considered victims of human trafficking.<sup>40</sup> The traffickers, who are usually part of sophisticated criminal networks, profit by selling these organs to recipients who are unable or unwilling to wait for legal transplants. The most harvested organs from victims of trafficking in persons are kidneys, followed by parts of livers.

Definition: The illegal trade of human organs, often through coercion or exploitation.

Victims: Vulnerable individuals, often from impoverished backgrounds.

Examples: Forced organ removal, exploitation of donors, and black-market organ sales.

Methods: Victims may be deceived or coerced into giving up organs, often under unsafe conditions.

## **Other forms of Human Trafficking:**

**Domestic Servitude:** Individuals are forced into domestic work under exploitative conditions, often facing restricted freedom, abuse, and withheld wages.

**Debt Bondage:** Victims are trapped in exploitative labour conditions under the guise of repaying a debt, which continuously increases due to manipulation.

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<sup>40</sup> Explainer: Understanding Human Trafficking for Organ Removal, UNODC

**Bride Trafficking:** Women and girls are trafficked and coerced into marriages, frequently subjected to abuse and exploitation.

**Trafficking for Criminal Activities:** Individuals are forced into crimes such as drug trafficking, theft, and fraud through coercion, threats, or deception.

**Trafficking for Forced Begging:** Vulnerable individuals, including children and persons with disabilities, are compelled to beg and surrender their earnings to traffickers.

**Trafficking for Surrogacy and Adoption:** Women are exploited for illegal surrogacy arrangements, and children are trafficked for unlawful adoptions.

**Trafficking for Military Exploitation:** Children and adults are forcibly recruited into armed groups as soldiers, porters, or human shields.

**Trafficking for Online Sexual Exploitation:** Victims, particularly minors, are exploited through live-streamed abuse, cybersex trafficking, and non-consensual pornography.

**Trafficking for Ritual Practices:** Individuals, especially children, are trafficked for ritualistic killings, sacrifices, or other harmful traditional practices.

**Trafficking for Forced Medical Trials:** Vulnerable individuals are subjected to illegal drug trials or experimental medical procedures without consent.

**Trafficking for Illicit Labour:** Victims are forced to work in illegal industries such as drug production, counterfeit manufacturing, and wildlife trafficking.

**Trafficking for Slave-like Practices:** People are subjected to conditions resembling slavery, including hereditary servitude and caste-based forced labour.

**Trafficking for Exploitation in Tourism:** Victims are lured into exploitative work in hospitality, entertainment, or informal sectors under false job promises in tourist regions.

**Trafficking for Sham Rehabilitation Programs:** Vulnerable individuals, including those with addictions, are deceived into fraudulent rehabilitation centres and exploited for labour or financial gain.

**Trafficking for Hazardous Labour:** Migrant workers are trafficked into dangerous construction and infrastructure jobs, often facing wage theft, identity document confiscation, and inhumane conditions.

### 3.4 Differences between Human Trafficking and Human Smuggling

Migrant smuggling or Human Smuggling, which is defined in the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime as "...the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national".<sup>41</sup> Unlike human trafficking, people smuggling is characterized by the consent between customer and smuggler – a contractual agreement that typically terminates upon arrival in the destination location. Human trafficking involves transporting individuals from one place to another either against their will or under some sort of false pretenses. With smuggling, on the other hand, there is understood to be an agreement between smuggler and customer, a meeting of the minds and a contract between the two. These differences can similarly be detected in the Trafficking and Smuggling Protocols (more commonly known as the Palermo Protocols) passed by the UN Convention on Transnational Organized Crime. The Palermo Protocols frame the difference between smuggling and trafficking around the dichotomy of coercion and consent: whereas people who are trafficked are considered "victims" or "survivors", individuals who are smuggled are seen as having engaged willingly in an enterprise that one or both of the bordering countries consider illegal. The recognition of trafficked persons as "victims" but smuggled migrants as "objects" of a process is a principal point of difference between how international law treats trafficked and smuggled migrants.

Aspect	Human Trafficking	Human Smuggling
Definition	The recruitment, transportation, transfer, harboring, or receipt of persons by means of threat, use of force, coercion, abduction, fraud, deception, abuse of power, or	The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party

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<sup>41</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, art. 3(a), U.N. Doc. A/55/383 (2000)

	exploitation of vulnerability for the purpose of exploitation. <sup>42</sup>	of which the person is not national or a permanent resident. <sup>43</sup>
Consent	Victims have not consented, or if they initially consented, it was obtained through deception or coercion and is rendered meaningless by the exploitative nature of the act.	Individuals typically consent to be smuggled, often paying smugglers to facilitate illegal entry into another country.
Exploitation	Involves ongoing exploitation of victims for purposes such as forced labor, sexual exploitation, or other forms of servitude.	Smuggling ends with the arrival of the migrants at their destination, and there is no intent to exploit them beyond the illegal entry.
Trans nationality	Not necessarily transnational; trafficking can occur within a country's borders and does not require the crossing of international boundaries.	Inherently transnational, as it involves the illegal crossing of international borders.
Violation Against	Considered a crime against the individual due to the violation of the victim's rights through exploitation and coercion.	Considered a crime against the state due to the violation of immigration laws.

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<sup>42</sup> United Nations. (2000). Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. U.N. Doc. A/55/383.

<sup>43</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, art. 3(a), U.N. Doc. A/55/383 (2000)

Relationship Duration	The relationship between trafficker and victim is continuous, with ongoing control and exploitation.	The relationship between smuggler and migrant is short-term, typically ending upon arrival at the destination.
Profit Source	Derived from the continuous exploitation of victims through forced labor, sexual exploitation, or other means.	Derived from fees paid by individuals seeking illegal transportation or entry.
Victimization	Individuals are considered victims of a crime under international law and are entitled to protection and assistance.	Individuals are not considered victims under international law; they are complicit in the illegal act of smuggling.
International Legal Framework	Governed by protocols such as the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol).	Governed by protocols such as the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air.

While human trafficking and human smuggling may appear similar, they are fundamentally distinct. Human trafficking involves the exploitation of individuals through force, coercion, or deception for purposes such as forced labor or sexual exploitation, often without the victim's consent. It is a crime against the individual and can occur both within and across borders. In contrast, human smuggling involves the illegal transportation of individuals across borders with their consent, typically for financial gain, and ends once the individual reaches their destination. Smuggling is a crime against the state, and while it may be transnational, it does not involve exploitation or coercion after arrival. These differences are crucial for legal frameworks and international protocols aimed at combating these offenses.

### **3.5 Causes of Human Trafficking and Transportation**

Human trafficking is a complex and multifaceted crime, driven by various factors that span socio-economic, political, and cultural dimensions. These causes can be broadly categorized into push and pull factors, which motivate both the victims and traffickers. The causes of human trafficking and transportation are deeply rooted in systemic issues such as poverty, inequality, corruption, and political instability, as well as in demand-driven factors such as cheap labor and sexual exploitation.

#### **a) Economic Factors**

Human trafficking is deeply rooted in economic vulnerabilities that create conditions of extreme desperation:

##### **1. Poverty**

- Extreme economic hardship forces individuals to seek opportunities that make them susceptible to trafficking
- Limited economic prospects create pressure to migrate for work, increasing vulnerability
- Poverty reduces access to education and economic mobility, limiting protective options

##### **2. Unemployment and Economic Instability**

- High unemployment rates drive people to accept risky job opportunities
- Economic instability creates populations desperate for income
- Lack of sustainable local economic opportunities increases migration risks

#### **b) Social and Structural Vulnerabilities**

Systemic inequalities and social structures significantly contribute to human trafficking:

##### **1. Gender Inequality**

- Discriminatory social norms that marginalize women and girls
- Limited economic opportunities for women in many societies
- Cultural practices that devalue women's autonomy and economic potential



## **2. Marginalized Populations**

- Ethnic minorities
- Indigenous communities
- Refugee and displaced populations
- Individuals with limited legal protections
- People with disabilities

### **c) Political Factors**

Political instability and weak governance create environments conducive to trafficking:

#### **1. Conflict and Political Instability**

- War and armed conflicts disrupt social structures
- Breakdown of legal protections
- Displacement of populations
- Increased vulnerability of children and women during conflicts

#### **2. Weak Legal Frameworks**

- Inadequate law enforcement
- Corrupt governmental systems
- Insufficient prosecution of trafficking networks
- Weak border control mechanisms

### **d) Psychological and Individual Factors**

Personal vulnerabilities that increase trafficking risks:

#### **1. Psychological Vulnerabilities**

- Low self-esteem
- History of abuse or trauma
- Limited social support networks

- Psychological manipulation by traffickers

## **2. Educational Limitations**

- Low levels of education
- Limited awareness of trafficking risks
- Reduced ability to recognize exploitative situations
- Fewer economic opportunities

## **e) Demand-Side Factors**

Persistent market demand drives human trafficking:

### **1. Labour Exploitation**

- Industries requiring low-cost labour
- Agricultural sector
- Construction
- Domestic work
- Manufacturing

### **2. Sexual Exploitation**

- Global sex industry
- Pornography markets
- Sex tourism
- Complex networks of commercial sexual exploitation

Human trafficking and transportation are complex issues driven by a combination of economic, social, political, psychological, and demand-side factors. Economic vulnerabilities, such as poverty and unemployment, create conditions that push individuals toward risky migration routes, making them vulnerable to exploitation. Social inequalities, particularly gender discrimination and marginalization of certain populations, further exacerbate this vulnerability. Political instability and weak legal frameworks, including corruption and inadequate law enforcement, provide an environment where trafficking can thrive. Additionally, individual psychological vulnerabilities, including low self-esteem and

prior trauma, can increase susceptibility to trafficking, while lack of education limits awareness of risks. Finally, demand-side factors, including the need for cheap labor and the global demand for sexual exploitation, drive the market for trafficking.

### **3.6 Impact of Human Trafficking and Transportation**

Human trafficking represents a grave violation of human rights with far-reaching consequences that extend beyond individual victims to families, communities, and entire economic systems. This analysis examines the comprehensive impact across multiple critical domains.

#### **3.6.1 Impact on Victims: A Multi-layered Trauma**

##### **a) Physical Consequences**

- Victims often endure severe physical abuse, malnutrition, and deliberate health deprivation
- Increased vulnerability to sexually transmitted infections, chronic health conditions, and long-term physical disabilities
- Potential exposure to extreme physical violence, torture, and life-threatening working conditions

##### **b) Psychological Consequences**

Profound psychological trauma, including:

- Post-traumatic stress disorder (PTSD)
- Chronic depression and anxiety
- Severe trust issues and emotional dissociation
- Heightened risk of suicide and self-harm
- Long-term psychological scars that persist even after liberation from trafficking situations
- Challenges in rebuilding personal identity and sense of self-worth

##### **c) Social Consequences**

- Severe social isolation and disruption of personal relationships
- Potential stigmatization upon return to their communities

- Difficulties in reintegrating into educational systems or social networks
- Challenges in forming healthy interpersonal relationships due to trauma

#### **d) Economic Consequences**

- Loss of educational and professional opportunities
- Significant barriers to economic independence
- Potential long-term unemployment or underemployment
- Economic vulnerability that increases risk of re-trafficking

### **3.6.2 Impact on Families and Communities**

#### **a) Displacement and Social Disruption**

- Fragmentation of family units and support systems
- Intergenerational trauma transmitted through disrupted family structures
- Loss of potential caregivers and economic contributors within families
- Increased community instability and social tension

#### **b) Social Stigma**

- Victims often face profound social marginalization
- Families may experience collective stigmatization and social ostracism
- Cultural shame and community judgment that impede healing and reintegration
- Potential breakdown of traditional social support mechanisms

#### **c) Economic Burden**

- Substantial financial costs for families seeking victim recovery and rehabilitation
- Loss of potential family income due to trafficking
- Resources diverted from community development to individual survival
- Increased healthcare and psychological support expenses

### **3.6.3 Impact on National and Global Economics**

#### **a) Illicit Market Dynamics**

- Human trafficking generates an estimated \$150 billion in illegal profits annually<sup>44</sup>
- Creates complex underground economic networks
- Undermines legitimate economic structures and fair labour practices
- Facilitates additional criminal activities like money laundering

#### **b) Workforce Disruption**

- Significant loss of productive human capital
- Reduction in workforce potential, especially in developing economies
- Interruption of skill transmission and professional development
- Increased economic vulnerability for marginalized populations

#### **c) Legal and Governmental Burden**

- Substantial costs for law enforcement and judicial processes
- Resources allocated to investigation, prosecution, and victim support
- Complex international legal challenges in trafficking prevention
- Strain on diplomatic relations and cross-border cooperation

Human trafficking is a deeply harmful crime that affects not only the victims but also families, communities, and entire economies. The consequences for victims are devastating and far-reaching, leading to long-term physical, psychological, and economic hardship. The broader societal and economic impact includes displacement, social stigma, and economic burden on families and communities. On a larger scale, human trafficking contributes to the illicit economy, drains national resources, and creates a significant strain on legal systems worldwide.

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<sup>44</sup> Countering Human Trafficking: Year in Review (October 2020 to September 2021). DHS Center for Countering Human Trafficking, U.S. Department of Homeland Security, Jan. 2022. Retrieved from <https://www.dhs.gov/sites/default/files/2022-02/CCHT%20Annual%20Report.pdf>



## CHAPTER IV

### NATIONAL AND INTERNATIONAL LEGAL FRAMEWORKS

#### 4.1 NATIONAL LEGAL FRAMEWORK

##### 4.1.1 Constitution of Nepal (2072)

The Constitution of Nepal, promulgated in 2015, explicitly prohibits human trafficking and exploitation. It states that No one shall be subjected to trafficking nor shall one be held in slavery or servitude.<sup>45</sup> Such an act shall be punishable by law and victim shall have the right to obtain compensation from the perpetrator in accordance with law.<sup>46</sup> A victim of human trafficking and transportation shall have the right to justice including social rehabilitation and compensation in accordance with law.<sup>47</sup> This provision underscores the nation's commitment to safeguarding individuals from trafficking and related exploitative practices. Article 21 and Article 29 of the constitution has been invoked in cases like *Laxman Thapa v. GoN* (2078) to mandate victim compensation.

##### 4.1.2 Human Trafficking and Transportation (Control) Act, 2064 (2007)<sup>48</sup>

This act serves as the primary legislation against human trafficking in Nepal. As the nature, forms and mode of trafficking changed, and an understanding of the crime developed, the Human Trafficking (Control) Act, 2043 was replaced by the Human Trafficking and Transportation (Control) Act, 2064 (2007) [hereinafter the 2064 Act]. While the Previous act was more focused on crime control, the 2064 Act takes a more victim-centric approach. While the previous act conflated human trafficking with prostitution, the 2064 Act broadens the definition of human trafficking to include other forms of exploitation. And finally, the 2064 Act attempts to reflect the definitions of trafficking used in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol) of the 2000 Convention against Transnational Organised Crime.

Within the context of Nepal, the Human Trafficking and Transportation (Control) Act of 2064 has been enacted to address this concern. The legislation aims to end instances of human

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<sup>45</sup> Constitution of Nepal, 2015, Art. 29(3).

<sup>46</sup> Constitution of Nepal, 2015, Art. 29(5).

<sup>47</sup> Constitution of Nepal, 2015, Art. 21(2).

<sup>48</sup> 2064 Act

trafficking and transportation, while simultaneously safeguarding and rehabilitating trafficking victims.

### **A. Acts Classified as Human Trafficking and Transportation<sup>49</sup>**

Human Trafficking: If anyone commits any of the following acts that shall be deemed to have committed human trafficking:

1. Selling or purchasing a person for any purpose.
2. Inducing or forcing someone into prostitution, regardless of whether any benefit is involved.
3. Extracting a human organ, except as permitted by law.
4. Engaging in prostitution.

There used to be ambiguity on the matter of interpretation of the fourth crime of going for in prostitution. The Nepali print of the Act, which is considered the original and the authentic copy of the Act criminalized वेश्यागमन, however the definition of Besyagaman is not given in the Act. There was a split among scholars in defining Besyagaman where one line of approach was that only the act of availing the prostitution services as a customer was criminalized, whereas the other line of approach suggested that it was criminalized for both the sex worker and the customer. But recently a Supreme Court judgement clarified that the woman who engages in prostitution in Nepal cannot be punished, or the act is not punishable as a crime for women involved in sex work.<sup>50</sup> Notwithstanding this, however, causing someone to engage in prostitution or keeping someone for the purpose of engaging them in prostitution or to go for in prostitution is criminalized.

