

Human Trafficking and Transportation (Control) Act, 2064

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Act Number 5 of the Year 2064(2007)

Preamble : Whereas 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.

PRELIMINARY Part 1

1. **Short Title , extension and Commencement:** (1) This Act may be called “Human Trafficking and Transportation (Control) Act, 2064(2008).
 - (2) This Act shall come into force immediately.
 - (3) This Act shall extend throughout Nepal and anyone committing an offence against Nepali citizen under this Act from foreign territory shall also remain within the scope of this Act.
2. **Definition:** Unless the Subject or context otherwise requires, in this Act-
 - (a) "Offence" means an act pursuant to Section 3.
 - (b) "Center" means a rehabilitation center established pursuant to Section 13.
 - (c) "Victim" means a person who is sold, transported or put into prostitution.
 - (d) “Child” means a person who has not reached the age of eighteen years.
 - (e) "Exploitation" means an act of keeping human being as a slave and bonded and this word also includes to remove human organ except otherwise provided by prevailing law.
 - (f) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act.

Part 2

PROVISION OF OFFENCE AND INVESTIGATION

3. **Human beings not to be trafficked and transported:** (1) No one shall commit or cause to commit human trafficking and transportation.

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

4. **Acts considered as Human Trafficking and Transportation:** (1) If anyone commits any of the following acts, that shall be deemed to have committed human trafficking:

- (a) To sell or purchase a person for any purpose,
- (b) To use someone into prostitution, with or without any benefit,
- (c) To extract human organ except otherwise determined by law,
- (d) To go for in prostitution.

(2) If anyone commits any of the following acts, that shall be deemed to have committed human transportation:

- (a) To take a person out of the country for the purpose of buying and selling,
- (b) To take anyone from his /her home, place of residence or from a person by any means such as enticement, inducement, misinformation, forgery, tricks, coercion, abduction, hostage, allurements, influence, threat, abuse of power and by means of inducement, fear, threat or coercion to the guardian or custodian and keep him/her into ones custody or take to any place within Nepal or abroad or handover him/her to somebody else for the purpose of prostitution and exploitation.

5. **Reporting:** (1) If anyone knows that the offence under Section 3 of this Act is being committed or may be committed, he/she may report to the nearest police office.

(2) If the person who reports under Sub-section (1) puts written request to remain unnamed, the police office which registers the report should maintain his/her confidentiality.

6. **Certifying the statement:** (1) If the person reporting under Section 5 is a victim, the police office should take the statement immediately and the victim shall be taken to the nearest district court to certify the statement as soon as possible.

(2) If a police office brings to certify a statement under Sub-section (1), the district judge, notwithstanding anything contained in the prevailing law and even if the offence related with that statement does not fall within the jurisdiction of that district court, shall certify the statement after reading it aloud and noting whether there is difference or not in the statement.

(3) If the statement of the victim is certified under Subsection (2), the court can take the certified statement as evidence even if the victim does not appear in the court in the course of further court proceeding.

7. **Arrest and investigation:** (1) If any act considered to be an offence under this Act is being committed or may be committed or attempted in a house, land, place or a vehicle, and if there is a chance the offender will escape or evidence relating to the offence will disappear or be destroyed if immediate action is not taken; notwithstanding anything contained in the existing law, a police officer of the rank Sub-inspector or higher may prepare a report and carry out any of the activities listed below at any time:

(a) To enter, search or seize such house, land, place or vehicle.

(b) To break or open windows or doors in order to carry out the necessary activities in case he/she faces obstruction and

opposition in performing the duties,

(c) To arrest or take body search of a person engaged in such activity without an arrest warrant,

(d) To seize and take in custody of the evidence found in such house, land, place or vehicle.

(2) While carrying out such activity under Sub-section (1), police personnel shall, if possible, identify representatives of local bodies or otherwise those present at the time of activity as witnesses and provide a copy of the details of the activity to the owner of the house, land, place or vehicle.

8. **Prosecution in custody**: Notwithstanding anything contained in the prevailing law, and except to the offence under Clause (d) of Sub-section (1) of Section 4, the court shall keep the accused in custody while prosecuting cases on other offences that fall under Section 4.
9. **Burden of proof**: Notwithstanding anything contained in the prevailing law, a person accused of an offence under this Act shall provide evidence proving that he/she did not commit the offence.
10. **Right to keep separate Law Practitioner**: 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.
11. **Provision of Translator and Interpreter** : If the working language used by the concerned court and office in dealing with an offence under this Act is not understandable by the victim, he/she may manage for the translator or interpreter with the permission of the court.

