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The Three Rs of Justice to Human Trafficking Victims (Rescue, Rehabilitation and Reintegration)

• Saurav Ghimire¹

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 is essential for rendering justice to the victims. Therefore, state should focus on rescuing trafficked children and women, helping them return to their families, providing psychological and medical assistance, housing and skills training. Safe rescue of victims to the possible extent should be guaranteed by both the receiving state and state of origin. Moreover, the victims who have already been traumatised by offender should not be re-victimized by complex legal procedure.

Introduction

Human trafficking throughout the globe has become a matter of serious concern for the international community. About 800,000 to 900,000 persons are bought, sold and forced across the international borders annually.² Trafficking in women and children for sexual exploitation is a multi-billion dollar business which involves citizens of most the countries. A study conducted by the International Labour Organization (ILO) in 2005 reveals that the trafficking in person results minimum of 2.45 million of persons into forced labour at a given time whilst this criminal activity generates about USD 10 to 12 billion per year³. The majority of the victims of trafficking constitute of Women and children. Trafficking in women and children has been taken as heinous crime and the worse form of human rights

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² E. Obuah, *Combating Global Trafficking in Persons: the Role of the United States Post-September 2001* (International Politics 2006), 241.

³ *Ibid.*

violation. Delivering justice to the victims of trafficking is a long term process and thus is a challenging job. The process should include physical and psychological recovery of the victims as well as recovery of their social status. In other words their Rescue, Rehabilitation and Reintegration altogether can be referred as justice to the victims of human trafficking.

Despite many years of discussions and debates including number of laws, policies, and programs designed to prevent trafficking, there is no international consensus on the definition⁴ of trafficking. Trafficking is often understood synonymous with prostitution. Until recently, trafficking was seen exclusively as a woman's problem, confined to clandestine sex workers. The trends of trafficking are also for forced labour, child labour in circus, trafficking for child bearing, marriages and even for organ transplantation. However, there is increasing recognition of trafficking as a dynamic concept, which encapsulates a process of recruitment, transport, and exploitative labour conditions. Trafficking in persons is equated to modern day slavery since human beings are removed to distant destinations from their places of origin and enslaved through labour or commercial exploitation.⁵ The victims are engaged in profession which is not of their choice and they are compelled to carry on it against their free will.

Human trafficking in Nepal

Trafficking in women and children, for commercial and sexual exploitation is a long-standing tragedy in Nepal. There is a long history of human trafficking though it was not recognized as a profession or business. Certain reference of trafficking in girls has been traced back to Lichhivi and Malla period. Tibetan merchants were held responsible for promoting trafficking in Nepal as they recruited Nepalese young women to serve in brothels run by the

⁴ The UN General Assembly, 1994 defined trafficking as the “illicit and clandestine movements of persons across national borders, largely from developing countries with economies in transition, with the end goal of forcing women and girls into sexually or economically oppressive and exploitative situation for the profit of recruiters, traffickers, and crime syndicates, as well as other illegal clandestine employment and false adoption.” United Nations Convention Against Transnational Organized Crime (Supplementing Convention, Article-3) defined trafficking in persons as the “recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception of the abuse of power or of a position of vulnerability or of the given or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation, of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs;” The SAARC Convention defined trafficking as “moving, selling or buying of women and children for prostitution within and outside the country for monetary or other considerations with or without the consent of the person subjected to trafficking.”

⁵ Kathmandu School of Law, *Regional Study for harmonization of anti-trafficking legal framework in India, Bangladesh and Nepal with International Standards* (Kathmandu School of Law 2007), 40.

Tibetans.⁶ However, it has been a fully established fact that the practice of trafficking of village girls from nearby districts as sex servants was high during period of Ranas.⁷ After the political change of 1951, trafficking in women crossed the national boundary. Many Ranas who left Nepal after 1951, took with them maid servants and girls from here and sold to brothels in India for prostitution after they grew older. Some of these women opened their own brothels in those cities and started to recruit girls from the areas of their origins.⁸ Besides the organized gang of traffickers, the parents and close relatives also sold their daughters and relatives to the brothels of India in the hope of improving their socio-economic status.

