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Access to Justice to Victims of Human Trafficking: Nepalese Perspective

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The Circus of Human Trafficking

- Milan Dharel¹

Human Trafficking has been in debate of development and human rights interventions for past many years. With the changes in social political and economic context the understanding and responses on combating human trafficking has been widening. Yet, the debate has been heavily influenced by human trafficking for sexual slavery and later on labor exploitation followed by organs transplantation. Anti Human trafficking interventions in Nepal is still much influenced by protectionist conception and undermining the global economics and politics related to human trafficking concern. In addition, the interventions are much more focused on boarder control and punishing the petty criminals. The circus of human trafficking, despite of protest, control and protection interventions, have been in existence with flourishing market and effective influence. The paper discusses that, to stop the circus of human trafficking, interventions should go beyond romantic heroism, petty criminal boarder control action and further need to claim accountability of larger actors sitting far behind the curtains.

Human Trafficking: Who are they, the victim and the offender?

Human Trafficking has been globally recognized as Transnational Organized Crime, thus the UN has endorsed the additional two protocols in 2000 called *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (also referred to as *the Trafficking Protocol* or *UNTIP Protocol*) and *Protocol against the Smuggling of Migrants by Land, Sea and Air*. The first one entered into force since 2003 and the second one since 2004.

The *UNTIP Protocol* has defined human trafficking in terms of process of actions and use of authority and power, yet the definition has limited the conception of human trafficking with purpose of exploitation of labor, exploitation of one's sex work (Prostitution), slavery

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practices and removal of organs². Similarly, the next protocol on preventing smuggling of migrants have defined smuggling just as illegal entry which is further elaborated as use of fraudulent documents, or somebody's documents used by other one³.

In this sense any person involved in commission of such act are offender of human trafficking and any person targeted or actually victimized with the commission of such actions are victim/survivors.

Let us look at some of the reports in Nepal and at global level. The *Global Report on Trafficking in Persons* (2009), have accepted that the current data on human trafficking victim are not enough able to provide a real picture of the scenario because the data record system are based on criminal justice process and victims' assistance organization (UNODC, 2009). The report at national level in Nepal repeatedly confirming that human trafficking is increasing with new dimension in changed sociopolitical and economic context along with recitation of numbers that has been estimated by ILO-IPEC, some local NGOs, reported case available in police stations and number of victims/survivors assisted by local NGOs (Mathema, Acharya, Kshetri, & Subedi, 2011). In Nepal, annually more than 12 thousand children are supposedly trafficked to India, in addition, the human smuggling in foreign employment has been identified to be very much rampant. At domestic level, trafficking of children, youth and women in cabin restaurants, dance bars, local sex work industries, domestic work, brick kiln, embroidery industries are also reported by *National Human Rights Commission Office of Special Rapporteur's on Trafficking (NHRC OSRT) Report of 2011*.

According to UN.GIFT global report (2009), women constitute two third of the total victim, and surprisingly it is still women who occupy the majority of offenders, despite of the general assumption that men are more likely to involve in human trafficking. The report has shed

² "Trafficking in persons" shall mean 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 giving 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; *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* 2000, article 3a.

³ "Smuggling of migrants" shall mean 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 or a permanent resident; *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime* 2000, article 3a.

light that in the crime of human trafficking two layers of networks are involved. The first layers are often local people, the citizen of source countries, who work to influence, coerce and facilitate as well as actively take lead on transferring the person from one place to another, these groups are the front liner often less paid than another layer and take more risk. In most of the countries overwhelming majority of the people in prison represents the first layer actors, criminals. The second layers are international groups often comprised people from developed countries having strong mafia, political and business connections. These are the people playing key role on war trading, arsenal, and drugs trafficking. Yet the report of UN.GIFT has mentioned that often in developed countries whoever are arrested on account of human trafficking are the diaspora people from the source countries, who again represents the first layer group.