Part 3

PROVISION OF RESCUE, REHABILITATION AND RECONCILIATION

12. **Act related to Rescue:** Nepal government shall manage for the rescue of any Nepali citizen sold in the foreign land.

13. **Rehabilitation Center:** (1) Nepal government shall establish necessary rehabilitation centers for physical and mental treatment, social rehabilitation and family reconciliation of the victim.

(2) Any organization can obtain permission as prescribed to establish and run rehabilitation center to address the objectives under Sub-section (1). Nepal government shall make regular and effective monitoring of that organization and rehabilitation center established by it.

(3) Nepal government may provide economic support as well as other assistance, as prescribed, to the center run under Sub-section (2).

(4) Center shall manage for the social rehabilitation and family reconciliation of the person stationed at the Center.

(5) Center shall manage for the medical treatment and consultation service and facility to the victims.

(6) No one shall make the victim in the Center engage in any work against his/her wish.

(7) Management, operation standard, monitoring of the rehabilitation center, skillful training and employment, rehabilitation, family reconciliation shall be carried out as prescribed.

14. **Rehabilitation Fund:** (1) Nepal government shall establish a rehabilitation fund for operation of the rehabilitation center established under Sub-section (1) of Section 13.

(2) The fund established under the Sub-section (1) shall receive

contributions as follows:

- (a) Funding received from Government of Nepal,
 - (b) Funding received from national and international organizations, and individuals,
 - (c) Half of the amount received as fines under Section 15.
- (3) Management and operation of the rehabilitation fund shall be as prescribed.

Part 4

PROVISION OF PUNISHMENT AND COMPENSATION

15. **Punishment:** (1) Any person who commits an offence as prescribed under Section 3 shall be punished as follows:
- (a) Twenty years imprisonment and a fine of Two Hundred Thousand Rupees for selling or buying a human being,
 - (b) Ten years to Five years imprisonment and a fine of Fifty Thousand Rupees to One Hundred Thousand Rupees for forcing into prostitution, with or without financial benefit,
 - (c) 10 years imprisonment and a fine of Rs Two Hundred Thousand to Five Hundred Thousand Rupees for extracting human organ except otherwise determined by law,
 - (d) One month to three months imprisonment and a fine of Two Thousand Rupees to Five Thousand Rupees for a person engaged in prostitution.
 - (e) For a person who is involved in transportation of human being for the purpose of buying, selling and engaging some one in prostitution-

- (1) Ten years to Fifteen years imprisonment and a fine of Fifty Thousand Rupees to One Hundred Thousand Rupees for taking a person out of the country.

Fifteen years to Twenty years imprisonment and a fine of One Hundred Thousand Rupees to Two Hundred Thousand Rupees for taking a child out of the country.

- (2) Ten years of prison and a fine of Fifty Thousand Rupees to One Hundred Thousand Rupees for taking a person from one place to another place within the country.

Ten years to Twelve years imprisonment and a fine of One Hundred Thousand Rupees for taking a child from one place to another place within the country.

- (f) One years to two years of imprisonment for taking a person from one place to another place within the country, and two years to five years of prison for taking out of the country for the purpose of exploitation under Clause (b) of Sub-section (2) of Section 4.
- (g) Except otherwise written in clause (e) and (f), seven years to ten years of prison for a person committing an offence under clause (b) of Subsection (2) of Section 4.
- (h) The person engaged in provocation, conspiracy and attempt of an offence of human trafficking or transportation or an abettor of that offence shall get half out of full punishment envisioned for that offence.

(2) Notwithstanding anything written in Sub-section (1), the punishment in the following matters shall be as follows:

- (a) If same person is involved in buying or selling and forcing into prostitution, with or without any benefit; he/she shall be liable for

punishment under both offences,

- (b) If same person is involved in buying or selling or forcing into prostitution, with or without any benefit, and in an offence under Clause (b) of Sub-section (2) of Section 4, he/she shall be liable for punishment under both offences,
- (c) Notwithstanding anything mentioned in Clause (b), if same person is involved in an offence under Clause (b) of Sub-Section (2) of Section 4 and in transporting a human being from one place to another place within Nepal or outside the country for the purpose of buying, selling or forcing into prostitution, with or without any benefits; he/she shall be liable for separate punishment for each offence.