According to population census of Nepal 2001, the total population of Nepal exceeds 24 million of which 50.1% are female. The literacy rate of women is only 39%. Illiteracy and unawareness among female eases the way of traffickers. Moreover, women and girls are manifestly subjected to discrimination of various forms. Previously, the law in Nepal did not oblige parents to provide good care education of girl child.⁹ Such discrimination in family causes deprivation of education which ultimately becomes source of other forms of discrimination in later stages of life. Many Nepalese girls have been betrayed by people who had shown them love and empathy and tricked into prostitution with guarantees of decent job opportunities abroad. They have been forced into prostitution by starving, having acid poured over their bodies, being burn with live cigarettes or brutally beaten. Due to such inhuman treatment they surrender and enter into prostitution.

Human trafficking is driven by demand and fuelled by poverty and unemployment. Trafficking of the person has been flourished due to the patriarchal social structure, gender disparity, illiteracy and ignorance in the society and so forth. In addition, the lack of political will to fight against trafficking at the state level due to the nexus between business, crime and politics further complicates the problem. It is estimated that at least 10,000 to 15,000 girls¹⁰ are being trafficked annually in the Indian brothel and assumed that more than 2, 00,000

⁶ Bhuwan Thapalia, 'The busiest 'sex traffic' port: Trafficking of Girls from Nepal and India', available at http://peacejournalism.com/read_article.asp (accessed on 7 September 2012).

⁷ Kathmandu School of Law (n 4), 38.

⁸ Bal Kumar K.C, *Trafficking in Girls with Special Reference to prostitution: A rapid assessment* (Geneva: ILO/IPEC 2001), 47.

⁹ Previously, clause 10 of the Chapter on Partition of Property in the *Muluki Ain* 2020 obliged the father to take good care only son and wife not daughter. (At present, even of daughter).

¹⁰ Kumar Regmi, 'Nepalese Legislative and Judiciary Responses to Women/Girl Trafficking into Prostitution', in Bhimarjun Acharya, *Annual Survey Of Nepalese Law* (Kathmandu: Nepal Bar Council 2002) ,186.

women and girls¹¹ are working in such brothel. A report released by United Nations' crime fighting office states that 70 percent of prostitutes working in brothels of India are Nepalese.¹² Especially poor rural girls have been trafficked and sold in the India. Gulf countries, Thailand, Malaysia and Hong Kong are other possible destinations. In the armed conflict and post conflict period, the magnitude of problems has been immensely higher. Available facts and figures show that trafficking has become a huge problem in Nepal, as in most of other third world countries. Poverty, unemployment and the globally flourishing sex industry are some of the factors responsible for the growth of trafficking in Nepal.

In order to reduce possible victims the Government of Nepal has been giving great emphasis on enhancing educational opportunities for women. Major programs include higher enrolments of girls in school, non-formal education and education for dropouts. The Government is also working with civil society organizations, social workers, media persons and girl students in promoting awareness among people, focusing on highly affected areas. Ministry of Women Children and Social Welfare (MWCSW) have started running a 'women self-reliance and rehabilitation home' since 1998.¹³ In order to address the problem of girl children at risk, some NGOs have initiated Child Care Shelters to accommodate street girls, homeless girls, orphans, destitute girls and those who have been subjected to trafficking. Over 50 NGOs currently work to stop sex trafficking in Nepal, but still numbers as high as 10,000 to 15,000 girls are quoted as being trafficked to and from Nepal each year.

Anti-Trafficking laws in Nepal

Nepal is a party to several international instruments to combat trafficking: The *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* (1949); the *1979 Convention on the Elimination of all Forms of Discrimination against Women* (CEDAW)¹⁴ and the *1989 Convention on the Rights of the Child* (CRC)¹⁵. Likewise, there are other international mechanisms to control trafficking, such as, *Slavery Convention*,

¹¹ Yubaraj Sangroula, *Condemned of Exploitation: Trafficking Of Women and Children in Nepal* (Kathmandu: Kathmandu School of Law 2001), 9.

¹² Alka Gurung, 'Living in Hell', *Republica*, August 14, 2012.

¹³ Kathmandu School of Law (n 4), 52.