Human Transportation for Trafficking: If anyone commits any of the following acts that shall be deemed to have committed human Transportation:

1. Taking a person out of the country for the purpose of buying and selling.
2. Removing an individual from their home, residence, or another person's custody using enticement, inducement, misinformation, forgery, deceit, coercion, abduction, hostage-taking, influence, threats, abuse of power, or other manipulative means with the intent to

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<sup>49</sup> Sec 4 of 2064 Act.

<sup>50</sup> Bishnu Thapa v. GoN, 62(2) NKP 2077, Dec no. 10617.



exploit them through prostitution. This includes transporting such individuals within Nepal or abroad and handing them over to others for the same purpose.

3. Directly or indirectly gaining illegal benefits by using or attempting to use any Nepali citizen, foreign citizen, or stateless person to issue fake or forged documents or facilitate illegal entry or exit into or out of Nepal through human trafficking.
4. Using any method or means to facilitate the entry or exit of any person into or out of Nepal for human trafficking, utilizing Nepal's routes.

Section 3 of the 2064 Act prohibits Human trafficking and Transportation.

1) No one shall commit or cause to commit human trafficking and transportation.<sup>51</sup>

(2) If anyone commits an act under Subsection (1), that shall be deemed to have committed an offence under this Act.<sup>52</sup>

Section 4 defines the crime of human transportation and trafficking and Section 3 Prohibits the crime, while Section 15 outlines the punishable activities and the severity of the crime. To fully understand the offense and its corresponding punishment, Section 3 and 4 must be read alongside Section 15. This allows for a clear understanding of the degree of the crime and the specific acts that are penalized.

## **B. Punishment for Human Trafficking and Transportation<sup>53</sup>**

<b>Punishable Acts</b>	<b>Punishment</b>
<b>(a) Selling or buying a human being</b>	20 years imprisonment and a fine of 200,000 Rupees
<b>(b) Forcing a person into prostitution, with or without financial benefit</b>	10 to 15 years imprisonment and a fine of 50,000 to 100,000 Rupees
<b>(c) Extracting a human organ (except as permitted by law)</b>	10 years imprisonment and a fine of 200,000 to 500,000 Rupees
<b>(d) Engaging in prostitution</b>	1 to 3 months imprisonment and a fine of 2,000 to 5,000 Rupees

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<sup>51</sup> Sec 3(1) of 2064 Act.

<sup>52</sup> Sec 3(2) of 2064 Act.

<sup>53</sup> Sec 15 of 2064 Act.

<b>(e) Transportation of a human for buying, selling, or prostitution</b>	<b>For taking a person out of the country:</b> 10 to 15 years imprisonment and a fine of 50,000 to 100,000 Rupees
<b>For taking a child out of the country</b>	15 to 20 years imprisonment and a fine of 100,000 to 200,000 Rupees
<b>For taking a person from one place to another within the country</b>	10 years imprisonment and a fine of 50,000 to 100,000 Rupees
<b>For taking a child from one place to another within the country</b>	10 to 12 years imprisonment and a fine of 100,000 Rupees
<b>(f) Transporting a person for exploitation under Clause (b) of Sub-section (2) of Section 4</b>	<b>Within the country:</b> 1 to 2 years imprisonment
<b>Outside the country</b>	2 to 5 years imprisonment
<b>(g) Any other offence under Clause (b) of Sub-section (2) and Sub section (3) of Section 4 (except those in e and f)</b>	7 to 10 years imprisonment
<b>(h) Provocation, conspiracy, attempt, or abetment of human trafficking or transportation</b>	Half of the full punishment prescribed for that offense
<b>If the same person commits both buying/selling and forcing into prostitution</b>	Punishable under both offenses separately
<b>If the same person commits buying/selling or forcing into prostitution and an offense under Clause (b) of Sub-section (2) of Section 4</b>	Punishable under both offenses separately
<b>If the same person commits an offense under Clause (b) of Sub-section (2) of Section 4 and transports a human for buying, selling, or prostitution</b>	Separate punishment for each offense
<b>If the offender holds a public post</b>	Additional 25% punishment on top of the regular punishment
<b>If the victim is under protection/guardianship or is a relative of the offender (as per the Incest chapter in the Criminal Code)</b>	Additional 10% punishment on top of the regular punishment

<b>If the offender commits the crime repeatedly</b>	An additional one-fourth punishment for each repeated offense
<b>If a person involved in reporting an offense under Section 5 later gives a contradictory statement, does not appear in court, or does not assist the court</b>	3 months to 1 year imprisonment

## **C. Exemption from Punishment<sup>54</sup>**

If a person is aware or has reasonable grounds to believe that they are being trafficked, sold, or engaged in prostitution, or are being taken for such purposes, and they are unable to escape or receive help to free themselves from these acts, or if someone prevents or obstructs their escape through force or control, and the person, believing it to be impossible to break free from such control, causes harm or death to the perpetrator during the attempt to escape, that person shall not be held criminally liable, regardless of any provisions in the prevailing law.

## **D. Investigation in Human Trafficking and Transportation Cases**

### **1. Reporting of Offenses<sup>55</sup>**

(1) Any individual who is aware of an offense committed or likely to be committed the offence of Human trafficking and Transportation (under Section 3) may report the incident to the nearest police office.

(2) If the informant submits a written request to remain anonymous, the police office registering the report must ensure confidentiality and protect the informant's identity.

### **2. Certification of Statements<sup>56</sup>**

(1) If the person reporting the offense under Section 5 is a victim, the police must immediately record their statement and present the victim before the nearest district court for certification as soon as possible.

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<sup>54</sup> Sec 16 of 2064 Act.

<sup>55</sup> Ibid, Section 5

<sup>56</sup> Ibid, Section 6

(2) Upon receiving such a statement, the district judge, irrespective of jurisdictional limitations, shall certify the statement after reading it aloud and verifying its accuracy.

(3) A certified statement, once recorded under Subsection (2), shall be admissible as evidence in court proceedings, even if the victim is unable to appear in court during subsequent hearings.

### **3. Arrest and Investigation Procedures**<sup>57</sup>

(1) If there is reasonable belief that an offense under this Act is being or is likely to be committed in any house, land, place, or vehicle, and if immediate action is required to prevent the escape of the offender or destruction of evidence, a police officer of at least the rank of Sub-Inspector may, without a warrant, undertake the following actions:

- (a) Enter, search, or seize the premises, land, place, or vehicle.
- (b) Forcefully open doors or windows in case of obstruction.
- (c) Conduct an arrest or body search of a suspect without an arrest warrant.
- (d) Seize and secure any relevant evidence found at the location.

(2) During such operations, police personnel should, if feasible, include representatives of local bodies or other available witnesses and provide a copy of the search details to the owner of the premises.

(3) Any individual arrested without a warrant under Subsection (1) must be presented before the appropriate legal authority for approval of the arrest.

### **4. Prosecution in Custody**<sup>58</sup>

Notwithstanding any provisions in prevailing law, except for offenses under Clause (d) of Subsection (1) of Section 4 (engaging in Prostitution), the court shall detain the accused in custody while prosecuting cases under Section 4.

### **5. Burden of Proof**<sup>59</sup>

Contrary to general legal principles, in cases related to human trafficking, the accused bears the burden of proving their innocence.

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<sup>57</sup> Ibid, Section 7

<sup>58</sup> Ibid, Section 8

<sup>59</sup> Ibid, Section 9

## **6. Right to Legal Representation<sup>60</sup>**

Victims of human trafficking have the right to appoint an additional legal representative of their choice to advocate for their case during court proceedings.

## **7. Provision of Translators and Interpreters <sup>61</sup>**

If a victim does not understand the language used by the court or other legal authorities, they have the right to arrange for a translator or interpreter with the court's permission. The Government of Nepal shall bear the prescribed costs for hiring an interpreter, sign language expert, or translator upon the victim's request.

## **E. Provision of Rescue, Rehabilitation and Reconciliation**

Human trafficking includes many ways of exploitation of women and children. It has become a serious problem in Nepal. Delivering justice to victims of trafficking is a challenging job as it even requires cooperation of the parties not concerned to the offence. Just punishing the offender and providing compensation to the victim is far behind from justice. The victims may have lost ties with their families, and families may not be prepared to face community stigma once their child (Victim) returns. Entire Programs for rescue, rehabilitation and reintegration (Three Rs) is essential for rendering justice to the victims.<sup>62</sup>

### **Explanation of "Three Rs of Justice to Human Trafficking Victims"**

The concept of the "Three Rs"—Rescue, Rehabilitation, and Reintegration—in the context of justice for human trafficking victims is a framework aimed at ensuring comprehensive support for survivors. Each component plays a crucial role:

**Rescue** – Identifying and freeing victims from trafficking situations through law enforcement actions, NGOs, and social organizations.

**Rehabilitation** – Providing medical care, psychological counselling, legal aid, and vocational training to help survivors recover from trauma.

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<sup>60</sup> Ibid, Section 10

<sup>61</sup> Ibid, Section 11

<sup>62</sup> Ghimire, Saurav. "The Three Rs of Justice to Human Trafficking Victims (Rescue, Rehabilitation, and Reintegration)." [Kathmandu School of Law Review], vol. 1, special issue, Oct. 2012

**Reintegration** – Helping survivors re-join society with dignity, including economic empowerment, education, and social acceptance.

The Human Trafficking and Transportation Control Act, 2064, has provided clear provisions regarding the Rescue, Rehabilitation, and Reintegration of victims of human trafficking. The Chapter three of The 2064 Act outlines the responsibilities of the Government of Nepal, provincial and local governments, and non-governmental organizations in ensuring the protection and support of victims. The Act also mandates the establishment of rehabilitation centers and a rehabilitation fund to facilitate the recovery and reintegration of affected individuals.

## **1. Rescue Operations**

The Government of Nepal is responsible for organizing the rescue of Nepali citizens who have been trafficked or sold into foreign lands.<sup>63</sup>

To facilitate rescue operations and legal proceedings related to offenses punishable under this Act in a foreign country, the Government of Nepal may arrange for mutual legal assistance in accordance with prevailing laws.<sup>64</sup>

## **2. Rehabilitation Centers and Reintegration**

### **(1) Establishment of Rehabilitation Centers**

The Government of Nepal shall establish necessary rehabilitation centers to provide physical and mental health treatment, social reintegration, and family reconciliation for victims of human trafficking.<sup>65</sup>

In coordination with the Government of Nepal, provincial and local governments may also establish rehabilitation centers as per their requirements.<sup>66</sup>

If a rehabilitation center established by the Government of Nepal is to be operated by a provincial or local government, the Government of Nepal may transfer its management accordingly.<sup>67</sup>

### **(2) Involvement of Non-Governmental Organizations**

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<sup>63</sup> Sec 12(1) of 2064 Act.

<sup>64</sup> Ibid, Sec 12a

<sup>65</sup> Ibid, Section 13(1)

<sup>66</sup> Ibid, Section 13(1a)

<sup>67</sup> Ibid, Section 13(1b)

Organizations may obtain permission, as prescribed, to establish and operate rehabilitation centers in alignment with the objectives outlined in Sub-section (1). The Government of Nepal shall conduct regular and effective monitoring of such organizations and their rehabilitation centers.<sup>68</sup>

Rehabilitation centers established and operated by provincial or local governments under Sub-sections (1a) and (1b) shall be monitored by the respective governing bodies.<sup>69</sup>

### (3) Financial and Logistical Support

The Government of Nepal may provide financial and other necessary assistance, as prescribed, to rehabilitation centers operating under Sub-section (2).<sup>70</sup>

### (4) Social Reintegration and Family Reconciliation

Rehabilitation centers shall facilitate the social reintegration and family reconciliation of victims residing in these facilities.<sup>71</sup>

### (5) Medical Treatment and Counselling Services

Rehabilitation centers must provide victims with necessary medical treatment and consultation services.<sup>72</sup>

### (6) Protection of Victims' Rights

Victims residing in rehabilitation centers shall not be compelled to engage in any work against their will.<sup>73</sup>

### (7) Standards and Regulations

The management, operational standards, monitoring, skill development training, employment facilitation, rehabilitation, and family reconciliation processes shall be implemented as prescribed by law.<sup>74</sup>

## **3. Rehabilitation Fund**

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<sup>68</sup> Sec 13(2) of 2064 Act.

<sup>69</sup> Ibid, Sec 13(2a)

<sup>70</sup> Ibid, Sec 13(3)

<sup>71</sup> Ibid, Sec 13(4)

<sup>72</sup> Ibid, Sec 13(5)

<sup>73</sup> Ibid, Sec 13(6)

<sup>74</sup> Ibid, Sec 13(7)

### (1) Establishment of Rehabilitation Fund

The Government of Nepal shall establish a rehabilitation fund to support the operation of rehabilitation centers, as outlined in Section 13, Sub-section (1).<sup>75</sup>

#### (1a) Provincial and Local-Level Rehabilitation Funds

Provincial governments that assume management of rehabilitation centers under Sub-sections (1a) and (1b) of Section 13 may establish a rehabilitation fund in accordance with provincial law. Similarly, local governments may establish a rehabilitation fund based on local regulations and resources.<sup>76</sup>

### (2) Sources of Rehabilitation Fund

The rehabilitation fund shall receive contributions from the following sources:<sup>77</sup>

- (a) Financial support from the Government of Nepal,
- (b) Donations from national and international organizations and individuals,
- (c) Fifty percent of the fines collected under Section 15.

### (3) Fund Management and Operation

The management and operation of the rehabilitation fund shall be conducted as prescribed by law.<sup>78</sup>

## **F. Compensation to Victim**

Constitution of Nepal (2072) Provides that a victim of human trafficking and transportation shall have the right to justice including social rehabilitation and compensation in accordance with law.<sup>79</sup>

The concept of reparations is pivotal in transitional justice, focusing on measures to redress gross human rights violations. Reparations can include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. For trafficking victims,

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<sup>75</sup> Ibid, Sec 14(1)

<sup>76</sup> Ibid, Sec 14(1a)

<sup>77</sup> Ibid, Sec 14(2)

<sup>78</sup> Ibid, Sec 14(3)

<sup>79</sup> Constitution of Nepal, 2015, Art. 21(2).



compensation serves not only as financial redress but also as acknowledgment of the harm suffered and a step towards restoring their dignity. However, challenges persist in the legal system, such as difficulties in obtaining fair compensation, as victims often face obstacles in the judicial process that hinder proportional redress for their suffering.<sup>80</sup> A comprehensive approach to compensation considers the complex layers of trauma experienced by trafficking victims. This includes understanding the psychological, social, and economic impacts of trafficking. Effective compensation mechanisms should be part of broader support systems that address mental health, social reintegration, and empowerment of survivors. Such victim-centred approaches ensure that compensation contributes to the holistic recovery and well-being of trafficking survivors.<sup>81</sup>

The 2064 Act provides measures for victim/ witness protection and compensation to the victims. In A case, Nepal Govt vs. Binod Dhakal, Krishna Bd. Darji et.al on June 1st, 2013 Kathmandu District Court gave a verdict that the accused Mr. Dhakal and Mr. Darji to be imprisoned for 10 years and fined Nrs. 200,000 each and compensate the survivor with Nrs. 200,000 as per 2064 Act.<sup>82</sup>

The TIP Act provides that a victim shall be given compensation of at least one half of the amount fined to the offender. It also has other provisions for cases in which the victim dies before the compensation is given.

**Compensation to Victim:** The court is required to order compensation to the victim, which must be at least 50% of the fine imposed on the offender.<sup>83</sup>

**Compensation from Victim Relief Fund:** In cases where the offender has low financial status or the victim cannot receive compensation from the offender for any other reason, the court may order compensation to be paid from a victim relief fund, in line with relevant laws.<sup>84</sup>

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<sup>80</sup> Cusveller, Jeltsje, and Edward Kleemans. "Fair compensation for victims of human trafficking? A case study of the Dutch injured party claim." *International review of victimology* vol. 24,3 (2018): 297-311. doi:10.1177/0269758018758427

<sup>81</sup> Marburger, K., & Pickover, S. (2020). A comprehensive perspective on treating victims of human trafficking. *The Professional Counselor*, 10(1), 13–24. <https://doi.org/10.15241/km.10.1.13>

<sup>82</sup> Human trafficking and transportation(control) act, 2007:its implementation, The Asia Foundation,2014

<sup>83</sup> Sec 17(1) of 2064 Act.