In terms of victim, the dimension of human trafficking considering the process of action may be able to include the new emerged tendency of human trafficking, whereas the purpose mentioned has limited the wider and larger economic transaction under the definition of human trafficking. At the moment in Nepal, what is happening in the name of overseas studies, dependent of overseas student, in the name of adoption, in essence is human trafficking. Why not? The use of fake bank transaction, use of fake deposition of money, the fake explanation of the purpose of study and the commission the consultancies receives from overseas colleges are enough conditions to be considered these things under the human smuggling. In addition to that the paper orphans ready to adopt or adopted without adequate and sufficient safeguarding provisions have enough conditions to be considered as human smuggling and trafficking of a person.

I do not find any difference on deception by a man marrying a girl and taking her to Mumbai from Nepal, or a manpower agency giving a lure of better income for a woman or man in gulf or middle east and the big bill boards exposing Sydney harbor, London bridge, Washington city or Tokyo of Japan and freely distributing dream of a western standard life to a recently higher secondary school graduated girl and boy.

The sponsored media articles about the foreign employment and education, the sponsored acknowledgement and appreciation of remittance role in national economy are no more different from a woman from brothel in Mumbai sending some pieces of *Kurta* and *Saris* to the girls entering into youth stage in Sindhupalchowk and Nuwakot.

What is the reason, when child adoption stops the embassy rings to the prime minister office? What is the reason that nobody in embassy asks question to Nepali applicants about their financial status and easily believes in open secret of fake documentation? Why does the ministry easily issue consent letter knowing all this open secrets? What is the reason that abroad governments are not ready to refund the paid fee when they declare shutting down of colleges?

The fishery skills in circus of human trafficking are very much focused on tapping the small local fishes, criminalization of petty actors and Mumbai and Nepal relation. But what about action on those cases where a benefit is received beforehand and earning is legitimately squeezed from the victim? What about the contributors for scaling up interested for being vulnerable and victimization?

Human Trafficking: looking beyond poverty, what are the causes?

The human trafficking discourse has most often recited the poverty, ignorance, conflict and lack of employment opportunities in source countries/location are the major underlying causes. All these are against victim, victim's family, community and country. It is unfortunate for them to be a citizen of country like Nepal, where poverty hits the daily life, unemployment carries your life ahead and conflicts and ignorance are parts of life. The accusations against the developing and under developing countries are no more than to demoralize the strength of the communities and families. The accusations are clearly to save faces of exploiters and punish the wrong doers at front line.

The *NHRC OSRT report* (2011) has mentioned that though most of the victims have an agriculture economic background, most of them have a background of informal sector employment. In this sense, the slow disruption of national industries, displacement of local cottage industries and micro enterprises by the giant multinational suppliers, trade and supply of seeds that not breeds to the farmers, curtailment of market by international brands and displacement of traditional industrial and economic chain with imposition of modern technologies and principles without adequate safeguarding policies and principles as well as criminalization of local economic transactions are enough to increase the level of poverty, attract rural population to urban, break social tie up and distract youth from local entrepreneurship to employment seekers group.

The political enterprises at national level, in unbalanced power relation of global economy, often surrender its population in a mire condition. The skill development-training programs in Nepal are heavily focused on production of migrant labor. We are compelled to produce servants for them. The women's labor rights campaigners have forgotten the thousands of rag pickers, thousands of local drivers, hundreds of thousands of local domestic workers and local entrepreneurs inside the country, the focus since last few years projects are heavily based on Middle East working women. Is such focus to promote or to prevent?

The remittance entering into Nepal has seldom been scrutinized on the basis of whether it is from legal or illegal migrants, from a person in brothel or in far desert land, or from a person in student visa or working visa. Even in many cases the corrupted money inside Nepal has been disguised under the name of remittance sent by son/daughter overseas.