¹⁴ Convention on the Elimination of all Forms of Discrimination against Women 1979, article 6 obliged state parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

¹⁵ Convention on the Right of the Child 1989, article 34-39.

¹⁶ *International Covenant on Civil and Political Rights*,¹⁷ and so on. Government of Nepal has committed itself to improving the situation of human rights at National, Regional, and International levels and has ratified these international human rights treaties. There are also national mechanisms in the Nepal such as, the *Interim Constitution of Nepal-2007* guarantees the rights against exploitation of any form¹⁸ and country code (*Muluki Ain*) devotes a separate chapter to the offence of human trafficking. *Human Trafficking and Transportation Control Act 2007* is specific law relating to crime of trafficking in human being Moreover there are other laws and policies that directly or indirectly affects trafficking and the victims, *Foreign Employment Act, 2007 Children Act, 1991* and so on.

Despite these laws and conventions, prosecution of trafficking offenses has not improved. The number of cases registered in the courts compared to the estimated number of women and girls trafficked is extremely low.¹⁹ Even when a case is initiated, the victim faces many difficulties. Many of them fail to file cases because they lack confidence in the police and justice system and fear social stigma, bribes, threats, the perpetrators, or personal shame. Victims and witnesses sometimes become hostile or change their statement out of fear. One reason for this is believed to be inadequate police protection. Without the cooperation of victims and witnesses, effective investigation and prosecution of trafficking crimes is virtually impossible. The state has not been able to protect the rights of victims against this severe form of exploitation. Programs for rescue, rehabilitation and reintegration are marginal and very limited. Efforts to control trafficking should include efforts to improve the lives of women who have been trafficked or are vulnerable to trafficking. Therefore, state ensuring justice to victims should focus on rescuing trafficked girls and women, helping them return to their homes and families, and providing psychological and medical assistance, housing and skills training.

Rescuing the victims

Trafficking in persons is a hidden phenomenon where only a tip is visible above the surface whist the major part is operated below the surface. One of the most challenging tasks of the field of trafficking in persons is the non availability of reliable data for the ascertainment of

¹⁶ Slavery Convention 1926, article 2-3.

¹⁷ International Covenant on Civil and Political Rights 1966, article 3, 4, 5, 6, 7, 8 and 12.

¹⁸ The Interim Constitution of Nepal 2007, article 29.

¹⁹ Only about 345 cases have been registered from 1992/93 to 1994/95. CeLRRd (n 4), 38.

the magnitude of the problem. This is due to the fact that most of the populations relevant to the study of human trafficking, such as victims/survivors of trafficking for sexual exploitation, traffickers, or illegal migrants are part of a hidden population. Since victims are placed in private and illegally controlled place the access of and to them is almost impossible which result difficulties in rescuing victims. It is more complicated when trafficking involves powerful and well organized transnational criminal groups in one hand and the vulnerable and voiceless victims on the other hand.

If the trafficked persons are rescued before they have been harmed too severely, there is high probability of being accepted back into their communities. This also means the traffickers can be identified and cases are pursued immediately. Safe rescue of victims to the possible extent should be guaranteed by both the receiving state and state of origin. Sometimes victims, especially those who have undergone grave sexual abuse and exploitation may not will to return back to their community due to fear of rejection. The rescue and reintegration of trafficking victims into their home community presents particular challenges when supporting trafficking victims who do not want to return home or are unable to do so. These victims need assistance to create an independent life, sometimes requiring a long-term commitment by those organizations providing support.²⁰ Rescue and rehabilitation programs should also preserve existing union of children and mothers who are victims of trafficking.

Rehabilitation

After rescuing the victim from trap of traffickers the victims should be rehabilitated and adjusted in society. Rehabilitation is something more than providing a victim with shelter and food. Counselling, medical care, legal aid, skills training and employment are all part of rehabilitation. Rehabilitation programs and transit homes for the victims of trafficking are woefully inadequate in Nepal. As per present law rehabilitation is an option, not an obligation of the state. The rehabilitation programme should assist the physical and psychological recovery of the victims. Because victims of trafficking face psychological pain and trauma, proper and timely counselling services are vital for rehabilitation and reintegration. The

²⁰ Hennink M. & P. Simkhada, 'Sex Trafficking in Nepal: Context and Process', *Opportunities and Choices Working Paper* no. 11 (April, 2004), 33; The Asia Foundation, *Prevention of Trafficking and the Care and Support of Trafficked Persons: In the context of an Emerging HIV/AIDS Epidemic in Nepal* (The Asia Foundation, 2001); 'Nepal, The Asia Foundation and India: The Population Council' in *The rehabilitation Of victims of Trafficking in group Residential Facilities in foreign Countries: A study conducted pursuant to the trafficking victim protection Reauthorization act* (USAID 2005), 20.