<sup>84</sup> Ibid, Sec 17(1a)

**Compensation in Case of Victim's Death:** If the victim dies before receiving the compensation, it will be given to the victim's minor children. If there are no minor children, it will be given to the dependent parents of the victim.<sup>85</sup>

**Compensation in Absence of Dependents:** If there are no minor children or dependent parents to receive the compensation, the amount will be deposited into a rehabilitation fund, as per Section 14.<sup>86</sup>

**A Case Study on Interim Relief to the victim**<sup>87</sup>

Bindiya who was 5 months pregnant was sold to a brothel in India for IC 50,000.000. She was tortured and exploited for 15 years, and her son was given away. After spending 24 years of her life in a brothel, she was able to return to Nepal with the help of a Nepali woman. Upon her return, she found out that she was HIV positive. She filed a case against the perpetrator at the Makwanpur District Court, and Justice Tek Narayan Kunwar ordered the compensation of NRS 300,000 to the survivor to be provided immediately from the human trafficking rehabilitation fund.

However, despite the decision to give compensation by the courts, this compensation is usually not received by the survivor of human trafficking. The reasons for this are many. Firstly, they may not want to go to the Decision Execution Office as they want to maintain their confidentiality, or they have already settled into a new life and do not want to revisit the case.<sup>88</sup> It was also found that survivors of trafficking were not aware of the provision regarding compensations.<sup>89</sup> But some survivors said they even do not have information about the judgment. Only if they are living in the shelter they get updated about the case and only if cases are handled by the NGO. This also indicates lack of effective mechanism for communication of verdict of the court. Another is that although survivors are entitled to 50% of the fine received from accused, in many cases the accused do not have money, property or any other means to pay that fine. Therefore, survivors end up without compensation.

In a writ filed by FWLD<sup>90</sup>, the Supreme Court of Nepal has ordered To create a separate compensation fund as early as possible managing necessary allocation of amount in the

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<sup>85</sup> Ibid, Section 17(2)

<sup>86</sup> Ibid, Section 17(3)

<sup>87</sup> Government of Nepal vs Sita Ram Thing, Makwanpur District Court

<sup>88</sup> Human trafficking and transportation(control) act, 2007:its implementation, The Asia Foundation,2014

<sup>89</sup> Ibid

<sup>90</sup> FWLD v. Government of Nepal, Supreme Court of Nepal, NKP 2070, Volume No: 3, Decision No: 8973, Page No: 326.

budget of fiscal year 2070/071 for payment of compensation to the victims of such crime, after a judgment by the court, pursuant to Section 17 of the Human Trafficking and Transportation Act 2064 and also to take and cause to take necessary measures by the concerned police office to pay compensation to such victims.

### **G. Provision of Award<sup>91</sup>**

As per 2064 Act, if a person is rescued or an offender is arrested based on the reporting of an offence under this Act, or if notice is given about the commission of an offence, the informant shall receive an incentive of ten percent of the fine imposed as punishment under Section 15. This incentive will be provided from the Rehabilitation Fund established under Section 14. In cases where there are multiple informants providing information under Sub-Section (1), the incentive will be distributed proportionally among them.

### **H. Provision of Confidentiality <sup>92</sup>**

The law provides that the personal information of the informant is to be kept confidential, including their real name and address during the registration of the complaint with the police<sup>93</sup>, and during court proceedings.<sup>94</sup> The Regulation requires the police officer registering a complaint of human trafficking or transportation to provide the complainant with an imaginary name.<sup>95</sup> In practise, this is either a pseudonym (a fictitious name) or a code number.

The law prohibits the public dissemination of confidential information of the victim as well, including their real name, or any other information that would be detrimental to their character. The Act subjects anyone who breaches this to a fine up to ten thousand rupees to twenty five thousands rupees.<sup>96</sup> This is an important part of this legislation, as it ensures the confidentiality of the victim without him/her having to request it. Even before this law was enacted a detailed guideline on confidentiality in cases of violence against women, including cases of individuals affected with HIV/AIDS, was provided through a Supreme Court

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<sup>91</sup> Sec 19 of 2064 Act.

<sup>92</sup> Sec 20 of 2064 Act.

<sup>93</sup> Sec 5(2) of 2064 Act.

<sup>94</sup> Sec 20 of 2064 Act.

<sup>95</sup> Human Trafficking and Transportation (Control) Regulations 2008, r. 9

<sup>96</sup> Sec 25 of 2064 Act.

decision.<sup>97</sup> The Procedural Guidelines for Protecting the Privacy of the Parties in the Proceedings of Special Types of Cases 2064 protects the ‘personal introductory information’ of individuals appearing as a party to the case outlined.<sup>98</sup> The guideline requires that their name shall be replaced by a pseudonym or a code.<sup>99</sup> Their personal information is protected from the time of filing of the complaint, and throughout all procedures and even during the period following the implementation of the verdict.<sup>100</sup> The guidelines require anyone who comes to know about their personal information through the court proceedings to keep them secret.

## **I. Exemption from penalty<sup>101</sup>**

If an accused person charged with committing an offence under 2064 Act admits to the offence and cooperates with the police, public prosecutor or court in collecting evidence and assisting in the arrest of other accused or accomplices and if it is their first offence, the court may reduce the punishment by up to 25 percent of the prescribed penalty for that offence. *Provided that, if the assistance is not substantiated by evidence, or if the accused retracts their statement regarding the support provided to the police or prosecutor, a case may be registered regardless of any prevailing laws.*

No reduction in the prescribed punishment shall be granted in the following conditions:

- (a) If the principal accused is being granted exemption from punishment,
- (b) If the case involves trafficking or transportation of a child,
- (c) If exemption from punishment has already been granted.

## **I. Claim of offence against moral turpitude**

Moral Turpitude is an act or behaviour that gravely violates the sentiment or accepted standard of the community.<sup>102</sup> As Nepal prepares to make its laws compatible with the

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<sup>97</sup> Sapana PradhanMalla /FWLD vs. the Government of Nepal.Writ no. 3561 year 2063 (2006). Decision date: December 25th, 2007. Decided by: Justice Khil Raj Regmi and Justice KalyanShrestha

<sup>98</sup> Ibid

<sup>99</sup> Procedural Guidelines for Protecting the Privacy of the Parties in the Proceedings of Special Types of Cases 2007, r. 5

<sup>100</sup> Ibid

<sup>101</sup> Sec 21 of 2064 Act.

<sup>102</sup> “Moral turpitude.” Merriam-Webster.com Legal Dictionary, Merriam-Webster, <https://www.merriam-webster.com/legal/moral%20turpitude>. Accessed 6 Mar. 2025.

Palermo Protocol that supplements the UN Convention against Transnational Organised Crime, the country must stipulate in the new anti-Human Trafficking law that human trafficking crimes will be crimes of moral turpitude.<sup>103</sup>

Moral turpitude refers to conduct that is inherently base, vile, or depraved, and shocks the public conscience. It involves actions that violate accepted moral standards and duties owed to society. Legally, crimes involving moral turpitude (CMT) are offenses that gravely violate the community's sense of justice, honesty, or good morals.<sup>104</sup>

In the context of human trafficking, such acts are unequivocally considered crimes of moral turpitude. Human trafficking involves the exploitation of individuals through force, fraud, or coercion for purposes like forced labour or commercial sexual exploitation. These actions are fundamentally depraved and violate the basic rights and dignity of individuals, aligning with the characteristics of moral turpitude.<sup>105</sup>

When preparing a charge sheet for an offence under the Human Trafficking and Transportation (Control) Act, 2064, the concerned public prosecutor may assert that the accused has committed an offence involving moral turpitude.<sup>106</sup>

## **J. Other Provisions**

- **Formation of a Committee:** Nepal government may form a National Committee and necessary District Committees as prescribed to coordinate the activities of government bodies and non-governmental organizations working to rehabilitate victims and control the offence under 2064 Act.<sup>107</sup>

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<sup>103</sup> Kamat, Ram Kumar. "Trafficking is a Crime of Moral Turpitude." The Himalayan Post, 21 Feb. 2021, 10:02 am.

<sup>104</sup> U.S. Citizenship and Immigration Services. "Chapter 5 - Conditional Bars for Acts in Statutory Period." USCIS Policy Manual, <https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-5>.

<sup>105</sup> Guerrant, Amanda. "Moral Turpitude and Human Trafficking." Ave Maria Law Library Guides, <https://avemarialaw.libguides.com/c.php?g=265800&p=1777646>.

<sup>106</sup> Sec 22 of 2064 Act.

<sup>107</sup> Ibid, Sec 23

- **Security<sup>108</sup>**: If the person making the complaint in accordance with section 5 requests for protection at the nearest police office showing reasonable grounds that he may be subject to any retaliatory action based on the reason he complained to the police or on the basis of his statement or witness in the station court or the rights workers assigned to protect women's human rights have provided any assistance to the victim, the said police office shall provide him with any of the following arrangements:-
  - (a) To provide security when going to and from the court in connection with the proceedings of the case,
  - (b) Keep or cause to be kept under police protection for a specified period,
  - (c) Keep in the rehabilitation centre.
- **Per diem and travel allowance to be given to the witness<sup>109</sup>**: The relevant government Attorney office shall provide the per diem and travel allowance to the witness appearing in the court on behalf of the Government of Nepal in the case under this Act as per the prevailing law of the first class government employees.  
If a government employee appears in the court as a witness or expert in a case, the office in which he is stationed shall provide him with the daily and visiting allowance that he is entitled to in accordance with the prevailing law.
- **Proceedings will be conducted in closed court<sup>110</sup>**: Court proceeding and hearing of an offence under 2064 Act shall be conducted in In-Camera. Only parties to the proceeding, their attorneys or other non-parties permitted by the court may enter to the court during the proceeding and hearing.
- **The government will be the plaintiff<sup>111</sup>**: The case under this Act will be the government case and the case will be deemed to be included in Schedule 1 of the National Criminal Procedure Code, 2074.

## **K. Positive Aspect of the Act**

The following aspect make the *Human Trafficking and Transportation (Control) Act, 2064* a strong legal framework for combating trafficking in Nepal.

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<sup>108</sup> Ibid, Sec 26

<sup>109</sup> Ibid, Sec 26a

<sup>110</sup> Ibid, Sec 27

<sup>111</sup> Ibid, Sec 28

### 1. Broad Definition of Human Trafficking

The Act expands the definition of human trafficking beyond sexual exploitation to include organ extraction, forced labour, and other forms of exploitation. The act provides a precise definition of human trafficking, including selling, purchasing, and forcing someone into prostitution. Declares trafficking and transportation of humans as a criminal offense. While the previous act conflated human trafficking with prostitution, the 2064 Act broadens the definition of human trafficking to include other forms of exploitation. And finally, the 2064 Act attempts to reflect the definitions of trafficking used in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol) of the 2000 Convention against Transnational Organised Crime

### 2. Criminalization of Human Trafficking and Related Offenses

The Act clearly declares human trafficking and transportation for exploitation as criminal offenses. This includes the sale and purchase of individuals, coercion into prostitution, forced labour, slavery, and unlawful organ extraction. By defining trafficking in a broad legal framework, the Act criminalizes all parties involved in the trafficking chain, including recruiters, transporters, and exploiters. As Preamble states that it is expedient to control the acts of human trafficking and transportation, and to protect and rehabilitate the victims of such act by enacting law, the 'Legislature-Parliament' has enacted this Act.<sup>112</sup>

### 3. Strict Legal Provisions and Punishments for Traffickers

The Act imposes severe penalties for those involved in trafficking activities, with punishments ranging up to 20 years of imprisonment, along with heavy fines. Repeat offenders receive even harsher punishments. Additionally, public officials involved in trafficking face an additional 25% penalty beyond the standard punishment. By establishing severe penalties for trafficking offenses, the Act aims to deter potential traffickers.

### 4. Victim-Centered Approach and Protection

Unlike earlier legal frameworks like 2043 Act, this Act places the rights and welfare of victims at the centre. It mandates protection, rehabilitation, and legal aid for trafficking survivors. It ensures that victims are treated as individuals requiring assistance rather than criminals. The Act mandates the establishment of rehabilitation centers to provide medical,

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<sup>112</sup> 2064 Act, Preamble

psychological, and social support to survivors. Furthermore, a rehabilitation fund is created to offer financial assistance to victims, helping them reintegrate into society and rebuild their lives. While the 2043 Act took a crime control approach to address human trafficking, the 2064 Act takes a more rights-based and victim-centric approach. The TIP Act has broadened its definition and brought victim centric provisions

## 5. Confidentiality and Privacy of Victims

To protect victims from stigma and potential retaliation, the Act prohibits the disclosure of their identities in legal proceedings or media reports. The law ensures that victims' privacy is maintained during investigation and prosecution. To ensure the safety and dignity of victims, the Act mandates in-camera hearings, meaning court proceedings take place privately. This prevents undue public exposure and psychological distress to survivors during testimony.

Court proceeding and hearing of an offence under this Act shall be conducted in In-Camera. Only parties to the proceeding, their attorneys or other non-parties permitted by the court may enter to the court during the proceeding and hearing.<sup>113</sup>

## 6. Witness Protection and Security Provisions

The Act provides security arrangements for victims and witnesses who testify against traffickers. Upon request, law enforcement agencies must ensure their safety, preventing intimidation or threats from traffickers and their networks. If a person provides reasonable ground and requests the nearest police office for security against any type of retaliation for reporting to the police under Section 5 or providing statement on court or remaining as a witness, that police office should provide any or all of the following protection measures to him/her:<sup>114</sup>

- (a) To provide security during traveling in course of attending case proceeding in the court,
- (b) To keep or cause to keep under police protection for a certain period,
- (c) To keep at rehabilitation centre.

This Act provides that the relevant government Attorney office shall provide the per diem and travel allowance to the witness appearing in the court on behalf of the Government of Nepal in the case under this Act as per the prevailing law of the first class government

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<sup>113</sup> Ibid, Sec 27

<sup>114</sup> Ibid, Sec 26



employees.<sup>115</sup> If a government employee appears in the court as a witness or expert in a case, the office in which he is stationed shall provide him with the daily and visiting allowance that he is entitled to in accordance with the prevailing law.<sup>116</sup>

#### 7. Burden of Proof on the Accused

The Act shifts the burden of proof onto the accused in trafficking cases. This means that once trafficking is alleged, the accused must provide evidence of their innocence, thereby reducing the pressure on victims to prove their exploitation. A person accused of an offence under this Act shall provide evidence proving that he/she did not commit the offence.<sup>117</sup>

#### 8. Rescue and Repatriation of Victims

The Act obliges the government to arrange the rescue and repatriation of Nepali citizens trafficked to foreign countries. This ensures that victims stranded in foreign lands due to trafficking receive government support for safe return and rehabilitation. Nepal government shall manage for the rescue of any Nepali citizen sold in the foreign land.<sup>118</sup> There were no separate provisions related to rescue in 2043 Act.

#### 9. International Cooperation and Cross-Border Anti-Trafficking Measures

Recognizing the transnational nature of human trafficking, the Act provides a legal framework for collaboration with foreign governments and international organizations. It facilitates coordinated rescue operations, information exchange, and legal actions against traffickers operating across borders.

#### 10. Compensation for Victims

The Act ensures financial compensation for victims, either from traffickers or through state rehabilitation funds. This financial support helps survivors recover and reintegrate into society. A court shall issue order to provide compensation to the victim which shall not be less than half of the fine levied as punishment to the offender.<sup>119</sup> Victims were not provided compensation in 2043 Act.

#### 11. Encouragement for Reporting and Whistle-blower Protection

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<sup>115</sup> Ibid, Sec 26a

<sup>116</sup> Ibid

<sup>117</sup> Ibid, Sec 9

<sup>118</sup> Ibid, Sec 12

<sup>119</sup> Ibid, Sec 17

The Act encourages citizens to report trafficking cases and provides legal protection to whistle-blowers. Those who inform authorities about trafficking activities are safeguarded against retaliation and may receive financial rewards. The name and address of the informant and the details provided by the informant shall be kept confidential.<sup>120</sup> If anyone is rescued or a person involved in an offence is arrested based on the reporting of an offence under this Act or giving notice that an offence is going to be committed; the informant shall be given, from Rehabilitation Fund, ten percent of the fine levied as punishment under Section 15 as an incentive.<sup>121</sup> Informants were not provided awards in 2043 Act.

#### 12. Court's Acceptance of Victim's Certified Statement as Evidence

Victims' certified statements can be used as evidence in court, even if they are unable to appear in person. This provision prevents undue legal pressure on victims and ensures that their testimony is not dismissed due to absence.

