

Human Trafficking (Control) Bill

Preamble: Whereas: To stop the inhumane acts of human trafficking and immoral sex work; to rehabilitate the victims of such activity and to maintain the morality and proper conduct of the general public by unifying and updating the existing laws, this Act is developed on the 29th reign of His Majesty the King Birendra Bir Bikram Shah Dev.

Part 1

1. Short Title and Commencement:

- (1) The title of this act shall be 'Human Trafficking (Control) Act' 2057.
- (2) This Act shall commence immediately.

2. Extraterritorial application of the Act:

- (1) If any person commits a crime punishable under this Act outside Nepal and, if the person affected by such activity is a Nepali citizen, the person shall be prosecuted or punished under this Act as if that the crime were committed within the Kingdom of Nepal.

3. Definition: Unless otherwise stated in this Act,

- a. "Child" means children who have not reached the age of sixteen.
- b. "Brothel" means a house, room or any place used for prostitution by oneself or by others.
- c. "Prostitution" means the activity of selling, buying, renting and using someone's body for sexual exploitation or to cause the sexual exploitation by others with or without profit.
- d. "Victim" means a person who is affected by the activities under section 4, subsection (2) of this Act.
- e. "Sexual activity" means improper sexual contact, sexual stimulation, sexual harassment or sexual exploitation.
- f. "Rehabilitation home" means a rehabilitation center established under Section 21 of this Act.
- g. "Prescribed" or "as prescribed" means prescribed or as prescribed in the rules enacted under this Act.

Part 2

Prohibited Work

4. Prohibition against engaging in human trafficking:

- (1) No one shall commit or make others commit human trafficking.
- (2) If anyone commits or makes others commit any of the following activities, that person shall be deemed to have committed human trafficking.
 - a. To sell or buy a human being for any purpose
 - b. To work as a prostitute or make others work as a prostitute

- c. To perform sexual acts on a child or make a child perform any kind of sexual act
- d. To traffic a child or mentally incapacitated person for the purpose of prostitution
- e. To engage in prostitution
- f. To attempt any of the activities mentioned above or assist others in carrying out any of the activities mentioned above

5. Prohibition against operating a brothel:

- (1) No one shall run or make others run a brothel within the Kingdom of Nepal.
- (2) No one shall knowingly allow the use one's house, land, place or vehicle for prostitution, with or without profit.
- (3) Anyone committing a crime under subsection (2) shall be deemed to have committed a crime under this Act. If it is proved that profit is derived from such use or from causing others to do the same, that profit shall be deposited in the rehabilitation fund established under Section 22 of this Act.

Part 3

Investigation and Prosecution

6. Reporting:

- (1) Anyone who knows of any person or persons committing a violation under Part 2 of this Act or knows of any person or persons causing another to do the same, shall report to any police office and submit all the evidence that he/she has collected to the police.
- (2) The police shall submit the report filed under the Subsection (1) to the nearest district court and shall act according to the decision of the court.

7. Certifying the statement:

- (1) If the person reporting under Section 6 is a victim, the statement should be taken immediately and the victim shall be taken to the nearest district court to certify the statement.
- (2) Notwithstanding existing laws, if a victim is brought to certify a statement under subsection (1), the district judge shall certify the statement after reading it aloud and noting any additional details of the case.
- (3) If the statement of the victim is certified under subsection (2), the court shall take accept the certified statement as evidence even if the victim does not appear in court.

8. Arrest and investigation without a warrant:

- (1) Notwithstanding existing law, a police officer of the rank sub-inspector or higher may carry out any of the activities listed below if informed of an attempt or a crime committed under this Act in a house, land, place or a vehicle. The police officer may act if there is a chance the accused will escape or evidence will disappear or be destroyed if immediate action is not taken and the police officer prepares a report of this activity.
 - a. Enter, investigate or seize such house, land, place or vehicle.

- b. Break or open windows or doors in order to carry out the necessary activities.
- c. Arrest or investigate any person, who has engaged in prohibited activity without an arrest warrant,
- d. Seize and gather evidence found in such house, land, place or vehicle.

(2) When carrying out such activity under subsection (1), police personnel shall, if possible, provide a copy of the details of the activity to the owner of the house, land, place or vehicle. A local official should be present and all those present at the time of the activity should be identified as witnesses.

(3) The person arrested under Subsection (1) shall be notified of the reason for the arrest within 24 hours of the arrest and the written documentation shall be given to district government attorney's office.

9. Prosecution in custody: Notwithstanding existing laws, the court keep the accused in custody if there is sufficient reason to do so, while prosecuting cases under this Act.

10. Burden of proof:

- (1) Notwithstanding existing laws, a person accused of a crime under this Act shall provide evidence proving that he/she did not commit the crime.
- (2) The accused shall provide evidence proving that the certified statement of the court under section 7, subsection (2) is not true.

Part 4

Punishment

11. Punishment: Any person who commits the stated crime shall be punished according to the physical and mental condition of the victim and the situation at the time of the crime:

- a. If the crime is committed within Nepal under the section 4, subsection 2(a), the punishment shall be ten to 15 years in prison and a fine of Rs. 50,000 to Rs. 100,000. If the crime is committed outside Nepal, the punishment shall be 15 years to 20 years in prison and a fine of Rs. 100,000 to Rs. 200,000.
- b. If the crime is committed voluntarily under section 4, subsection 2(b), the punishment shall be one month to three months in prison. If the crime involves causing another to commit the crime, the punishment shall be five years to 10 years in prison and a fine of Rs. 100,000 to Rs. 200,000.
- c. If the crime is committed under section four, subsection 2(c), the punishment shall be up to three years in prison and a fine of up to Rs. 100,000.
- d. If the crime is committed under section 4, subsection 2(d) the punishment shall be up to three years in prison and a fine of up to Rs. 50,000.
- e. If the crime is committed under the section 4, subsection 2(e), the punishment shall be one to three months in prison and a fine of up to Rs. 50,000.
- f. If the crime is committed under section 4, subsection 4(f), the punishment shall be half of the punishment given in such crime.

g. If the crime is committed under the Section 5, the punishment shall be three to five years in prison and a fine of Rs. 50,000 to Rs 100,000.

