



Legal and Institutional Barriers Faced by Human Trafficking Survivors to Access Justice in Nepal

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*When my perpetrator was sentenced to jail, I was **very happy** and felt a sense of justice at that time. But I had to wait for ten years to get compensation after the verdict.”*

—Nirmaya¹

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Survivors of human trafficking in Nepal face extreme challenges to access justice. Many are still waiting to begin the process and those who are mid-process continue to encounter multiple legal and institutional barriers.

Although justice polices in Nepal have been developed over the years, deficits remain. The Human Trafficking and Transportation Control Act (HTTCA) came into force in 2007 in Nepal to deal with human trafficking issues. The National Committee to Combat Human Trafficking (NCCHT) was enacted in 2008 under the Ministry of Women, Children, and Senior Citizens (MoWCSC) to conduct and coordinate the activities against human trafficking in Nepal. Additionally, the Constitution of Nepal was drawn up in 2015 and prohibited acts of human trafficking and provided compensation to crime victims.

CONTEXT

¹ Nirmaya is pseudo name of TIP survivor.

Prior to these endeavors, the Palermo Protocol of 2000 was written to prevent, suppress, and punish trafficking in persons—but not ratified by the Nepal government until mid-2019. And, although the Anti-Human Trafficking Bureau (AHTB) of Nepal Police was established in 2017 to take legal action, existing constitutional, legal, and policy provisions are not adequate to provide justice to human trafficking survivors in Nepal.

According to the National Human Rights Commission (NHRC), 40,300 trafficking-in-persons (TIP) cases were documented and another 1.9 million Nepalis were estimated at risk of human trafficking (NHRC, 2022). In fiscal year 2019/2020, the Office of the Attorney General and its branch offices prosecuted 675 TIP cases out of a total of 1,851 cases; the Supreme Court and its branch courts adjudicated 549 TIP cases out of a total of 1,247 cases (MoWCSC, 2020). This means that only 36 percent of cases were prosecuted, and only 44 percent of cases were settled. Fewer still received compensation.

DEFINITION OF JUSTICE FOR TIP SURVIVORS

Based on the perception of survivors and experts, the study identified six criteria that defined justice for survivors. Survivors felt a sense of justice (see image at right) based on whether they were 1) rescued in a timely way; 2) given provisions for basic needs (food, shelter, health, etc.); 3) treated well during investigation, prosecution, and judicial procedure; 4) assured that their perpetrators were punished; 5) received compensation easily; and 6) reintegrated respectfully.



The study calls for a clear definition of justice for TIP survivors in order to design effective programs and enhance access to justice, which includes overcoming three potential barriers:

1) Social barriers. The study found that Dalits, Janajati, Madheshi, and Muslims—especially women and girls—are forced to work and trafficked for sex mainly in Middle East (Gulf) countries and Malaysia. The existing caste system and patriarchal society not only marginalizes them but also subjects them to a higher risk of trafficking. Because of their lack of education, livelihood opportunities, and social benefits, they are prone to be easily abused and exploited. These socio-cultural barriers hinder them from accessing socio-economic benefits and accessing justice after being trafficked. The study found that the survivors are socially stigmatized and traumatized—especially females—by their own families, neighbors, and society.

As a result, most of them do not want to disclose their identity as a survivor or initiate the process of accessing justice. Children of many female survivors are deprived of their state government rights and services due to lack of birth registration and citizenship.

2) Legal barriers. As per HTTCA (2007) and its Regulations (2008), acts of human trafficking is prohibited and compensation is to be provided to crime victims; the Act/Regulations also state that the Nepal government is obliged to control, manage, and rehabilitate survivors. However, neither the Act nor the Regulations are comprehensive nor adequate to provide justice to the survivors, but instead create even more legal hurdles.

The study found that many survivors cannot register their cases due to little information or support. Although some non-governmental organizations (NGOs) offer local awareness programs, most people do not have access. Even when a court rules in their favor, survivors may be unable to receive compensation or must wait many years for it.

3) Institutional barriers. The MoWCSC is the leading governmental ministry on human trafficking in Nepal. The ministry established NCCHT as essential to its mission, which then created District Committees to Combat Human Trafficking (DCCHTs) in 75 districts of Nepal. However, in the new federal structure enacted in 2015, provincial and local committees were formed with no direct reporting nor relationship to MoWCSC, making them difficult to track and regulate. In addition, AHTB has its own mechanism of investigation/coordination with local police, which is not well connected to DCCHTs for a comprehensive response or support for the justice of survivors.

Section 13 of HTTCA (2007) directs the establishment of victim rehabilitation centers in coordination with the government of Nepal in each province. Although government provision for TIP survivors appears inadequate, it does support shelters run by NGOs and individuals; however, it does not operate its own facilities—which needs to be remedied. By contrast, NGOs were found to be more active than the government by supporting survivors through shelters and legal assistance.

LACK OF VICTIM-FRIENDLY ENVIRONMENT IN NEPAL

Survivors of human trafficking in Nepal face multiple legal, institutional, and structural barriers to restart their normal life. They are in great need of support for justice and reintegration with their families and communities. However, many of them are not supported by their own families and communities. Only a few receive support from the government and other agencies, while the majority are left alone to fight their own battles.

This lack of a victim-friendly environment discourages survivors. Some environmental deficiencies include an absence of separate rooms for investigation/counseling, basic expenses for food and shelter, safety and security for survivors and witnesses, and access to justice. Although there is provision for continuous conversation and video conferencing, these are not regularly used. Many survivors report harassment by police and public prosecutors, and some have to bribe the legal establishment in order to win their case. These issues create more difficulties and challenges for survivors in the legal process.

RECOMMENDATIONS

- Nepal government to amend the HTTCA (2007) and its Regulations (2008) to address legal issues of justice to survivors
- MoWCSC to initiate a simple, quick procedure for compensation to the survivors
- AHTB of Police to expand and create a separate unit in each local government
- State to facilitate identification and citizenship to children of women survivors who were trafficked for sex
- Government to manage their own rehabilitation shelters at each provincial and local level
- NGOs to build capacity to raise legal awareness of survivors and their families
- Local governments to initiate school-level curriculum of human trafficking to expand legal literacy and awareness in society and remove social stigma associated with survivors
- Formulate a consolidated policy incorporating the existing National Action Plan and other policies focusing on justice to TIP survivors
- Define justice for TIP survivors in its laws and policy
- Effectively establish NCCHT at provincial and local levels
- Make investigation and prosecution survivor-friendly and gender-responsive—such as separate rooms, female investigator and prosecutor, necessary security, etc., for female survivors
- Provide interim compensation for survivors who go through the lengthy legal and judicial process

RESEARCH

This study explored legal and institutional barriers in accessing justice by the survivors of human trafficking in Nepal. The study applied a qualitative approach and conducted 30 in-depth interviews with trafficking survivors and 27 key informants' interviews in Parsa, Sindhupalchowk, and Makwanpur districts.

REFERENCES

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RESEARCH TEAM

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