If the person reporting the offense under Section 5 is a victim, the police must immediately record their statement and present the victim before the nearest district court for certification as soon as possible. Upon receiving such a statement, the district judge, irrespective of jurisdictional limitations, shall certify the statement after reading it aloud and verifying its accuracy. A certified statement, once recorded shall be admissible as evidence in court proceedings, even if the victim is unable to appear in court during subsequent hearings.<sup>122</sup>

#### 13. National and District-Level Committees for Combating Trafficking

The Act mandates the establishment of national and district-level committees to coordinate anti-trafficking efforts. These committees are responsible for overseeing policies, implementing awareness campaigns, and ensuring effective law enforcement. Nepal government may form a National Committee and necessary District Committees as prescribed to coordinate the activities of government bodies and non-governmental organizations working to rehabilitate victims and control the offence under this Act.<sup>123</sup>

#### 14. Legal Representation for Victims

Victims are granted the right to separate legal representation, ensuring that they receive proper legal counsel and advocacy throughout the judicial process. In previous act, there was no

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<sup>120</sup> Ibid, Sec 20

<sup>121</sup> Ibid, Sec 19

<sup>122</sup> Ibid, Sec 6

<sup>123</sup> Ibid, Sec 23

provision for keeping separate legal practitioner. As of now, if a victim wishes to keep an additional law practitioner to represent his/her case during court hearings, he/she has the right to be represented by a separate law practitioner for an offence under 2064 Act.<sup>124</sup>

## 15. Special Funds for Victim Support and Rehabilitation

The Act establishes dedicated financial resources to support victims' rehabilitation, skill development, and reintegration into society. This ensures long-term support for survivors beyond immediate rescue efforts.

### 1) Establishment of Rehabilitation Fund

The Government of Nepal shall establish a rehabilitation fund to support the operation of rehabilitation centers, as outlined in Section 13, Sub-section (1).<sup>125</sup>

#### (1a) Provincial and Local-Level Rehabilitation Funds

Provincial governments that assume management of rehabilitation centers under Sub-sections (1a) and (1b) of Section 13 may establish a rehabilitation fund in accordance with provincial law. Similarly, local governments may establish a rehabilitation fund based on local regulations and resources.<sup>126</sup>

### (2) Sources of Rehabilitation Fund

The rehabilitation fund shall receive contributions from the following sources: <sup>127</sup>

- (a) Financial support from the Government of Nepal,
- (b) Donations from national and international organizations and individuals,
- (c) Fifty percent of the fines collected under Section 15.

### (3) Fund Management and Operation

The management and operation of the rehabilitation fund shall be conducted as prescribed by law.<sup>128</sup>

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<sup>124</sup> Ibid, Sec 10

<sup>125</sup> Ibid, Sec 14(1)

<sup>126</sup> Ibid, Sec 14(1a)

<sup>127</sup> Ibid, Sec 14(2)

<sup>128</sup> Ibid, Sec 14(3)

## **L. Lacunas of the Act**

Nepal's Human Trafficking and Transportation (Control) Act (HTTCA), enacted in 2064, represents a significant legal effort to combat human trafficking through victim-centric provisions and punitive measures. However, over 15 years since its implementation, critical gaps persist in its legal framework, undermining its efficacy. Below contains systemic lacunas in the Act;

### **1. Focus on Cross-Border Trafficking Over Internal Trafficking**

The Act primarily emphasizes cross-border human trafficking, neglecting the rising cases of internal trafficking within Nepal. Domestic trafficking victims, especially those trafficked for forced labor and exploitation within the country, do not receive adequate legal protection.

### **2. Definition Issues:**

While the Act includes slavery, bonded labor, and organ removal in its definition of exploitation, it fails to explicitly cover forced labor, child labor, or forced marriage, leaving gaps in legal protection.

The Act separates "human trafficking" and "human transportation", causing confusion. It is not aligned with the Palermo Protocol. Consent of a child is not explicitly deemed irrelevant in trafficking cases, which may create legal loopholes.

### **3. Conflation of Trafficking and Prostitution**

The 2064 Act conflates human trafficking with prostitution, particularly under Section 4(1)(b) and (d), which criminalize "using someone into prostitution" and "going for prostitution" as trafficking offenses. This framing conflates voluntary sex work with coerced exploitation, ignoring distinctions between consensual adult activities and trafficking crimes. Such language perpetuates stigma and misdirects enforcement resources.

There used to be ambiguity on the matter of interpretation of the fourth crime of going for in prostitution. The Nepali print of the Act, which is considered the original and the authentic copy of the Act criminalized वेश्यागमन, however the definition of Besyagaman is not given in the Act. There was a split among scholars in defining Besyagaman where one line of approach was that only the act of availing the prostitution services as a customer was criminalized, whereas the other line of approach suggested that it was criminalized for both the sex worker

and the customer. But recently a Supreme Court judgement clarified that the woman who engages in prostitution in Nepal cannot be punished, or the act is not punishable as a crime for women involved in sex work.<sup>129</sup> Notwithstanding this, however, causing someone to engage in prostitution or keeping someone for the purpose of engaging them in prostitution or to go for in prostitution is criminalized.

### 3. Lack of Clear Guidelines for Rehabilitation Centers

Though the Act mandates rehabilitation centers, it does not provide clear operational guidelines, funding mechanisms, or oversight procedures, leading to inconsistencies in their effectiveness.

### 6. Criminalization of Prostitution

The Act imposes penalties for engaging in prostitution, which may criminalize victims rather than the traffickers who exploit them.

### 7. Lack of a Distinct Framework for Child Trafficking

Trafficking cases involving children require special protection measures, but the Act does not provide a distinct legal framework to address their specific needs.

### 8. No Coverage of Digital and Online Trafficking

The Act does not include provisions to address trafficking through the internet and social media, which have become prominent tools for traffickers.

### 9. Lack of Coordination between Law Enforcement, NGOs, and Government Agencies

The absence of a structured collaboration mechanism leads to inefficiencies in combating trafficking and providing victim support.

### 10. Limited Preventive Measures

The Act focuses more on punishment rather than proactive measures such as public awareness, economic empowerment, and addressing root causes of trafficking.

### 11. Delays in Justice Due to Lack of Special Courts

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<sup>129</sup> Bishnu Thapa v. GoN, 62(2) NKP 2077, Dec no. 10617.

The Act does not mandate the establishment of special courts for trafficking cases, resulting in prolonged legal proceedings and delayed justice for victims.

#### 12. Lack of Clarity in Differentiating Labor Trafficking

The Act does not clearly distinguish labor trafficking from other forms of trafficking, which leads to inconsistent legal interpretations and enforcement.

#### 13. Fear of Retaliation Prevents Witness Testimony and whistle- blowers

Individuals who report trafficking cases face risks, but the Act lacks strong protection measures to safeguard them from retaliation or threats. Due to inadequate witness protection measures, many witnesses refuse to testify, which weakens the prosecution's case. Confidentiality protection only applies to the complainant's name, while other identifying details (address, etc.) can still be exposed. It does not mandate complete confidentiality of victims and witnesses unless explicitly requested. Perpetrator details might also need confidentiality in cases where revealing them can expose victim identities. No explicit government agency is assigned to handle victim rescue operations.

#### 14. Legal Hurdles for Survivors Seeking Justice

The Act and its regulations create procedural challenges, making it difficult for survivors to access justice effectively.

#### 15. Weak International Cooperation Mechanisms

Despite the transnational nature of trafficking, the Act does not establish robust mechanisms for cooperation with other countries.

#### 16. Issues in Legal Procedures and Prosecution:

The Act states the court "can take the certified statement of the victim as evidence"<sup>130</sup> instead of making it mandatory, weakening victim testimonies. Victims cannot file cases or appeals independently; only government attorneys can, limiting victims' access to justice. No clear provision for translators or interpreters for victims in legal proceedings. The Act does not ensure continuous hearings in trafficking cases, leading to delays.

#### 17. Weak Rehabilitation and Compensation Mechanisms:

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<sup>130</sup> Sec 6(3) of 2064 Act.

The Act does not specify provisions for educational support and life skills training for survivors. Compensation is only provided if the trafficker can pay the fine, and if they cannot, the victim may not receive any compensation. The Act does not ensure compensation if the trafficker is not caught. No monitoring mechanism exists to ensure proper use of rehabilitation funds. Although compensation is mentioned, the Act does not establish effective mechanisms to ensure victims receive financial restitution, particularly in cases where perpetrators cannot pay. For the breach of confidentiality of victims, punishment is limited only to the imposition of payable fine. There is no imprisonment sentence to the violator and the Act does not provide compensation to the victim.

18. Lack of Coordination with Foreign Employment Act, 2064:

The Act fails to recognize trafficking through labor exploitation, while the Foreign Employment Act treats it as a contract violation. No clear interlinking of anti-trafficking laws and labour migration laws, leading to gaps in identifying and prosecuting labor trafficking.

19. Claim of offence against moral turpitude<sup>131</sup>: While framing a charge sheet before the court for an offence under this Act, the concerned public prosecutor may claim that accused have committed an offence against moral turpitude. This provision has made it optional for the public prosecutor to claim the offence against moral turpitude while filing of charge sheet.

20. Right to keep separate Law Practitioner<sup>132</sup>: If a victim wishes to keep an additional law practitioner to represent his/her case during court hearings, he/she has the right to be represented by a separate law practitioner for an offence under this Act. Trafficking being an Government case, the prosecution is led by government attorneys. Though this provision has given limited rights to victims to appoint his/ her separate lawyer, victims are not entitled to file a case or appeal a decision in the higher court. Even if a victim is not satisfied, it is still the decision of the government attorney whether or not to file or appeal the case. Even though the victim is critical to the prosecution, the victim or the informer is merely a witness on behalf of the government attorney and not a party to the case.

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<sup>131</sup> Ibid, Sec 22

<sup>132</sup> Ibid, Sec 10

### **4.1.3 Human Trafficking and Transportation (Control) Rules, 2065**

The **Human Trafficking and Transportation (Control) Rules, 2065** were introduced to facilitate the effective implementation of the **Human Trafficking and Transportation (Control) Act, 2064** in Nepal. These rules provide procedural guidelines for law enforcement agencies, courts, and other stakeholders in addressing human trafficking cases. They outline the process for investigating trafficking offenses, prosecuting offenders, and ensuring the protection and rehabilitation of victims. The rules also specify the procedures for compensating victims, managing rescue operations, and coordinating with national and international organizations to combat trafficking. By establishing clear legal frameworks, these rules strengthen Nepal's efforts to prevent trafficking, punish perpetrators, and support survivors in their recovery and reintegration into society. The Human Trafficking and Transportation (Control) Rules, 2065 (2008), were established to effectively implement Nepal's Human Trafficking and Transportation (Control) Act, 2064 (2007). These Rules outline the formation and functions of various committees dedicated to combating human trafficking and providing support to victims. Notably, they provide for the establishment of rehabilitation centres to offer care and services to survivors, as stipulated in Rule 16. The Rules also define the roles and responsibilities of these centres, ensuring that victims receive necessary assistance for reintegration into society. By detailing procedures and standards, the Rules aim to strengthen Nepal's legal framework against human trafficking and ensure the protection and rehabilitation of victims.

### **4.1.4 National Criminal Code, 2074 and National Criminal Procedure Code, 2074**

As per **Schedule-1** (relating to clauses (d) and (l) of Section 2), human trafficking and transportation offenses are classified among serious crimes under the Penal Code.<sup>133</sup> If the act is committed with the intention of Trafficking or enslaving or engaging the victim in prostitution is subject to 7–10 years imprisonment & fine of Rs. 75,000–100,000. <sup>134</sup>Upon receiving information about a human trafficking offense, the concerned police office must designate an investigating officer (at least of Police Inspector rank).<sup>135</sup> The police must inform the government attorney's office and higher police authorities. Human trafficking cases are

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<sup>133</sup> Schedule 1, National Criminal Procedural Code, 2074

<sup>134</sup> Section 213 of National Criminal Code, 2074

<sup>135</sup> Sec 8(1b) of National Criminal Procedural Code, 2074



among the serious offenses that cannot be withdrawn under any circumstances. Once a human trafficking case is filed in court, it cannot be withdrawn.<sup>136</sup> Sentences imposed for human trafficking and transportation offenses cannot be pardoned, suspended, altered, or reduced.<sup>137</sup>

#### **4.1.5 Other Legislative Acts covering Human trafficking**

- 1) Foreign Employment Act, 2064
- 2) The Foreign Employment Rules, 2064 (2008)
- 3) Extradition Act, 2070
- 4) Mutual Legal Assistance Act 2070
- 5) Organized Crime (Prevention) Act 2070
- 6) Labour Act 2074

#### **4.1.6 Government Bodies Working against Human Trafficking in Nepal**

##### **1. Ministry of Women, Children, and Senior Citizens (MOWCSC)**

The MOWCSC serves as the apex body for anti-trafficking efforts at the federal level. It chairs the National Coordination Committee for Human Trafficking (NCCHT), established under the Human Trafficking and Transportation (Control) Act, 2064. The MOWCSC serves as the apex body for anti-trafficking efforts at the federal level. The NCCHT is mandated to coordinate interagency efforts, oversee rescue operations, and facilitate victim rehabilitation. However, gaps persist in aligning provincial and local governance structures with federal mandates, particularly after Nepal's transition to a federal system in 2015. For instance, District Coordination Committees (DCCHTs) have become largely defunct due to the dissolution of district-level Women and Children Offices, creating jurisdictional ambiguities. The NCCHT is mandated to coordinate interagency efforts, oversee rescue operations, and facilitate victim rehabilitation<sup>6</sup>. However, gaps persist in aligning provincial and local governance structures with federal mandates, particularly after Nepal's transition to a federal system in 2015. For instance, District Coordination Committees (DCCHTs) have become

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<sup>136</sup> Ibid, Sec 116

<sup>137</sup> Ibid, Sec 159(4h)

largely defunct due to the dissolution of district-level Women and Children Offices, creating jurisdictional ambiguities.

## **2. National Coordination Committee for Human Trafficking (NCCHT)**

Nepal government may form a National Committee as prescribed to coordinate the activities of government bodies and non-governmental organizations working to rehabilitate victims and control the offence under this Act.<sup>138</sup>

As per Section 23 of the Act, the National Committee shall be composed of the following members:<sup>139</sup>

**Chairperson:** Secretary, Ministry of Women, Children, and Social Welfare

### **Members:**

- a) Joint Secretary, Ministry of Labour, Employment, and Social Security
- b) Joint Secretary, Ministry of Home Affairs
- c) Joint Secretary, Ministry of Foreign Affairs
- d) Joint Secretary, Ministry of Law, Justice, and Parliamentary Affairs
- e) Associate Attorney, Office of the Attorney General
- f) Chief, Human Trafficking Investigation Bureau, Nepal Police
- g) Three women representatives from organizations or individuals working against human trafficking, nominated by the Ministry
- h) Two women representatives from among the victims of human trafficking, nominated by the Ministry
- i) **Member-Secretary:** Joint Secretary, Ministry of Women, Children, and Social Welfare

The tenure of members appointed under clauses (g) and (h) shall be four years. As far as possible, female representatives shall be nominated for positions under clauses (b), (c), (d), (e), (f), and (i).

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<sup>138</sup> Sec 23 of 2064 Act.

<sup>139</sup> Rule 3 of Human Trafficking and Transportation (Control) Rules, 2065

## **Functions, Duties, and Powers of the National Committee<sup>140</sup>**

The National Committee shall have the following responsibilities:

- (a) Develop and propose policies, plans, and programs to combat human trafficking and submit them to the Ministry.
- (b) Implement and monitor the execution of approved policies, plans, and programs.
- (c) Rescue victims stranded abroad and repatriate them with their consent.
- (d) Monitor the activities of the rehabilitation center as per the instructions of the Government of Nepal and provide necessary guidance.
- (e) Coordinate and oversee the work of District Committees.
- (f) Maintain and update data and records related to human trafficking.
- (g) Monitor Nepal's adherence to its obligations under international and regional treaties on human trafficking.
- (h) Establish and implement guidelines for providing seed capital to individuals who have completed skill training programs.
- (i) Take initiatives for the repatriation of foreign nationals who are victims of human trafficking in Nepal.
- (j) Facilitate coordination and cooperation at interprovincial and local levels for trafficking prevention.
- (k) In collaboration with the Human Trafficking Investigation Bureau, update and publish records and progress reports on trafficking-related crimes.
- (l) Organize and oversee awareness and capacity-building programs for trafficking prevention.
- (m) Conduct awareness campaigns through various media channels to combat human trafficking.
- (n) Issue necessary guidelines for the operation of rehabilitation centres.