In this entire basis, the cause and accusation of poverty can be easily challenged. Whose poverty? Is it Nepal's current financial poverty or the recipient country's vulnerability to poverty? What Poverty? Is it Nepal's current one-third population or the lack of manual labor force in recipient country? Whose economy? Of the rural Nepal's poor family dream of tinned roof house or the recipient country's plan to accumulate tourism economy additionally lured by sex tourism?

The debate of poverty on human trafficking, ignorance on sending families and conflict of supplying communities has to be well scanned identifying the real actors behind it.

Human Trafficking: illusion of protection and prevention?

A recent decision of Nepal government prevented women of less than 30 years to go for housemaid work in Middle East countries. The decision maker claimed it as a strong protection plan for preventing trafficking of women. A recent article in *Kantipur* National daily, exposed the hidden game of corruption and about protectors exploiting the exploited in the name of entry from immigration.

Until few years back there was legal provision to obtain consent from male partner, son or father or nearest male member of the family for women to make passport to apply visa in foreign countries. The government proudly claimed it as protection of women and girls.

Not only government but also the internationally recognized and awarded NGOs have been proudly carrying on their protection establishing villages, rescuing back few numbers of women every year, interrogating at boarder (many have been complained as harassment) and keeping all them in a “strict rule and disciplined” institutional settings.

The learnt, the NGO runners, the home runners, rescuers and rewarders are savior of the poor, ignorant, pathetic, pitiful, women from Mumbai. They know everything from why family gave birth to many child (as often cited in wait for son), who sold (a local man marrying her), why (to earn few thousands IC), what do they do now (skill training- income generation), do society accepts (No, they are not aware), who has to aware (again NGO through campaigns) preventing people from coming to Kathmandu, Crossing Thankot and flying by plane. But, how many lives have been changed? How many survivors have become change makers? How many women and girls have been prevented? How many have been harassed? Why can they not enjoy the fancies of modern life? Why do the people in city often tell them not to go to city? What would have happened differently if they were in Mumbai than in current situation? Who shall answer all these questions?

The gaps in our understanding about trafficking survivor and the vulnerable are our prescriptions. We have not much explored why a family with four girl child is able to send all four child to school and why not a similar status family in rural side; why some women once sold want to get back and why some don't want; What are the community and family resilience that enables one to have her child or person back in the home in pleasing environment, and what lacks for a family and community that don't do? It's not just simply lack of television serials, documentary or posters on human trafficking, it is beyond that. Let society expose the illusion, let people analyze the myth and reality, let him/her be a leader, let them be in society, be exposed, struggle and seek their place, not in a corner within a compound. Let them get ready to face the challenge and cope with and let us not stop them from experiencing what they have dreamt about. Let them claim reparation from the benefitted and not limit their survival on the alms of the donors. Let them be hero of themselves and act with own leadership.

So, what next?

There is no doubt on good intention of all actors, but mere good intention is not enough. There is no question on services provided and benefits received by the vulnerable and

victims, but giving and taking alone are not enough. I don't have problems with different views and perception on poverty and human trafficking and interventions on it, but just being indifferent is not enough.

The human trafficking is not just a crime of transnational nature; it is not just a criminal offence by a person or a group of persons. Human Trafficking has special meaning and value on politics, on economy and on international relation and accountability. Prevention, protection and prosecution on human trafficking does not mean in alone raising awareness on Mumbai life, or Middle East Labor toil; neither is it sentencing somebody to 120 years for nor opening up hotline actions. All these also have significance in terms of interventions, but interventions without blocking the possibilities of economic anomalies, without securing a sustained and locally owned opportunities for people; without claiming accountability of benefitted; without asking for reparation and ultimately without myth busting on human trafficking, would remain incomplete and ineffective.

Thus, widening the definition and legal intervention scope on human trafficking in terms of process and purpose both; international political debate and dialogue to counter exploitation of human trafficking and war business and enhancing the resilient of victim, survivor, vulnerable is urgently needed.

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