(3) If an offence under Section 3 is committed by person holding a public post; in addition to the regular punishment for that offence, he/she shall be liable for Twenty five 25 percentage additional punishments.

(4) If anyone commits an offence under Section 3 with a person under protection or guardianship or if the victim is relative of the offender as incorporated in the Chapter of Incest in civil code , he/she is shall be liable for ten percentage additional punishment besides regular punishment under this Act.

(5) If anyone commits an offence under Section 3 repeatedly, for every offence he/she shall be liable for it additional one-fourth punishment in addition to the regular punishment.

(6) If, in the course of proceeding of the case, a person involved in reporting the offence under Section 5 of this Act gives contrary statement to that of the statement giver earlier or if he/she does not appear before the court on its notice or does not assist to the court, shall be liable for three months to one year of imprisonment.

16. **Exemption from Punishment**: If a person knows or there is reasonable ground

to believe that he/she is being bought, sold or engaged in prostitution or taken for the same and he/she does not get help to get rid of from those acts or somebody creates obstacle or stops or takes into control or uses force, in such case, if he or she believes that it is impossible to get rid of from such control and on such faith the perpetrator happens to be killed or injured in the course of release, such person shall not be liable for any punishment notwithstanding anything in the prevailing law.

17. **Compensation:** (1) 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

(2) If the victim dies before receiving the compensation under Sub-Section (1) and if he/she does have children below the age of 18, the children shall receive the compensation. If the victim does not have any children, the dependant parents shall receive the compensation.

(3) If there are no dependant parents and minor children to receive compensation under Sub-Section (2), the amount should be accrued in the Rehabilitation Fund.

Chapter – 5

Miscellaneous

18. **Seizure of Property:** (1) Any movable or immovable property acquired as a result of an offence under this Act shall be seized.

(2) If it is proved that anyone uses or provides to use any house, land or vehicle for any offence under this Act, that house, land or vehicle shall be seized.

19. **Award:** (1) 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 established under Section 14, ten percent of the fine levied as punishment under

Section 15 as an incentive .

(2) If there is more than one informant giving information under Sub-Section (1), the incentive amount shall be distributed proportionately.

20. **Confidentiality of the informant:** The name and address of the informant and the details provided by the informant under Sub-Section (1) of Section 19 shall be kept confidential.

21. **Exemption from penalty:** (1) If an accused charged of committing an offence under this Act accepts an offence and co-operates the police, public prosecutor or court to collect evidence and arrest other accused or abettor, and if he/she has committed the offence for the first time, court can reduce the punishment up to twenty five percent so prescribed for that offence.

Provided that, if the assistance is not proved by the evidence or he/she gives statement against the support provided to the police or prosecutor, a case may be registered notwithstanding anything in the prevailing laws.

(2) Notwithstanding anything contained in Sub-Section (1), there shall be no reduction in claimed punishment, pursuant to this section, in the following conditions:

- (a) To provide exemption in punishment to the principal accused,
- (b) If the case involved is trafficking or transportation of a child,
- (c) If exemption in the punishment has already been provided.

22. **Claim of offence against moral turpitude:** 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.

23. **Formation of a Committee:** (1) 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.

(2) The functions, duties and powers of the committee formed under Sub-Section (1) shall be as prescribed.

24. **Punishment for obstruction**: Anyone obstructing an investigation of an offence under this Act shall be fined up to Ten Thousand Rupees.

25. **Prohibition against disseminating confidential information**: (1) Without the consent of the victim, no one shall publish or broadcast the real name, photograph or any information which is detrimental to his/her character.

(2) Any person who publishes or broadcasts the name, photograph or other information pursuant to Sub-Section (1) shall be subjected to a fine of Rs Ten Thousand to Twenty Five Thousand Rupees.

26. **Security**: 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:

- (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 center.

27. **In camera court proceedings**: (1) Court proceeding and hearing of an offence under this Act shall be conducted in In-Camera.

(2) 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 under Sub-section (1).

28. **Government to be the Plaintiff**: Government of Nepal shall be the plaintiff in all cases filed under this Act, and such case shall be deemed to be included in

Schedule 1 of the Government Cases Act, 2049.

29. **Power to make Rules**: Government of Nepal shall frame Rules to implement the objective of this Act.

30. **Repeal and Saving** : (1) Human Trafficking (Control) Act 2043 is, hereby, repealed.

(2) Acts conducted and performed under Sub-Section (1) shall be considered to have be done pursuant to this Act.