The National Committee shall coordinate with relevant organizations when conducting rescue operations for victims stranded abroad and repatriate them with their consent. A confidential record of all rescue operations conducted under this Act and its regulations shall be maintained. Notwithstanding Sub-rule (3), such records may be made available upon request

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<sup>140</sup> Rule 4(1) of Human Trafficking and Transportation (Control) Rules, 2065

to an authorized body. The Secretariat of the National Committee shall be located within the Ministry.<sup>141</sup>

### **3. District Coordination Committee for Human Trafficking (DCCHT)**

Nepal government may form necessary District Committees as prescribed to coordinate the activities of government bodies and non-governmental organizations working to rehabilitate victims and control the offence under this Act.<sup>142</sup>

The District Committee, as established under Section 23 of the Act, shall consist of the following Chairman and members:<sup>143</sup>

- (a) Chief District Officer - Chairman
- (b) District Public Prosecutor from the Office of the District Attorney - Member
- (c) Head of the District Police Office - Member
- (d) Three women nominated by the Chief District Officer based on the principle of inclusion, selected from among individuals or organizations working in the field of anti-human trafficking within the district - Member
- (e) Representative from the Nepal Journalist Federation, District Working Committee - Member
- (f) Branch Officer of the District Administration Office or an officer designated by the Chief District Officer - Member-Secretary

The Chairman of the District Development Committee shall be an invited member of the District Coordination Committee for Human Trafficking.<sup>144</sup>

### **Functions, Duties, and Powers of the District Committee:<sup>145</sup>**

The District Committee shall have the following functions, duties, and powers:

- (a) In cases where an official document confirming the identity of a rescued person is unavailable, recommend to the relevant agency for the issuance of such a document.
- (b) Form and operate human trafficking prevention and control committees at the local

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<sup>141</sup> Rule 4(2)(3)(4)(5) of Human Trafficking and Transportation (Control) Rules, 2065

<sup>142</sup> Sec 23 of 2064 Act.

<sup>143</sup> Rule 6 of Human Trafficking and Transportation (Control) Rules, 2065

<sup>144</sup> Rule 6(2) of Human Trafficking and Transportation (Control) Rules, 2065

<sup>145</sup> Rule 7(1) of Human Trafficking and Transportation (Control) Rules, 2065

level.

- (c) Monitor rehabilitation centers within the district as per the directives of the National Committee.
- (d) Raise public awareness against human trafficking.
- (e) Implement programs under the policies and plans formulated by the National Committee.
- (f) Rescue individuals at risk of human trafficking within the district.
- (g) Coordinate with organizations working against human trafficking within the district.
- (h) Maintain and update records related to human trafficking and submit periodic reports to the National Committee.
- (i) Monitor human trafficking prevention activities and submit corresponding reports to the National Committee.

The Member-Secretary of the District Committee shall present the details and action plan of the activities carried out by the Committee, in accordance with the Act and these regulations, during District Committee meetings.<sup>146</sup>

#### **4. National Human Rights Commission (NHRC)**

NHRC was established on 26<sup>th</sup> May, 2000 under the Human Rights Commission Act, 2053.<sup>147</sup> The Interim Constitution of Nepal, 2063 has elevated NHRC as a constitutional body<sup>148</sup> for the protection, promotion and respect of Human Rights and to ensure the effective implementation of Human Rights.<sup>149</sup> The NHRC has established an Anti-Human Trafficking Section to monitor and address human trafficking issues, ensuring the protection of victims' rights. The NHRCN was elevated to a constitutional body by the Article 131 of the Interim Constitution of Nepal, 2007 and by Article 248 of the present Constitution of Nepal (2015). NHRC Nepal has a separate sphere of responsibilities as mandated in the Constitution of Nepal. These responsibilities complement the normal machinery of the Supreme Court, Office of the Attorney General, and other existing judicial and quasi-judicial bodies of Nepal.

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<sup>146</sup> Rule 7(2) of Human Trafficking and Transportation (Control) Rules, 2065

<sup>147</sup> National Human Rights Commission Act, Section 9 (2053 B.S.).

<sup>148</sup> Interim Constitution of Nepal, Article 131 (2063 B.S.).

<sup>149</sup> *Ibid*, Article 132.

The NHRC plays a critical role in monitoring trafficking trends and advocating for systemic reforms. Its 2022 Trafficking in Persons Report identified 1.5 million Nepali's as vulnerable to trafficking, emphasizing exploitation in sectors like brick kilns, adult entertainment, and overseas labor markets.<sup>150</sup> The NHRC's findings have pressured the government to accelerate legal reforms, including amendments to align domestic laws with the UN's Palermo Protocol.<sup>151</sup> Additionally, the National Human Rights Commission (NHRC) of Nepal, as established by Part 25 of the Constitution, is empowered to investigate human rights violations, including human trafficking. The NHRC can recommend actions against perpetrators and suggest legal reforms to the government. While the NHRC does not function as a court, its findings and recommendations can influence judicial proceedings and policy formulations related to human trafficking

#### **5. National Women Commission (NWC)**

NWC was originally established on the eve of 92<sup>nd</sup> International Women's Day (7th March 2002) for the protection, promotion and prevention of Women's Rights. Later, Women Commission Act, 2007 (2063 B.S.) and its Regulation, 2009 (2065 B.S.) have been introduced in order to promote and protect the rights of women and make sure their effective participation in mainstream national development.

#### **5. National Child Right Council (NWC)**

The National Child Rights Council (NCRC) has operated the Child Helpline (1098) and is providing services through 18 offices covering the whole of Nepal. Missing Children Response Centres rescue children who are in vulnerable situations through 240 units. There are sufficient mechanisms to address children's issues, such as the Ministry of Women itself, the NCRC, provincial child rights committees, and local child rights committees and child welfare officers. Some 238 child rights committees have already been formed at the local level. Similarly, children's funds have been established in 213 local areas. Child welfare officers have been assigned to 266 local areas. Child protection system procedures have been prepared in 323 local areas.<sup>152</sup>

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<sup>150</sup> Nepal's Silent Crisis: Human Trafficking Under the Spotlight, The Asia Foundation

<sup>151</sup> Nepal takes a step forward against human trafficking, UNODC

<sup>152</sup> International Labour Organization. (2018). Observation (CEACR) - Adopted 2018, Published 108th ILC session (2019). Retrieved from [https://normlex.ilo.org/dyn/nrmlx\\_en/f?p=1000:13101:0:NO:13101:P13101\\_COMMENT\\_ID:3957769](https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13101:0:NO:13101:P13101_COMMENT_ID:3957769)

## **6. Department of Foreign Employment (DoFE)**

Under the Ministry of Labour, Employment, and Social Security, the DoFE regulates labor migration—a key trafficking vector. It oversees licensing for foreign employment agencies and investigates fraudulent recruitment practices.

## **7. Anti-Human Trafficking Bureau**

The Anti-Human Trafficking Bureau (AHTB) of Nepal Police was established on 10th June 2018 and functions under the command of the Central Investigation Bureau (CIB). AHTB is a dedicated unit under Nepal Police to address problem of Human Trafficking and Illegal Transportation, internal (intra-country) and across borders. The office of AHTB is located at Babar Mahal Kathmandu headed by Senior Superintendent of Police (SSP) with 63 Police Personnel. The head office operates throughout the country via 7 focal officers in each state. The main function of the Bureau includes prevention and investigation of crimes related to human trafficking and transportation. It collaborates with other stakeholders to embark on a more vigorous awareness, sensitization programs and other strategic measures to address the issue of human trafficking in Nepal and across borders. It also carries out regular supervision, monitoring and coordinate and provide assistance to the related activities of Nepal Police.<sup>153</sup>

The Government also reiterates that the Anti-Human Trafficking Bureau of the Nepal Police has been taking significant action, including community sensitization and the establishment of border checkpoints, to prevent human trafficking in Nepal. The Community Police Partnership (CPP) programme has been launched. The Anti-Human Trafficking Bureau has adopted three strategies to curb human trafficking, including the trafficking of girl children. In a preventive approach, it conducts awareness programmes at border checkpoints, including at Tribhuvan International Airport, Gautam Buddha International Airport and the Indian border. It conducts protection activities, such as rescue from destination countries, sends victims to rehabilitation centres for counselling and registers cases. It regularly carries out investigations, prosecution and surveillance.<sup>154</sup> This specialized bureau of the Nepal Police undertakes community sensitization, establishes border checkpoints, and collaborates with community police partnerships to prevent trafficking. It also focuses on rescue operations and victim rehabilitation.

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<sup>153</sup> <https://ahtb.nepalpolice.gov.np/about-us/introduction/>

<sup>154</sup> Ibid

## 8. Central Women and Children Service Division of Police

Police is a major institution for the effective implementation of rule of law in the country. Therefore, it is responsible for registering crime, investigating them and maintaining law and order in the society. The Central Women and Children Service Division, under the Crime Investigation Department of Central Police Office, is a separate department operated by women police to handle the cases related to women and children.<sup>155</sup>

There is a Women and Children Service Division in central level. Along with this division, Women and Children service Division have been set up one in Central Level, Five in Regional Level, Fourteen in Zonal Level and Seventy-five in District Level. Apart from this, in the Kathmandu Valley there are seven divisions in seven police office.

## 9. Other Agencies

- Ministry of Home Affairs - Oversees law enforcement responses to trafficking
- Office of the Attorney General - Prosecutes trafficking cases
- Department of Immigration - Border monitoring and control

### 4.1.7 Organizations Working against Human Trafficking in Nepal

- **Maiti Nepal** - One of the most prominent anti-trafficking NGOs. Maiti Nepal (Nepali: माइती नेपाल) is a non-profit organization in Nepal dedicated to helping the victims of human trafficking. Currently, it operates a rehabilitation home in Kathmandu, transit homes at the Indo-Nepal border towns, preventive homes in the countryside, and an academy in Kathmandu. The main objective of Maiti Nepal is to provide comprehensive prevention of girls trafficking, rescuing and rehabilitating the survivors, advocating for justice in the cases of the rescued women and girls, and ensuring that effective immediate action is taken against their traffickers.
- **Shakti Samuha** - Founded in 2000 by survivors rescued from Indian brothels, Shakti Samuha is the world's first organization led entirely by trafficking survivors. It operates rehabilitation shelters, provides legal aid, and advocates for policy reforms. Its grassroots network spans 39

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<sup>155</sup> The Women and Children Service Division was established by the name of Women Police Cell in 2052/11/16 B.S.



districts, offering vocational training and psychosocial support to over 15,000 survivors since its inception

- **Alliance against Trafficking in Women and Children in Nepal (AATWIN):** AATWIN, a coalition of 35 NGOs, has been instrumental in shaping Nepal's anti-trafficking discourse. It played a pivotal role in lobbying for the ratification of the Palermo Protocol in 2020 and continues to push for stronger victim protections.<sup>156</sup> AATWIN's advocacy has highlighted the need for trauma-informed judicial processes and gender-sensitive law enforcement training.
- **Change Nepal** - Works on prevention and rescue
- **WOREC Nepal** - Women's Rehabilitation Center
- **Planete Enfants & Développement** - Works with vulnerable children
- **International Organization for Migration (IOM)** - UN agency supporting anti-trafficking efforts
- **The Asia Foundation** - Supports various anti-trafficking programs
- **Child Workers in Nepal (CWIN)** - Focuses on child trafficking
- **UNICEF Nepal** - United Nations children's agency with anti-trafficking programs
- **Women's Foundation Nepal** - Provides services to trafficking survivors
- **3 Angels Nepal:** Provides rescue and rehabilitation services.

## 4.2 INTERNATIONAL LEGAL FRAMEWORK

Nepal has become a state party of core International human rights instrument. It has ratified more than 22 different international human right instruments (treaties and conventions). Under Section 9 of the Treaty Act, 1990 the international treaties ratified by Nepal, are considered the laws of Nepal: "The laws inconsistent with the ratified treaties shall be null and void."<sup>157</sup> This provision is significant that shows a strong commitment towards the international human rights standards.

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<sup>156</sup> Nepal takes a step forward against human trafficking, UNODC, <https://www.unodc.org/unodc/en/human-trafficking/Webstories2020/nepal-takes-a-step-forward-against-human-trafficking.html>

<sup>157</sup> Section 9 of Treaty Act, 2047 B.S.

Nepal has ratified twenty-two UN human rights instruments, including the Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of Others, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Nepal has recently ratified the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children. Besides this, Nepal also ratified eleven ILO Conventions<sup>5</sup>including the ILO Convention Number 29 on Forced Labour, the ILO Convention Number 105 on Abolition of Forced Labor and the ILO Convention Number 182 on Worst Forms of Child Labour. By ratifying these Conventions, Nepal has shown its commitment to extend the rights mentioned in these treaties to its citizens. As provided in the Nepal Treaty Act, once an international instrument is ratified by Nepal, such treaty automatically becomes the law of the land.<sup>158</sup>

Some of The Important Treaty or Convention are described below;

### **1. United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)**

Commonly known as the Palermo Protocol, this instrument supplements the UN Convention against Transnational Organized Crime. It provides a comprehensive definition of human trafficking and obligates participating states to criminalize such activities, implement preventive measures, and protect victims' rights. UNODC (UN office on Drugs and Crime) acts as Custodian of UNTOC and its protocol. The protocol was adopted by the United Nations General Assembly in 2000 and entered into force on 25 December 2003. As of November 2022, it has been ratified by 182 parties.<sup>159</sup> Nepal acceded this Protocol on 16 Jun 2020.<sup>160</sup>

### **Objectives of This Protocol;<sup>161</sup> Tripartite Aims: Prevention, Protection, and Prosecution**

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<sup>158</sup> Forum for Women, Law and Development (FWLD). (2007). Analysis of legal gaps in the Human Trafficking and Transportation (Control) Act, 2007 and the Foreign Employment Act, 2007.

<sup>159</sup> "UNODC – Signatories to the CTOC Trafficking Protocol". United Nations. Retrieved 06-03-2025

<sup>160</sup> "UNODC – Signatories to the CTOC Trafficking Protocol". United Nations. Retrieved 06-03-2025

<sup>161</sup> United Nations. (2000). Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>

Article 2 of the Palermo Protocol delineates three overarching purposes: preventing trafficking, protecting victims, and fostering international cooperation

- To prevent and combat human trafficking, with particular focus on women and children.
- To safeguard and support victims of trafficking, ensuring full respect for their human rights.
- To enhance cooperation among States Parties to effectively address trafficking.

### **Definition of Trafficking<sup>162</sup>**

The **Protocol** defines "trafficking in persons" on the basis of three elements:

- Act: the recruitment, transportation, transfer, harbouring, or receipt of individuals
- Means: through force, coercion, abduction, fraud, deception, abuse of power, or exploitation of vulnerability. It also includes the exchange of payments or benefits to control another person
- Purpose of exploitation: It consists of, but is not limited to, sexual exploitation, forced labour, slavery, servitude, and the removal of organs.

Crucially, the protocol clarifies that a victim's consent is irrelevant if any of the coercive means are employed, thereby shifting the legal focus from the victim's choices to the perpetrator's actions<sup>27</sup>. For children under 18, the definition applies even in the absence of coercive means, recognizing their inherent vulnerability.<sup>163</sup>

### **State Obligations**

- Criminalization of Human Trafficking<sup>164</sup>
- Adopt Legislative measures to combat Human Trafficking<sup>165</sup>
- Protection of victim (medical, psychological and social assistance)<sup>166</sup>

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<sup>162</sup> Ibid, Art 3a ("trafficking in persons" as the recruitment, transportation, transfer, harboring, or receipt of individuals through force, coercion, abduction, fraud, deception, abuse of power, or exploitation of vulnerability. It also includes the exchange of payments or benefits to control another person for the purpose of exploitation. Exploitation encompasses, but is not limited to, sexual exploitation, forced labor, slavery, servitude, and the removal of organs)

<sup>163</sup> Ibid

<sup>164</sup> Article 5 of United Nations. (2000). Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

<sup>165</sup> Ibid

<sup>166</sup> Ibid, Art 6

- Victim must be provided temporary housing and safe return to country of origin<sup>167</sup>
- States Parties shall establish comprehensive policies, programs and other measures:<sup>168</sup>
  - To prevent and combat trafficking in persons; and
  - To protect victims of trafficking in persons, especially women and children, from victimization.
- Information exchange and training between Law enforcement, immigration or other relevant authorities of States Parties<sup>169</sup>
- To the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.<sup>170</sup>

## **2. Convention on the Rights of the Child (CRC, 1989) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000)**

The CRC addresses child trafficking explicitly and implicitly in various provisions, particularly in the context of exploitation, abuse, and protection. States must take measures to combat the illicit transfer and non-return of children abroad.<sup>171</sup> States must take appropriate steps to protect children from all forms of violence, abuse, and exploitation, including trafficking.<sup>172</sup> It also recognizes the child's right to be protected from economic exploitation and hazardous work, which can be linked to trafficking for labour.<sup>173</sup> It requires states to take measures to prevent the sexual exploitation and abuse of children, including in prostitution and pornography<sup>174</sup>, which are often connected to trafficking. States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.<sup>175</sup> It Protects children from all other forms of exploitation that might harm their well-being, which includes trafficking-related exploitation.<sup>176</sup>

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<sup>167</sup> Ibid, Art 8

<sup>168</sup> Ibid, Art 9

<sup>169</sup> Ibid, Art 10

<sup>170</sup> Ibid, Art 11

<sup>171</sup> Convention on the Rights of the Child, 1989, Art. 11.