National Health Policy should specifically address women's health issues including violence caused by trafficking. One of the most traumatic effects of trafficking and the resulting sexual exploitation is unwanted pregnancy. If she is pregnant, the victim is often required to leave the brothel without any support. If the victim manages to escape or is rescued and returns to Nepal, she is subject to a harsh abortion law, which does not allow abortion for any reason, even if she is HIV positive.

In addition, the court procedure should also be victim friendly. The appearing in open court could traumatize a victim of trafficking. These offences are sensitive and require attention to the privacy of victims. Failure to provide an in camera hearing often results in human rights violations because trafficking victims do not feel comfortable testifying in open court. Victims may endure further victimization from stigma associated with having been trafficked. Open court intimidates victims and defeats efforts to curb trafficking. Trafficking cases should be tried in camera to encourage victims to come forward and ensure that traffickers are punished. According to present law a victim may request an in-camera hearing. However in-camera hearing must be mandatory in trafficking cases. Moreover for there is only a Special Court in Kathmandu. It is expensive and time consuming to bring defendants, victims and witnesses from every part of the country to a court in Kathmandu. As poverty leaves women vulnerable to trafficking, most victims are poor and unable to afford to travel to Kathmandu to pursue their cases. Instead of a single Special Court in Kathmandu, special benches with special procedures within the existing regular courts in each district to adjudicate the trafficking cases can be viable.

In the course of rehabilitation the victim should be provided compensation for the sufferings during entrapment. Law provides compensation to the victim equal to half the fine imposed on the offender.²¹ This does not compensate victims for their physical and mental suffering and if there are several victims, the compensation will be negligible. Furthermore, it is irrational to link compensation to the amount of the fine imposed. If the offender is unable to pay a fine and is imprisoned instead, the victims would not receive any compensation. The law should be amended to provide victim compensation beyond the amount the perpetrator is fined. The rehabilitation process should emphasize programs to generate employment and income of the rescued victim. Training should be given to victims so that they can be economically independent. It may include sewing lessons, handicrafts, mechanics or

²¹ Human Trafficking and Transportation (Control) Act (2064), article 17(1).

developing any other skill by the means of which they can achieve socio economic integration. Government can even provide grants for to establish their own enterprise. For example: grocery shop, dress-making, beauty treatment, barbering, and cooking shops.

Reintegration

After being rescued and recovered, reintegrating to their family and community as it is not easy for the victims. In most cases they are ashamed, estranged from society, or maybe disowned by their families. Most often, the victims of trafficking return home with HIV/AIDS and other diseases. Even if they are not infected with HIV/AIDS or other sexually transmitted diseases (STDs), others presume they are infected as a result their families and the rest of society neglects them. Some individuals are reluctant to identify themselves as victims, particularly in communities where trafficking is equated with prostitution.²² It has been documented in South Asia that children may have lost ties with their families, and families may not be prepared to face community stigma once their child returns.²³ Some NGOs have developed alternatives to natal family reintegration. For example, the Hagar shelter in Cambodia maintains a foster program for child victims of trafficking. While living with their foster families, the children continue to receive counselling and education, and to be involved in social programs that facilitate their reintegration into community life.²⁴

Without power, financial support or property, trafficked women and children are rejected by their families and ostracized by society. In such situation it will be difficult to promote equality in society which denies justice to the victims. Ignored by everyone, without recourse to effective rehabilitation programs, the women eventually return to sex work in order to earn a living. Thus reintegration of trafficking victims often is a difficult, complex, and long-term process. Its complexity lies in the fact that it is different for each individual victim and that it involves not only the victim but also the environment and culture within which the reintegration is to take place. Reintegration of victims of trafficking entails more than moving a child or woman back home or to another selected place. The process entails putting the