12. Additional Punishment:

- (1) If anyone commits a crime on a woman or child under his/her protection or a related woman, such person shall be punished according to Chapter 5 on Incest of the Country Code and shall be given an additional ten percent of the punishment provided in this Act.
- (2) A person repeating a crime punishable under this Act shall be given an additional 50 percent of the punishment each time the crime is repeated.
- (3) A person holding a public position that commits a crime punishable under this Act shall be given additional ten percent of the punishment provided in this Act.

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Part 5

Miscellaneous

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13. Seizure of Property:

- (1) Any movable or immovable property acquired as a result of a crime charged under this Act shall be seized.
- (2) Any house, land, place or vehicle used for a crime charged under this Act and proved to belong to the person or persons convicted of a crime under this Act shall be seized.

14. Presumed Offences: Unless proved otherwise, anyone involved in any of the following activities shall be considered to have committed the crime of human trafficking.

- a. Coaxing, misinforming, frightening, influencing or threatening to keep someone in a brothel or forcing someone into prostitution, with or without financial benefit.
- b. Coaxing, misinforming, frightening, influencing, threatening or offering financial benefit to take a person outside the Kingdom of Nepal.
- c. Attempting to sexually abuse a child in any manner.
- d. Preparing or giving a false document to report or assist in a crime under this Act by a government, NGO or local official.

15. Award/Incentive: Anyone reporting a crime under this Act or giving notice that a crime is going to be committed shall be given ten percent of the fine levied as punishment. If there is more than one informant, the incentive amount will be proportionately distributed.

16. Compensation:

- (1) Half of the fine levied as punishment shall be given to a victim as compensation.
- (2) If the victim dies before receiving the compensation under subsection (1) and has children below the age of 18, the children shall receive the compensation.

17. Confidentiality of the informant and the information received:

- (1) The name and address of the informant and the details provided by the informant shall be kept confidential.
- (2) If the informant under the subsection (1) is convicted of the crime under this Act, the punishment shall be reduced by five percent.

18. Responsibility to help: If anyone knows that the crime under this Act is being committed or may be committed, that person shall provide written or verbal information to the nearest police station. It is the responsibility of the public to help in the investigation and prosecution of cases charged under this Act.

19. The crime shall be associated with immorality: Anyone convicted of a crime under section 4, subsection 2(a) f Section 4 shall be considered to have committed a crime of immorality.

20. Committee on Human Trafficking Control: To control human trafficking, to rehabilitate victims and coordinate the activities of organizations working on the issue of trafficking, his Majesty's Government and shall form a Committee on Human Trafficking Control. The committee shall include police personnel and representatives of NGOs working to combat human trafficking and rehabilitate victims. HMG shall publish information about this committee in a "Gadget"

21. Rehabilitation Center:

- (1) His Majesty's Government shall establish a rehabilitation center for the social rehabilitation of women sold, returned and rescued from brothels.
- (2) Management and operation of the rehabilitation home established under subsection (1) shall be carried out as stated.

22. Rehabilitation fund:

- (1) His Majesty's Government shall establish a rehabilitation fund for management and operation of the rehabilitation center
- (2) The fund established under the subsection (1) shall receive contributions as follows:
 - a. Payment received under section 5, subsection (3).
 - b. The balance remaining from fines levied after payment of victim compensation and incentive payments.
 - c. Funding received from the government,
 - d. Funding received from individuals and national and international organizations.
- (3) The permission of His Majesty's Government shall be obtained to receive funds under subsection 2(c).
- (4) Management and operation of the rehabilitation fund shall be as stated.

23. Punishment for obstruction: Anyone obstructing an investigation of a crime under this Act shall be fined up to Rs 10,000.

24. Limited release of information. Print and other media are prohibited from giving information that may adversely impact the character of a person affected by the activities considered a crime under this Act without the person's permission.

25. Self defense: Any woman or a child kidnapped, coaxed, frightened, threatened, offered financial benefit or taken by any other means for human trafficking, who reasonably believes she/he is being taken for that purpose shall not be punished for causing death or injury to the person believed responsible. The victim must scream or shout for help or try to escape. The victim must believe that help is not available and that she/he will become a victim of the activity if something is not done immediately.

26. In camera court proceedings:

- (1) If a victim requests in camera proceedings, this shall be provided.
- (2) Only parties to the proceeding, the victim's attorneys or other non-parties permitted by the court shall be allowed in the hearing.
- (3) The court shall state other conditions regarding in camera proceedings.

27. State case: His Majesty's Government shall be the plaintiff in all cases filed under this Act, and such cases shall be deemed included in Schedule 1 of the State Case Act, 2043 (1960 AD).

28 Power to make rules: His Majesty's Government shall make rules to implement the objective of this Act.

29. Dismissal and Protection:

- (1) Human Trafficking (Control) Act 2043, Country Code Chapter on Human Trafficking and Chapter 5 of Intention to Sexual Intercourse shall be revoked.
- (2) Activity under subsection 1 shall be considered conducted according to this Act.
- (3) The written rules of this Act shall be implemented as stated and in other cases shall be according to other existing laws.