<sup>172</sup> Ibid, Art 19

<sup>173</sup> CRC, 1989, Art. 32.

<sup>174</sup> CRC, 1989, Art. 34.

<sup>175</sup> CRC, 1989, Art. 35.

<sup>176</sup> CRC, 1989, Art. 36.

Optional protocol strengthens the CRC's provisions by defining and criminalizing offenses related to child trafficking. States must prohibit the sale of children, child prostitution, and child pornography.<sup>177</sup> Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.<sup>178</sup> It requires states to criminalize the sale of children, trafficking for sexual exploitation, organ transfer, forced labor, and illegal adoptions.<sup>179</sup>

### **3. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979**

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.<sup>180</sup> This article mandates that States Parties take effective legal and policy measures to eliminate trafficking and sexual exploitation of women. It recognizes trafficking as a form of discrimination and violation of women's rights. States are required to enact and enforce laws to prevent trafficking and protect victims.

### **4. The Global Plan of Action to Combat Trafficking in Persons<sup>181</sup>**

The Global Plan of Action to Combat Trafficking in Persons is a strategic framework adopted by the United Nations in July 2010 to enhance global efforts in combating human trafficking. It emphasizes the importance of international collaboration, victim protection, and the strengthening of legal frameworks. A key component of this plan is the establishment of the United Nations Voluntary Trust Fund for Victims of Trafficking in Persons, launched in November 2010, which provides financial, legal, and humanitarian assistance to trafficking survivors.

### **5. International Labour Organization (ILO) Conventions Ratified by Nepal**

- Forced Labour Convention (No. 29, 1930) and its 2014 Protocol
- Convention No. 105 on the Abolition of Forced Labour (1957)
- Worst Forms of Child Labour Convention (No. 182, 1999)

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<sup>177</sup> Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, 2000, Art. 1.

<sup>178</sup> Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, 2000, Art. 2.

<sup>179</sup> Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, 2000, Art. 3.

<sup>180</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, Art. 6

<sup>181</sup> United Nations. (2010). Global Plan of Action to Combat Trafficking in Persons. [https://www.unodc.org/documents/human-trafficking/United\\_Nations\\_Global\\_Plan\\_of\\_Action\\_to\\_Combat\\_Trafficking\\_in\\_Persons.pdf](https://www.unodc.org/documents/human-trafficking/United_Nations_Global_Plan_of_Action_to_Combat_Trafficking_in_Persons.pdf)

## 5. Regional Instruments

- Council of Europe Convention on Action against Trafficking in Human Beings (2005)

This regional treaty aims to prevent trafficking, protect victims, and prosecute traffickers within Europe. It focuses on victim protection regardless of cooperation with law enforcement. It establishes monitoring mechanism (GRETA)

- EU Directive on Preventing and Combating Trafficking in Human Beings (2011/36/EU)

Adopted by the European Union, this directive offers a comprehensive framework encompassing prevention, prosecution, and protection of victims. It mandates member states to adopt measures such as appointing national rapporteurs or equivalent mechanisms to assess trends and measure results of anti-trafficking actions. Additionally, the directive led to the establishment of the EU Anti-Trafficking Coordinator, responsible for improving coordination and coherence among EU institutions, agencies, and member states, as well as with third countries and international organizations.

- SAARC Convention on Preventing and Combating Trafficking in Women and Children (2002)

The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002 represents significant and substantial progress in the fight against trafficking. Although efforts to draft a Convention to combat trafficking began at Ninth SAARC Summit in 1997, it was adopted by SAARC during Eleventh SAARC Summit on 5th January, 2002 recognizing the pernicious problem of trafficking and detailing out majors in which Member State should carry out to combat trafficking in women and children from the region.

The SAARC Convention has 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.<sup>182</sup>

The SAARC Convention has stated that all judicial authorities of Member States create measures to ensure the proper treatment of trafficking victims. The convention has also stated

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<sup>182</sup> SAARC Convention on Preventing and Combating Trafficking in Women and Children (2002), Art 1(3)

about building the capacity of the law enforcement mechanism; granting mutual legal assistance with respect to investigation, inquiries, trials and proceedings; providing mechanism for the repatriation; providing care, treatment and rehabilitation; creating regional cooperation and set-up bilateral agreements for cooperation to interdict trafficking of women and children.

On the occasion of The 11<sup>th</sup> SAARC summit held in Kathmandu on 3/ 4 January, 2002 on its first day of conference approved to regional agreements. The Minister of Foreign Affairs of all the members' countries signed the agreement showing their commitments towards this direction highlighting the contributions of the women's empowerment and prevention of violence against women, long-term strategy for the sustainable development and the institutionalization of the economic and the cultural sectors were emphasized

□ ASEAN Convention against Trafficking in Persons (2015) <sup>183</sup>

The Association of Southeast Asian Nations (ASEAN) formulated this convention to strengthen regional cooperation against trafficking. It outlines obligations for member states to prevent trafficking, protect victims, and prosecute offenders. The convention is complemented by the ASEAN Plan of Action, which provides specific strategies for implementation, including enhancing victim identification processes, establishing national referral mechanisms, and conducting regional training programs for law enforcement officials.

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<sup>183</sup> ASEAN Convention Against Trafficking in Persons, Especially Women and Children, UNODC

## **CHAPTER V**

### **JUDICIAL DECISIONS ON HUMAN TRAFFICKING CASES IN NEPAL**

#### **5.1 Role of Court**

In Nepal, the judiciary plays a pivotal role in combating human trafficking through the enforcement of constitutional mandates and statutory provisions. The Constitution of Nepal, 2015, explicitly prohibits human trafficking and exploitation under its fundamental rights. Article 29(3) states: "No one shall be subjected to human trafficking or bonded labor, and such an act shall be punishable by law."<sup>184</sup> The judiciary is responsible for adjudicating cases under this Act, ensuring that perpetrators are held accountable and victims receive justice. For instance, Section 15 of the Act prescribes penalties ranging from imprisonment to fines for those convicted of trafficking offenses. Through the interpretation and enforcement of constitutional and statutory provisions, Nepal's courts play a crucial role in the fight against human trafficking, ensuring that justice is served and the rights of victims are upheld.

Nepal's judiciary operates under a three-tier court system as established by the Constitution of Nepal 2015: Supreme Court, High court and District Court.<sup>185</sup> The High Court oversee cases within their jurisdiction and hear appeals from District Courts, ensuring that justice is delivered effectively at the provincial level. The District Courts, as the primary courts of first instance, handle most criminal and civil cases, including those related to human trafficking.

In Nepal, the Supreme Court serves as the apex judicial authority and is designated as the court of record by the Constitution of Nepal.<sup>186</sup> This designation implies that its decisions are preserved as authoritative records and serve as precedents for lower courts to follow. While the Supreme Court's rulings are binding on subordinate courts,<sup>187</sup> its interpretations hold the ultimate authority in the legal hierarchy. Additionally, the judiciary has been instrumental in shaping progressive legal precedents through landmark decisions that reinforce Nepal's commitment to eradicating human trafficking and protecting the fundamental rights of

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<sup>184</sup> Constitution of Nepal, 2015, Art. 29(3).

<sup>185</sup> Constitution of Nepal, 2015, Art. 127.

<sup>186</sup> Constitution of Nepal, 2015, Art. 128(2).

<sup>187</sup> Constitution of Nepal, 2015, Art. 128(4).



victims. Below are some landmark cases in Nepal related to human trafficking and their established legal principles.

## **5.2 Some Supreme Court Precedent on Human Trafficking and Transportation**

### **1) Uttam Lama v. HMG (Charimaya Moktan) (2061)<sup>188</sup>**

#### **Case Background:**

In Shrawan 2043 B.S. (July 1986), the defendant, Uttam Lama, along with others, was accused of selling the victim, Charimaya Moktan, to a brothel in Bombay (now Mumbai), India. The victim was forced to work there for ten years before returning to Nepal in 2053 B.S. (1996), where she filed a First Information Report (FIR) against the defendants.

#### **Legal Issue:**

The central issue was whether the defendants could be prosecuted under the Human Trafficking Act of 2043 B.S. (1986), given that the alleged offense occurred in the same year the Act was promulgated. The defendants contended that applying the Act to their case violated Article 14(1) of the 1990 Constitution of the Kingdom of Nepal, which protects against the retroactive application of laws.

#### **Court Proceedings and Decisions:**

**Lower Courts:** Both the District Court and the Court of Appeal convicted and sentenced the defendants under the Human Trafficking Act of 2043 B.S.

**Supreme Court Appeal:** The defendants appealed to the Supreme Court, arguing that their conviction under the 2043 B.S. Act constituted retroactive application of the law. A division bench of the Supreme Court referred the matter to a full bench, citing a similar issue raised in the case of *Pasang Dawa Lopachan*.

**Full Bench Decision:** The full bench of the Supreme Court upheld the decisions of the District and appeal courts. In the decision the full bench laid the ratio that “the crime of trafficking human trafficking was already a defined crime by Muluki Ain, including more penalty than the referred Human Trafficking (Control and Punishment) Act, 2043 (1986), therefore , the

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<sup>188</sup> Uttam Lama v. HMG (Charimaya Moktan), NKP 2061, Vol 8 Decision No. 7432

questioned act cannot be considered as ex post facto”. The majority of the full bench upheld the lower courts' decisions, dismissing the defendants' claims. However, Justice Balram KC has dissented on the judgment from the level and angle of fundamental rights and human rights. Considering the fact that the alleged act was committed before the promulgation of Human Trafficking (Control and Punishment Act) 1986. In this context the punishment cannot be prescribed using ex post facto law. Such application would be inconsistent with Article 14(1) of the 1990 Constitution as well as Articles 11(2), 15 (1) 195 of the UDHR and ICCPR respectively.

This case is landmark in terms of analysing the case from lowering the punishment however, has left a debate over the application of substantive nature of ex post facto laws in criminal offence prosecuted by state. Moreover, such application of retrospective law that has introduced an exceptional provision of shifting burden of proof over the accused which was not existed at the time of alleged commission of crime. The majority judgment is not seen sensitive enough in considering the serious likely consequences in the criminal justice system.

### **2) Suresh Lama et. al v. HMG (2062)<sup>189</sup>**

The SC has shown its activism in Suresh Lama et al v. HMG on the FIR of Sharmila Tamang (NKP 877, 2005), has clearly observed that “Unlike other criminal Acts, there may not be witnesses or by-standers in the cases of sexual exploitations against women . Therefore, the victim herself and the reports of her physical examination are the major evidences. Clever, deceitful and selfish people are found to be the perpetrators of this organized crime whereas under-aged, immature, illiterate, ignorant women/girls are the victims. These women/girls are not aware of their rights and are ignorant of the fact that there is a legal provision to report such sexual exploitation and also provision of punishment the offenders or perpetrators. Even gloomier side of this picture involves the victim’s family’s ignorance and poverty. The family members cannot think of the possible outcomes that could face them under the cupidity of their daughter-earned money. Forcing women/girls to engage in prostitution is a despicable and condemnable crime. This is not only of national concern but also an internationally recognized grave offence.

### **3) Tej Bd Ranamagar vs GoN (2069)<sup>190</sup>**

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<sup>189</sup> Suresh Lama et. al v. HMG , NKP 2062, Vol 7, Decision No. 7571

<sup>190</sup> Tej Bd Ranamagar vs GoN , NKP 2069, Vol 4 ,Decision No. 8804

The case of *Tej Bahadur Rana Magar v. Government of Nepal* pertains to serious allegations of human trafficking. The defendant, Tej Bahadur Rana Magar, was accused of abducting and selling a young woman, referred to as "B. 140," into a brothel in Assam, India.

#### **Case Details:**

**Incident Description:** On March 19, 2005, "B. 140," a 17-year-old girl, went missing after attending school. Her family filed a report stating that Tej Bahadur Rana Magar had eloped with her. Subsequent investigations revealed that Tej Bahadur, along with accomplices Ram Lama and Rakesh Lama, allegedly trafficked "B. 140" to a brothel in Silchar, Assam, India, where she was sold for INR 150,000.

#### **Evidence Presented:**

Confiscation of five train tickets from Tej Bahadur's rented room, suggesting planned travel.

A statement from Tej Bahadur admitting to the crime, detailing how he and his accomplices lured "B. 140" under the pretence of marriage and subsequently sold her.

Testimonies from individuals involved in the rescue of "B. 140" from the brothel, including members of the organization Maiti Nepal.

**Legal Proceedings:** The District Court convicted Tej Bahadur Rana Magar based on the evidence and testimonies. He appealed the decision to the Appellate Court, which upheld the initial verdict. Subsequently, he filed a further appeal to the Supreme Court of Nepal.

#### **Supreme Court's Decision:**

On January 11, 2012, the Supreme Court, led by Chief Justice Khil Raj Regmi and Justice Tarkaraj Bhatta, delivered its judgment. The Court emphasized that in serious cases like human trafficking, the victim's initial statements and corroborative evidence are crucial, even if the victim does not testify in court. The defendant involved in it cannot be exempted from guilt. The Court upheld the convictions from the lower courts, reaffirming Tej Bahadur Rana Magar's guilt in the trafficking and sale of "B. 140."

This case underscores Nepal's legal stance against human trafficking and highlights the judiciary's commitment to addressing such grave offenses, ensuring that perpetrators are held accountable even when direct victim testimony is unavailable in court.

#### **4) GoN v. Dinesh Pariyar (Sanman Nepali), Kale Damai (2070)<sup>191</sup>**

The case Government of Nepal v. Dinesh Pariyar (also known as Sanman Nepali) and Kale Damai involves serious allegations of human trafficking.

##### **Case Details:**

**Victim's Background:** The victim, Ms. Sushma Danuwar Rai, faced domestic challenges after her husband took a second wife, leading her to seek employment to support her children. She worked at a carpet factory in Kathmandu and occasionally visited her hometown in Udayapur to provide for her family.

**Incident Description:** Upon returning to Kathmandu, Ms. Danuwar found her workplace closed. Seeking temporary shelter, she contacted an acquaintance, Dinesh Pariyar, who offered her a place to stay. During her stay, another individual, Kale Damai, proposed a better-paying job opportunity in Kakarbhitta, Nepal. Trusting their intentions, she accompanied them. However, instead of Kakarbhitta, they transported her to Kolkata, India, where she was handed over to a woman named Kanchi Tamang. Ms. Danuwar soon realized she had been sold into a brothel for INR 100,000.

**Escape and Rescue:** Refusing to engage in the activities imposed upon her, Ms. Danuwar remained at the brothel for three days. During a police raid on the establishment, she managed to escape and eventually returned to Nepal with assistance from organizations like Maiti Nepal.

##### **Evidence Presented:**

Ms. Danuwar's immediate statements after her escape detailed the deception and trafficking by the accused.

Her consistent testimonies during court proceedings corroborated her initial statements.

The accused, Dinesh Pariyar and Kale Damai, were identified as the individuals who orchestrated her trafficking.

##### **Court's Findings:**

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<sup>191</sup> GoN v. Dinesh Pariyar (Sanman Nepali), Kale Damai . NKP 2070, Vol 10, Decision No. 9064

The courts emphasized that statements made by the victim immediately after the incident are considered direct evidence under Section 10(1)(b) of the Evidence Act, 2031.

The victim's consistent testimonies, both immediately after the incident and during court proceedings, were deemed credible.

The defendants' denials were insufficient to counter the substantial evidence presented against them.

### **Supreme Court's Decision:**

The Supreme Court of Nepal, led by Justices Ram Kumar Prasad Shah and Sushila Karki, upheld the convictions of both defendants for human trafficking. The Court reaffirmed the importance of victim statements made immediately after the incident as direct evidence, especially in cases of serious crimes like human trafficking.

This case underscores Nepal's legal commitment to combating human trafficking and highlights the judiciary's reliance on credible victim testimonies to ensure justice is served.

### **5) Udhav Prasad Acharya et. al v. GoN (2071)<sup>192</sup>**

In the case of the victim Maiyan Giri, she was allegedly taken to a brothel in India for Rs. 27,500. The defendants, who admitted their guilt both before the police and in court, claimed that they had married the victim and taken her to Kathmandu. However, they failed to disclose the victim's current whereabouts or condition. The defendants had initially promised marriage to the victim, lured her away, and took possession of her house under false pretenses.