²² Evans Catrin and Pankaja Bhattarai, *Trafficking in Nepal: Intervention Models, A Comparative Analysis of Anti-Trafficking Intervention Approaches in Nepal* (Kathmandu and New Delhi: The Asia Foundation and The Population Council 2000), 26-29; *The rehabilitation Of victims of Trafficking in group Residential Facilities in foreign Countries: A study conducted pursuant to the trafficking victim protection Reauthorization act* (USAID 2005), 21.

²³ UNICEF, *Trafficking in Children in Kosovo: A study on protection and assistance provided to children victims of trafficking* (2004), 50; *Compassionate Care: Proceedings of Workshops* (Kathmandu: ILO /IPEC/TICSA 2006), 69-70 in *ibid*, 22.

²⁴ 'Annual Report 2005 (Hagar 2005), 14-15 in *ibid*.

pieces of the former victim's life together in a way that she can be reunited with a former life, a family, and a community, or helping the victim create a new life in another place in society.

The government should actively implement the policies and programmes for rehabilitation and reintegration of victims. The government should not shift its responsibility to any other organization. For instance, the rescue and reintegration component in the NPAT (National Plan of Action against Trafficking)²⁵ suggests that the government perceives rescue and reintegration as a task limited to NGOs and the community.²⁶ NGOs actively working in rescue and rehabilitation have their own problems and challenges. The government must participate in this effort. The government should give emphasis on long term rescue and rehabilitation operations and income generation programs. The SAARC (South Asian Association for Regional Cooperation) Convention on Prevention and Combating Trafficking and Women and Children for Prostitution has been adopted and it contains provisions with regard to rehabilitation and care. But the Convention ignores the important role of the country of destination in preventing, monitoring, rescuing, rehabilitating and repatriating trafficked victims and does not define the specific responsibilities of the destination country.²⁷ This oversight creates a particular problem for Nepal as India, the destination for most Nepali trafficking victims, has yet to assume responsibility for Nepali women and children trafficked and abandoned in India. Therefore, Nepal's rehabilitation and rescue efforts are hindered. The SAARC Convention must articulate particular provisions that require countries of destination to assume responsibility for victims trafficked into their territories. These provisions should include assisting in repatriation, providing safe housing, legal, medical and psychological support to the victims.

Conclusion

Human Trafficking is a multi-dimensional issue. It is an economic problem because the vast majority of women, seeking to escape poverty, are lured into trafficking by false promises of economic gain. It is a health problem because women and children who are trafficked are at

²⁵ The Ministry of Women, Children and Social Welfare/HMG developed this policy with the cooperation of the International Labour Organization International Program on the Elimination of Child Labour. The government approved the policy in July 1999.

²⁶ For example, The NPAT action plan states, "Institute a referral system for victims of sexual exploitation for NGOs for care and counselling.

²⁷ Article 9.1 of the Convention reads, "The rehabilitation of the victims of trafficking shall be the responsibility of the country of origin. The state parties to the Convention shall work out modalities for repatriation of the victims to the country of origin."

risk for HIV infection. It is a gender problem because unequal power relations reinforce women's secondary status in society. It is a legal problem because law enforcement is generally ineffective. So the justice to trafficking victims signifies complete solution of these problems.

Trafficking victims in Nepal lack access to the justice and are denied redress for the crimes committed against them. The Nepalese criminal justice framework seems to be based on notion of crime control rather than access to justice. Since victims are excluded from mainstream society they are denied of international, national or customary protection from abuse which is available to other citizen. Policies and programs should to be introduced to provide equal protection to them and they should be provided adequate compensation ensuring physical and psychological recovery, assisting to generate employment and income, facilitating reunion with family. Programmes should prevent trafficking and protect trafficked persons from re-victimization. There should be awareness on the issue both at grass root levels as well as among civil society and enforcement agencies. Thus, the Three Rs: Rescue, Rehabilitation and Reintegration of the victims should be emphasized while delivering justice to the trafficking victims.

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Conventions and Statutes

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