Given that the defendants did not provide any information about the victim's current condition, the burden of proof falls upon them to demonstrate their innocence. The victim's status remains unknown because the defendants did not clarify her whereabouts, and the defendants' failure to establish her identity or disclose her situation raises suspicion. As a result, it can be concluded that the defendants have committed the crime as alleged. The defendants' silence about the victim's condition, along with the uncertainty surrounding her status due to their actions, supports the claim that they are responsible for her situation. Furthermore, the statement made by the woman's husband in court, which the defendants

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<sup>192</sup> Udhav Prasad Acharya et. al v. GoN , NKP 2071, Vol 12 , Decision No. 9308

acknowledged while testifying before the authorized officer, is admissible. The defendants' argument that the statement is inadmissible does not align with legal principles.

#### **6) Goma Paanchkoti v. GoN (2072)<sup>193</sup>**

In certain serious criminal cases like Human Trafficking, where the societal impact is significant and the crime has far-reaching consequences, the burden of proof may be shifted to the accused. This approach considers the need for the state to take a proactive role in deterring such crimes and safeguarding the welfare of society. The law is designed with an understanding that the individuals involved in such crimes may be part of professional criminal groups, and the crimes themselves may be meticulously planned and executed in a way that makes it difficult to identify those responsible.

Recognizing the organized and planned nature of these crimes, the legislature intends to prevent the party committing the crime from exploiting any potential gaps or weaknesses in evidence collection. It is not the responsibility of the state to bear the burden of proving guilt in these cases when the evidence may be hard to gather due to the involvement of criminal networks. The legislative intent is clear: any benefit arising from challenges in evidence collection should not advantage the accused in serious criminal matters, especially when the crime is of a nature that harms the broader community.

#### **7) Lokbahadur Karki v. GoN, (2072)<sup>194</sup>**

According to section (b) of Section 4 (2) of Human Trafficking and transportation Control Act, 2064, it does not appear that the act of trafficking and transportation of any person must be completed in order to be an offence. For that purpose, taking such a person away from the house, place and person where he is staying and taking him from one place to another place within Nepal is considered to be an offense even if he is yet to be brought to the destination.

If the victim herself has appeared before the investigating officer and made a statement regarding the crime and such statement is immediately verified by the nearest district court, then the victim's statement can be taken as evidence in accordance with Section 6 (3) of the Human Trafficking and transportation (Control) Act. The compensation paid to the victim of the crime must be able to restore or rehabilitate the victim to the condition before the victim.

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<sup>193</sup> Goma Paanchkoti v. GoN ,NKP 2072, Vol 1 ,Decision No. 9333

<sup>194</sup> Lokbahadur Karki v. GoN , NKP 2072, Vol 2 ,Decision No. 9346

Therefore, for real and effective compensation to the crime victims, it is not only necessary to enact a compensation law, the law itself should be appropriate and effective, as well as its effective and realistic implementation.

#### **8) Lakpa Tamang v. GoN (2072)<sup>195</sup>**

In this case, the defendant was unable to provide sufficient evidence to support their denial. The discovery of the victim's belongings, such as clothes and other items, in the room of a mutual acquaintance, is crucial evidence linking the defendant to the crime. It is common for individuals who commit crimes to make false statements in an attempt to evade legal consequences. Therefore, the evidence collected should be thoroughly analyzed and evaluated to determine the defendant's guilt. The defendant is accused of taking the victim from Kathmandu to Kakadvitta, near the Nepal border. Under Nepalese law, it is considered a criminal offense to transport a victim from one location to another within Nepal for the purpose of trafficking. Specifically, the defendant's actions fall under clause (a) of sub-section (1) and clause (a) of sub-section (2) of Section 4 of the Human Trafficking and transportation (Control) Act, 2064.

Section 15 (1)(e) of the Human Trafficking and transportation (Control) Act, 2064, states that individuals involved in trafficking victims within Nepal can face up to ten years of imprisonment and a fine ranging from fifty thousand to one hundred thousand rupees. There is no dispute regarding the fact that the defendant should be fined after being found guilty. However, it appears that the trial court did not impose the fine as stipulated by the relevant legal provisions. Additionally, Section 17 of the Act requires that compensation be paid to the victim, amounting to no less than fifty percent of the fine. The Court of Appeals, in its ruling changed some of the decision of the trial court, confirming a sentence of ten years imprisonment, a fine of one hundred thousand rupees, and an additional fine of fifty thousand rupees from the defendant. So Supreme Court also upheld the decision of Court of Appeals.

#### **9) GoN (Dhamaya Nagbanshi) vs Som Bd Tamang (2073)<sup>196</sup>**

According to the Human Trafficking and transportation (Control) Act, 2064, Section 3 of the Act clearly prohibits human trafficking and transportation activities. Section 4(1) of the Act

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<sup>195</sup> Lakpa Tamang v. GoN , NKP 2072, Vol 11 ,Decision No. 9496

<sup>196</sup> GoN (Dhamaya Nagbanshi) vs Som Bd Tamang , NKP 2073, Vol 9 , Decision No. 9677

criminalizes human trafficking, while Section 4(2) further elaborates on the specifics of transportation. Additionally, Article 15 of the Act outlines different punishments for these distinct criminal acts.

It is important to note that human trafficking and human transportation are treated as separate criminal offenses under the law. The law provides separate definitions and classifications for what constitutes human trafficking and what constitutes human transportation in persons. While these crimes often occur together, they remain separate in legal terms. The absence of one crime does not imply the absence of the other. Although the law specifies that buying or selling individuals for trafficking purposes, including prostitution or exploitation, constitutes a crime, it cannot automatically be assumed that the crime of human trafficking has occurred in every instance of buying, selling, or exploitation. The law treats the intention of trafficking as a key factor. In the present case, the defendant transported the victim to India with the intent to sell them but was unsuccessful in doing so, leaving the victim stranded in India. It is confirmed that the victim was sexually abused, but it has not been definitively proven that the sale took place.

**10) Bhagirath Dahal, Nirmala Dahal v. GoN, (2074)<sup>197</sup>**

The exploitation of the victim, coupled with the fact that the defendant was not authorized by any statutory body and was not an official representative related to foreign employment, clearly places their actions under the scope of the Human Trafficking and transportation (Control) Act. Therefore, the defendant's claim that the Foreign Employment Act should apply is not relevant in this case.

Crimes such as human trafficking are often driven by motives including financial gain, physical exploitation, sexual exploitation, labor exploitation, forced relocation, and prostitution. In such cases, merely accepting the defendant's denial as evidence is insufficient grounds for acquittal. The crime can be established through circumstantial evidence, which plays a crucial role in cases where direct proof may not always be available. Regardless of how severe the punishment imposed on the perpetrator may be, the victim continues to suffer lifelong pain due to societal perceptions and behaviour. This often prevents them from feeling that justice has been served. Therefore, it is essential for law enforcement, prosecution, and

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<sup>197</sup> Bhagirath Dahal, Nirmala Dahal v. GoN, NKP 2074, Vol 6, Decision No. 9824



investigative authorities to remain vigilant, aware, and empathetic toward ensuring relief and justice for victims, especially in cases involving vulnerable individuals.

The state has a critical role in preserving human dignity and ensuring that individuals can live with respect and security. Every sector of the state and society must work together to create an environment where victims are not further burdened by their past but are empowered to live dignified lives. Lawmakers, legal interpreters, law enforcement agencies, and the judiciary must adopt a victim-centered approach to ensure meaningful justice and relief for victims. The criminal justice system cannot fulfill its purpose if it focuses solely on punishing offenders while neglecting the needs of victims. A legal system is truly competent and effective only when victims themselves feel that justice has been served. This highlights the importance of moving forward with a victim-relief-oriented approach.

Under Section 17 of the Human Trafficking and transportation (Control) Act, 2064—which replaced the Human Trafficking (Control) Act, 2043—it is mandated that the defendant must provide compensation to the victim. This compensation must amount to no less than fifty percent of the fine imposed on the offender. According to constitutional and legal principles, individuals cannot be punished under laws that were not in effect at the time of the crime. However, victim relief laws follow a jurisprudence that requires all stakeholders—including prosecutors, judicial authorities, and law enforcement—to consider the extensive harm suffered by victims and ensure that justice is delivered in a sensitive and comprehensive manner.

#### **11) GoN v. Sukumari Lama et. Al, (2075)<sup>198</sup>**

The law does not, and never has, intended to justify or permit individuals facing poverty and unemployment to sell themselves for exploitation or prostitution. The legal framework explicitly criminalizes engaging in prostitution, regardless of whether any benefit is involved. Furthermore, those who engage in or facilitate prostitution fall within the definition of human trafficking and transportation, as recognized by the law.

In grave crimes against humanity, such as human trafficking, victims are often left in a state of fear, vulnerability, and distress. These victims, particularly women, frequently find themselves powerless and discouraged, making it difficult for them to speak out or resist their

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<sup>198</sup> GoN v. Sukumari Lama et. Al , NKP 2075, Vol 2 , Decision No. 9958

exploitation. When there is only a single victim, their account of the incident and its impact remains consistent, further reinforcing the gravity of the crime. The absence of conflicting statements does not undermine the victim's credibility but rather highlights the seriousness of their suffering.

The legal system must take into account the victim's state of fear and vulnerability when evaluating evidence in human trafficking cases. It is essential to ensure that justice is served by prioritizing the protection and well-being of victims rather than allowing criminals to exploit legal loopholes to evade accountability.

**12) Raj Kumar Sonar v. GoN (2076)<sup>199</sup>**

Since only one person was involved from the beginning to the end of taking the victim abroad and selling it, there is no need to establish separate offenses for each step. When the offense is completed after the sale in abroad and the person who commits the act is the same, punishing them separately based on the stages of committing the offense does not appear to be logical and fair.

**13) Basant Rawal v. GoN (2076)<sup>200</sup>**

The defendant cannot be deemed innocent solely based on the victim's family's hostility. The evidence establishes that the defendant took advantage of the victim's vulnerable condition, transported her from one place to another, and eventually to Banbasa, India. During this period, the defendant subjected the victim to sexual exploitation, resulting in pregnancy. Furthermore, the victim was forced to undergo an abortion, as confirmed by the evidence. These actions clearly fall within the legal definition of human trafficking and constitute a serious offense under the law.

**14) Shyamkumar Ram v. GoN, (2076)<sup>201</sup>**

While the law shifts the burden of proving innocence to the defendant, this does not eliminate or significantly reduce the prosecution's responsibility. Section 9 of the Human Trafficking and Transportation (Control) Act, 2064 places the burden of proof on the defendant. However, this does not absolve the prosecution of its duty to conduct a thorough investigation.

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<sup>199</sup> Raj Kumar Sonar v. GoN, NKP 2076, Vol 2, Decision No. 10193

<sup>200</sup> Basant Rawal v. GoN, NKP 2076, Vol 5, Decision No. 10266

<sup>201</sup> Shyamkumar Ram v. GoN, NKP 2076, Vol 9, Decision No. 10349

The prosecution must still establish the nature of the offense committed by the accused, identify the specific legal provisions violated, and gather substantial evidence to confirm that the defendant's actions exceeded the boundaries of the law. A well-documented and evidence-based prosecution remains essential to ensuring justice and upholding the integrity of the legal system.

**15) GoN vs Ram Prasad Gurung, (2076)<sup>202</sup>**

In cases of human trafficking, determining whether the defendant genuinely trafficked the victim or whether the individuals involved were a married couple traveling together can be complex. To uncover the truth, the victim's statement holds significant weight and should serve as a primary basis for reaching a conclusion. Even if the victim does not appear before the court to testify later in the proceedings, the initial statement given in court remains crucial and retains its evidentiary value. When the victim is absent from the court, their verified statement from the beginning of the case is more instrumental in establishing the offense against the defendant than any subsequent statement made in the defendant's favour.

Furthermore, the absence of the victim in court does not automatically invalidate their prior testimony. A victim's statement against the defendant cannot be disregarded or nullified without a valid legal basis. The legal system must ensure that such testimony is given due consideration, recognizing the challenges victims may face in appearing before the court and the risks of intimidation or coercion that may prevent them from testifying later.

**16) GoN vs Iman Tamang (Deepak), (2079)<sup>203</sup>**

Since human trafficking and human transportation are two different criminal acts, the nature of the crime and the consequences of both are different. Since these offenses often occur together, both offenses may occur in an incident or only one of them may occur. In the absence of one, the other offense cannot be considered complementary.

**17) Bal Bahadur alias Bam Bahadur Sarki vs GoN, (2079)<sup>204</sup>**

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<sup>202</sup> GoN vs Ram Prasad Gurung ,NKP 2076, Vol 12 , Decision No. 10410

<sup>203</sup> GoN vs Iman Tamang (Deepak), NKP 2079, Vol 7 , Decision No. 10912

<sup>204</sup> Bal Bahadur alias Bam Bahadur Sarki vs GoN , NKP 2079, Vol 6 , Decision No. 10892

If a woman claims that she was sold by someone and substantiates her statement accordingly, but there is no other evidence to support her claim, there remains a risk of misuse of Section 6 of the Human Trafficking and transportation (Control) Act, 2064. This provision could potentially be misused, particularly in the context of reporting as a victim or having a statement verified.

In the absence of concrete evidence directly linking the accused to the crime, it is essential to carefully assess the overall circumstances, including the defendant's inability to provide proof of innocence. A balanced approach must be taken to ensure that the legal provisions are not exploited while also upholding justice and protecting the rights of both victims and the accused.

**18) GoN vs Bhimakumari Tharu (Chaudhari) (2079)<sup>205</sup>**

Due to the legislative law shifting the burden of proving innocence to the defendant, the liability of the prosecution will be limited but not terminated. Section 9 of the Human Trafficking and transportation (Control) Act, 2064 places the burden of proof on the defendant. However, this does not absolve the prosecution of its duty to conduct a thorough investigation into the offense committed by the accused. The prosecution must investigate and gather evidence to determine which law was violated, how it was violated, and what evidence can be used to prove that the defendant acted against the law.

**19) Kalpana Bhandari vs GoN (2078)<sup>206</sup>**

To conclude that a person is being trafficked merely based on the fact that they have been or are being transported to India is an unfair, illogical, and unjust determination. For an act to be legally recognized as human trafficking, it must be proven beyond doubt that the person was taken or attempted to be taken to India specifically for the purpose of trafficking. Simply suspecting or speculating based on the fact that someone is traveling to India is not sufficient to establish the crime of human trafficking under the law. Legal conclusions must be drawn from concrete evidence rather than mere assumptions.

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<sup>205</sup> GoN vs Bhimakumari Tharu (Chaudhari), NKP 2079, Vol 3, Decision No. 10831

<sup>206</sup> Kalpana Bhandari vs GoN, NKP 2078, Vol 7, Decision No. 10702

## **20) Laxman Thapa vs GoN (2078)<sup>207</sup>**

In the context of implementing Section 17 of the Human Trafficking and transportation (Control) Act, 2064, the provision for compensation is a legal arrangement made in favor of the victim. If the law explicitly mandates that compensation must be provided to the victim, failing to do so would result in injustice. Article 21 of the Constitution of Nepal should be interpreted to include the right of crime victims to receive compensation as part of their fundamental rights. When both the Constitution and the law guarantee compensation for victims, a failure by the District Court and the High Court to address this issue would render their decisions contrary to the Constitution and the prevailing legal framework. Such a decision would not be considered valid in the eyes of justice.

## **21) Adv. Chandrakanta Gyawali vs Office of the Prime Minister et.al (2080)<sup>208</sup>**

The Nepal-India border has a long history and is deeply connected through shared civilization and culture, primarily focused on facilitating bilateral movement. There exists significant trade, educational exchange, health services, employment, and socio-cultural interactions between the people living on both sides of the border. Citizens from border areas of both countries frequently cross the border for business, medical treatment, education, family visits, and leisure activities. Both nations have allowed relatively free or controlled movement across the border for these purposes.

However, this easy movement has also been exploited by criminal elements with malicious intent. The open border is being misused by undesirable activities, especially the trafficking of women, which poses a significant problem for both countries, but is a more severe issue for Nepal as a relatively underdeveloped nation. The cross-border trafficking of Nepali girls to India and other criminal activities in the border region have been noted. To tackle these challenges, it is crucial for the governments to enhance border management and surveillance. This can be achieved by ensuring the presence of security forces at border checkpoints and transit points, deploying advanced technologies like CCTV, and implementing stricter measures to regulate the movement across the border.

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<sup>207</sup> Laxman Thapa vs GoN, NKP 2078, Vol 7 , Decision No. 10697

<sup>208</sup> Adv. Chandrakanta Gyawali vs Office of the Prime Minister et.al, NKP 2078, Vol 2, Decision No. 11037

### 5.3 Evaluation of the Impact of Supreme Court Rulings on Human Trafficking in Nepal

The Supreme Court of Nepal has played a crucial role in shaping the legal interpretation, policy implementation, and overall judicial approach to human trafficking cases. The 20 Supreme Court cases on human trafficking and transportation in Nepal are most frequently seen to fall under five key themes:

- Burden of Proof and Evidentiary Standards,
- Legal Definitions and Scope of Human Trafficking,
- Victim Protection and Rights,
- Judicial Interpretation of Statutory Provisions, and
- Procedural and Jurisdictional Issues.

This categorization illuminates the judiciary's approach to the Human Trafficking and Transportation (Control) Act, 2064, highlighting critical legal principles and reasoning in anti-trafficking jurisprudence.

The rulings have significantly contributed to strengthening anti-trafficking laws, improving victim protection, and reinforcing legal precedents that guide law enforcement agencies and lower courts.

#### 1. Impact on Legal Interpretations

Supreme Court rulings have clarified ambiguities in the Human Trafficking and Transportation (Control) Act, 2064, expanding the scope of legal definitions and determining how various provisions should be applied. Some key aspects include:

**Expansion of Legal Definitions:** The court has interpreted trafficking beyond sexual exploitation to include labor exploitation, fraudulent foreign employment, and organ trafficking.

**Burden of Proof on the Accused:** In cases like *Goma Paanchkoti v. GoN (2072)*<sup>209</sup>, the Supreme Court affirmed that the burden of proof could shift to the accused in trafficking cases, recognizing the organized and concealed nature of such crimes.

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<sup>209</sup> NKP 2072, Decision No. 9333

Use of Victim Testimonies as Primary Evidence: The court has ruled that direct testimony from victims, even without additional corroborative evidence, can be sufficient for conviction, as seen in *Tej Bd Ranamagar vs GoN (2069)*<sup>210</sup>.

Setting Precedents: Landmark cases set precedents that influence how future trafficking cases are handled. These precedents can guide the admissibility of evidence, the burden of proof, and the sentencing guidelines applied in trafficking cases.

## **2. Impact on Policy Implementation**

The court's rulings have driven several policy-level changes aimed at improving law enforcement responses and victim protection mechanisms:

Establishment of Compensation Funds: A Supreme Court ruling on a writ petition filed by the Forum for Women, Law, and Development (FWLD) directed the government to establish a dedicated compensation fund for trafficking victims.

Victim-Centered Approach: The judiciary has reinforced policies ensuring that trafficking survivors receive rehabilitation, protection, and legal aid rather than being treated as criminals.

Confidentiality Measures: The Supreme Court has emphasized the importance of keeping victims' identities confidential, leading to the implementation of pseudonyms and in-camera hearings during trafficking cases.

Directives for Government Action: The Supreme Court has issued directives to the government, mandating specific actions to improve policy implementation. This could include directives related to victim protection, rehabilitation programs, cross-border cooperation, or awareness campaigns. In the case of *Adv. Chandrakanta Gyawali vs Office of the Prime Minister et.al*, Supreme Court stated that the open Nepal-India border has facilitated trade, education, healthcare, and cultural exchange, but it has also been exploited by criminal elements, particularly in the trafficking of women. This is especially problematic for Nepal, which faces greater vulnerabilities due to its underdeveloped status. To mitigate these issues, it is recommended that both governments strengthen border security by enhancing the presence of security forces at key checkpoints, implementing advanced

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<sup>210</sup> NKP 2069, Decision No. 8804

surveillance technologies like CCTV, and imposing more stringent regulations on cross-border movement to prevent criminal activities.

**Evaluation of Existing Policies:** Court decisions can highlight the shortcomings of existing policies and practices, prompting the government to revise or develop new strategies to combat trafficking.

**Resource Allocation:** Court rulings can influence the allocation of resources by drawing attention to specific areas that require increased funding or attention, such as specialized training for law enforcement or the establishment of additional shelters for victims.

### **3. Overall Judicial Approach to Trafficking Cases**

The Supreme Court has demonstrated an evolving and proactive approach to trafficking cases:

**Strict Penalties for Perpetrators:** The rulings have upheld and reinforced strict penalties, including life imprisonment in severe trafficking cases.

**Judicial Activism:** The court has taken an active role in interpreting human trafficking laws in alignment with international treaties such as the Palermo Protocol, ensuring Nepal's legal framework meets global standards.

**Recognition of Systemic Issues:** The judiciary has acknowledged that trafficking is often linked to economic vulnerabilities, migration policies, and law enforcement inefficiencies, encouraging broader government intervention.

In *Uttam Lama v. HMG (2061)*, the Court's precedent of shifting the burden of proof to the accused was reaffirmed in *Goma Paanchkoti v. GoN (2072)*, strengthening prosecutions and prompting policy discussions on victim compensation funds.

The Supreme Court of Nepal has played a transformative role in strengthening the country's legal framework against human trafficking. Its rulings have clarified legal interpretations, influenced policy reforms, and ensured a more victim-centric judicial approach. However, challenges remain in law enforcement efficiency, cross-border cooperation, and social reintegration of victims. Continued judicial oversight and policy enhancements are essential to effectively combat trafficking in Nepal.



## **CHAPTER VI**

### **ANALYSIS, FINDINGS AND CONCLUSION**

#### **6.1 Analysis**

Human trafficking represents the profound violation of human dignity through the commodification of personhood, modern manifestation of exploitation wherein individuals are reduced to instruments of profit rather than recognized as bearers of inherent worth and inalienable rights. It constitutes the systematic disassembly of human autonomy through mechanisms of deception, coercion, and manipulation, creating architectures of control that transform living beings into objects of transaction. This grievous breach of fundamental freedoms operates within the shadows of globalization, where vulnerable populations become ensnared in webs of exploitation that traverse national boundaries and penetrate the foundations of societies. The trafficking of human beings embodies not merely a criminal enterprise but a profound moral fracture in our shared humanity, challenging us to confront the ways in which human suffering can be rendered invisible amid the complex tapestry of our interconnected world.

Human trafficking represents the systematic erosion of human dignity through a complex web of exploitation, where vulnerable individuals become unwilling participants in a shadowed economy that trades in human lives rather than respecting their intrinsic value. It manifests as the deliberate manipulation of power differentials to transform persons into property—a profound inversion of the social contract that binds our collective humanity.

At its essence, human trafficking embodies the calculated dismantling of personal sovereignty, wherein perpetrators strategically identify and exploit vulnerabilities—whether born of economic desperation, social marginalization, political instability, or personal circumstance to orchestrate the commodification of human beings. These orchestrators of exploitation craft elaborate architectures of control through psychological manipulation, physical confinement, economic bondage, and systematic isolation, creating invisible prisons without walls that entrap victims within cycles of dependency and fear.

The phenomenon transcends mere criminal enterprise, revealing itself as a multidimensional assault on human dignity that operates at the intersection of global economic disparities, gender inequality, discriminatory practices, and governance failures. It represents a profound

moral fracture in our societal foundations—a wound that extends beyond individual suffering to compromise the ethical integrity of communities and nations that, whether through action or inaction, permit such profound dehumanization to persist.

Human trafficking embodies the paradox of modern civilization: amid unprecedented technological advancement and global connectivity, we witness the persistence of practices that reduce human beings to instruments of profit and pleasure, challenging our collective claims to moral progress. It illuminates the shadow economies that flourish in the interstices of legitimate markets, exploiting regulatory gaps and enforcement limitations to monetize human suffering while remaining largely invisible to mainstream society.

This profound violation of human rights demands recognition not merely as a criminal justice challenge but as a complex socio-political phenomenon requiring multifaceted intervention—a recognition that meaningful responses must address not only the immediate manifestations of trafficking but also the structural conditions of inequality, discrimination, and vulnerability that enable its continued existence in our ostensibly enlightened age.

Thus it is a complex and multifaceted crime that involves the recruitment, transportation, transfer, harbouring, or receipt of persons through the use of threat, force, coercion, deception, or abuse of power for the purpose of exploitation. Exploitation may include, but is not limited to, forced labor, sexual exploitation, slavery, servitude, or the removal of organs. It is characterized by the violation of fundamental human rights, targeting vulnerable individuals and communities, often exploiting economic, social, and political inequalities. This illicit practice undermines human dignity and poses serious challenges to global security, social justice, and public health.

This definition aligns with key international frameworks, such as the **United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol, 2000)**, which emphasizes the importance of consent being irrelevant when coercion, deception, or abuse of vulnerability is involved. By adopting a comprehensive and ethically grounded approach, this definition acknowledges the diverse contexts in which trafficking occurs and highlights the need for victim-centered legal and policy responses.

This study has undertaken a comprehensive analysis of the Human Trafficking and Transportation (Control) Act, 2064 (2007) of Nepal, evaluating its effectiveness in combating human trafficking and protecting victims. Human trafficking remains one of Nepal's most

pressing human rights challenges, deeply rooted in socio-economic vulnerabilities, weak enforcement mechanisms, and inadequate victim protection. The study has examined the effectiveness of the Human Trafficking and Transportation (Control) Act, 2064, its judicial interpretations, and implementation challenges. Key findings reveal that while Nepal has made legal strides, significant gaps persist in addressing internal trafficking, providing clear legal definitions, and ensuring the proper enforcement of anti-trafficking measures.

The Supreme Court of Nepal has played a crucial role in shaping anti-trafficking jurisprudence by clarifying legal definitions, shifting the burden of proof to the accused, and emphasizing a victim-centric approach. However, systemic challenges such as weak law enforcement, lack of inter-agency coordination, and insufficient resources for victim rehabilitation hinder the effective implementation of legal provisions. The failure to align domestic laws with international standards, including the Palermo Protocol, further weakens Nepal's anti-trafficking response.

Despite these challenges, the government, NGOs, and international organizations have made efforts to combat trafficking through awareness programs, legal reforms, and rehabilitation initiatives. However, enforcement remains inconsistent, and victims continue to face legal and societal barriers to justice and reintegration.

## **6.2 Findings**

Nepal has made notable legislative advancements in combating human trafficking, with the enactment of the Human Trafficking and Transportation (Control) Act, 2064, serving as a crucial step in establishing a legal framework dedicated to addressing this crime. However, despite these legislative efforts, significant gaps remain in legal definitions, enforcement mechanisms, and victim protection. The Act, while a progressive measure, lacks comprehensive coverage of all forms of trafficking, leaving loopholes that hinder effective implementation.

### **1. Legislative Advancement:**

- The enactment of the Human Trafficking and Transportation (Control) Act, 2064 is a significant step in Nepal's legal framework to combat human trafficking. It establishes a

dedicated legal structure to address the crime. However, gaps in definitions, enforcement, and victim support remain unresolved.

## **2. Gaps in Legal Definitions:**

- The Act narrowly defines trafficking, focusing primarily on physical and sexual exploitation. This excludes critical forms of trafficking such as forced labor, organ trade, and domestic servitude. Such limitations make Nepal's framework inconsistent with international standards, particularly the Palermo Protocol.
- The Act equates prostitution with trafficking, creating legal confusion and hindering the identification and prosecution of actual traffickers.
- The definition of "exploitation" omits labor exploitation, child labor, and other forms of forced labor, further diverging from international standards.
- The Act's focus on sex trafficking, excluding labor exploitation, stems from historical societal stigma, as seen in *GoN v. Som Bd Tamang* (2073), where transportation intent was proven but labor exploitation went unaddressed due to definitional limits.

## **3. Gaps in Victim Protection and Rights:**

- Although the Act outlines provisions for victim protection, rehabilitation, and compensation, these remain poorly implemented due to social stigma, lack of awareness, and insufficient resources.
- Victims face legal and societal barriers to justice and reintegration. As Provided by Supreme Court in *Bhagirath Dahal, Nirmala Dahal v. GoN*, (2074), Regardless of how severe the punishment imposed on the perpetrator may be, the victim continues to suffer lifelong pain due to societal perceptions and behaviour. This often prevents them from feeling that justice has been served. Therefore, it is essential for law enforcement, prosecution, and investigative authorities to remain vigilant, aware, and empathetic toward ensuring relief and justice for victims, especially in cases involving vulnerable individuals. Victims face barriers, as seen in this case, where delays deterred justice, and NHRC reports note societal stigma.
- Victims are unable to file cases or appeal decisions in higher courts independently, limiting their access to justice.
- The Act does not ensure confidentiality of victim and complainant details, leaving them vulnerable to threats and intimidation.

#### **4. Weak Law Enforcement and Implementation:**

- Police often refuse to register trafficking cases related to labor exploitation, misclassifying them as foreign employment issues and directing them to the Department of Foreign Employment.
- The Department prioritizes mediation over prosecution, allowing traffickers to evade accountability.
- The Foreign Employment Tribunal lacks jurisdiction to handle trafficking cases linked to foreign labor.
- Victims face lengthy legal processes and must bear travel and accommodation costs, discouraging them from pursuing justice.
- Unregistered brokers, primary facilitators of irregular migration and trafficking, continue to operate without facing legal consequences.

#### **5. Judicial Interpretation and Implementation Challenges:**

- The Supreme Court of Nepal has played a pivotal role in refining legal definitions, shifting the burden of proof to the accused, and reinforcing a victim-centric approach. However, inconsistencies in judicial interpretation limit the law's effectiveness.
- The failure to align domestic laws with the Palermo Protocol has further weakened Nepal's anti-trafficking response.

#### **6. Socio-Economic Factors and Cross-Border Trafficking:**

- Persistent socio-economic vulnerabilities such as poverty, gender inequality, and lack of education heighten the risk of trafficking, particularly for marginalized populations.
- Nepal's open border with India and other neighbouring countries facilitates cross-border trafficking, posing additional challenges for law enforcement and necessitating stronger regional cooperation.

#### **7. Structural Gaps in Anti-Trafficking Mechanisms:**

- No specific government agency is designated to oversee victim rescue efforts, leading to inconsistent responses during emergencies.
- The definition of "human trafficking" and "transportation" as separate concepts creates legal ambiguity, complicating law enforcement efforts.

- The punishment framework lacks penalties for labor exploitation and cases where Nepal is used as a transit point for trafficking activities.
- Victim compensation is insufficient, as it relies on fines collected from convicted traffickers. No alternative mechanism exists for cases where perpetrators remain unidentified or unpunished.

While Nepal has demonstrated legislative progress in combating human trafficking, systemic gaps in enforcement, legal definitions, and victim protection continue to undermine these efforts. Addressing these issues requires comprehensive reforms, improved law enforcement practices, better inter-agency coordination, and stronger regional collaboration to align Nepal's legal framework with international standards such as the Palermo Protocol. A victim-centered approach, coupled with enhanced awareness programs and support mechanisms, is crucial to ensuring justice, protection, and rehabilitation for trafficking survivors.

### **6.3 Conclusion**

In conclusion, the Human Trafficking and Transportation (Control) Act, 2064 represents a commendable yet incomplete effort to eradicate human trafficking in Nepal. The strides made through legislative intent and judicial oversight are overshadowed by gaps in enforcement, victim protection, and legal scope. The analysis demonstrates that the Act has established a foundation for combating human trafficking by criminalizing key exploitative acts and providing mechanisms for victim protection. However, its effectiveness is hampered by critical shortcomings. To truly break the chains of exploitation, Nepal must refine its legal definitions, bolster enforcement mechanisms, enhance victim support systems, and foster international collaboration. The persistent challenge of cross-border trafficking, facilitated by Nepal's porous borders with India, further underscores the necessity of regional cooperation. This research underscores the broader significance of Nepal's anti-trafficking efforts. It highlights that while laws are indispensable, their success hinges on robust enforcement, comprehensive victim support, and alignment with global frameworks. The fight against human trafficking is not merely a legal obligation but a moral imperative, demanding sustained commitment to ensure that the silent cries of the enslaved are answered with justice, compassion, and hope. The Human Trafficking and Transportation (Control) Act, 2064 (2007) stands as a pivotal legislative effort to address this offence, marking a significant step forward in Nepal's legal framework. This study has critically evaluated the Act's provisions,

its enforcement mechanisms, and the role of judicial interpretations in shaping its impact, revealing a complex landscape of progress tempered by persistent challenges.

Therefore, every victim of human trafficking is not merely a statistic, they are someone's child, sibling, or friend. Their silent cries demand not just justice but compassion, empathy, and unwavering action. Nepal's Human Trafficking and Transportation (control) Act, 2064 required substantial reforms to address its weaknesses. By refining legal definitions, improving victim support structures, enhancing transnational cooperation, and strengthening institutional capacity, Nepal can make significant progress in combating human trafficking. These reforms will improve access to justice for victims, strengthen preventive measures, and ensure effective prosecution of traffickers, aligning Nepal's efforts with international standards.

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