

## HUMAN TRAFFICKING AND PROSTITUTION: IDEOLOGY AND INSTITUTIONALISATION OF MORAL CRUSADE

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### Abstract

One of the greatest manifestations of the human trafficking which has gained global recognition and attracted international collaborative responses to the alarming situations is the human trafficking and prostitution. The intimate connection between these terms is not hard to discern which is evident from the causal relationship stirred by them. The UNODC's Palermo Protocol describes the term trafficking in persons as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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." The crime of human trafficking spreads its tentacles in vast areas such as domestic servitude, forced labour, forced criminality, removal of organs etc where sexual exploitations accounts for one of the prominent areas accounting for the largest share. It emanates from various causes like the socio economic conditions including poverty, family violence, marginalisation and lack of education etc. While it is commonly an internationally accepted principle that those who buy and sell the trafficked individuals are the criminals and those who are trafficked are the victims, there is little or no consensus on how the governments should respond to prostitution and trafficking that revolves about adults. This paper discusses about how the changing world has led the oldest profession known to the world history meet the new era slavery. The changing terminology however, fails to reflect the changes in the essence i.e. selling sex for money. Human trafficking and prostitution have been tackled by different states in different manner with fundamentally different ideologies. This paper shall comprehensively and intricately elucidate upon reasons for the spread of this menace at an unimaginable speed, the various psychological and medical consequences on victims and on the economies and the various international, national and state level strategies providing solutions to this problem.

**Keywords** :- human trafficking, prostitution, law and action, causes, consequences

### INTRODUCTION<sup>1</sup>

The world today operates on deeply drawn lines which separate the human from the subhuman world, in such a way that human principles are not threatened by inhumane practices. Thus, on the other side of the line we find a space which is a non-territory in legal and political terms, a space unthinkable in terms of the rule of law, human rights and democracy<sup>2</sup>. Essentially, we find people who do not exist, either in social or legal terms. These spaces are constructed on the basis of new forms of slavery, the illegal trafficking of human organs, child labour and the exploitation of prostitution.

During the past decade the problem of human trafficking, although not new, has been the subject of reinforced legislation designed to combat it. This includes, in particular, criminalisation of the phenomenon and its active agents, and enhanced rights and support for its victims. Whilst, for some, this is the most appropriate direction to follow, others feel that other aspects should be taken into consideration in order to make these measures and protection truly effective.

Firstly, the initiatives and political strategies designed to combat trafficking, in particular sex trafficking, have not met with any consensus on a definition of this specific type of trafficking. In fact, competing definitions can easily be found and there is little agreement among researchers and activists. Broader or more restricted definitions of the concept of sex trafficking influence, from the outset, the figures that are presented and, subsequently, the measures designed to combat it. It is difficult to find solid and reliable figures for sex trafficking, whether on a national, continental or worldwide level, and this has led to two extreme positions which, as such, can effectively do little to help trafficked women. Each international organisation presents us with figures that may vary by thousands or even millions. Some refer to very high numbers, whilst others

<sup>1</sup> <https://journals.openedition.org/rccsar/247#tocto1n1> as visited on 10.10.2019

<sup>2</sup> Santos, 2007

contest this and believe that sex trafficking is a minor phenomenon. Both positions contain dangers. The first runs the risk of denying women's self-determination, assuming that trafficking exists in situations of aid to illegal immigration or voluntary prostitution. The second runs the risk of not helping women who really are in danger.

Secondly, human trafficking brings with it issues that cannot be ignored when formulating a legislative response: the control of state borders, the fight against terrorism and the way in which each country deals with prostitution. As some authors argue (e.g. Kempadoo, 2005a), the fight against human trafficking may have different impacts in different countries in the global North and South.

These two aspects converge, particularly in what concerns the arena legal, in the form of a significant discrepancy between what is prescribed in legislation and its practical application, which is full of stereotypes and preconceptions. The law, understood here as both the text of the law and judicial practice, is therefore faced with major obstacles in terms of the role it can and/or could play in the fight against human trafficking. Sex trafficking has gained awareness and recognition as a human rights violation. It is commonly accepted that those who buy and sell trafficked individuals are criminals and those who are trafficked are victims, not criminals. While sex trafficking is closely linked to prostitution, often overlapping, there is less consensus on how

governments should respond to prostitution that involves adults. Of the various types of responses and laws that

address prostitution, four primary legal response models emerge:

- Criminalization
- Partial Decriminalization
- Full Decriminalization
- Legalization

**CRIMINALIZATION** Criminalization of all aspects of prostitution is by far the most common legislative approach. States vary on the degree of punishment for each individual involved and characteristics of the crime, but technically all participants are legally culpable for their actions. **PARTIAL DECRIMINALIZATION** Commonly known as the Nordic Model, partial decriminalization identifies prostituted individuals as victims and protects them from legal penalties. Buying or facilitating the sale of sexual services remain criminalized, often with increased penalties. **FULL DECRIMINALIZATION** Full decriminalization removes all laws prohibiting and regulating prostitution including those against facilitating and buying. Other laws, including those against sexual trafficking, child exploitation, and public indecency still apply. **LEGALIZATION** Legalization differs from decriminalization in that prostitution is legal but regulated and controlled by the government. These controls may include licensing, zoning, or mandatory health checks.<sup>3</sup>

Identifying victims of Human Trafficking <sup>4</sup>

Victims of human trafficking may look like many of the patients coming to GP waiting rooms, health clinics or emergency rooms. Victims can be young children, teenagers, men and women. By looking beneath the surface and asking yourself questions such as the following, you can help identify potential victims: • Is the patient accompanied by another person who seems controlling (possibly the trafficker)? • Can you detect any physical or psychological abuse? • Does the patient seem submissive or fearful? • Does the patient have any identification? Gaining the trust of a victim of human trafficking is an important step in providing assistance. Remember that this may be the first and only contact a victim of human trafficking has with someone apart from the trafficker or it may be their one and only opportunity to explain their situation or ask for help<sup>5</sup>.

## CAUSES

What are the root causes of trafficking?<sup>6</sup>

The root causes of trafficking are various and often differ from one country to another.

Trafficking is a complex phenomenon that is often driven or influenced by social, economic, cultural and other factors. Many of these factors are specific to individual trafficking patterns and to the States in which they occur. There are, however, many factors that tend to be common to trafficking in general or found in a wide range of different regions,

<sup>3</sup> [https://www.theadvocatesforhumanrights.org/uploads/sextrafficking\\_and\\_prostitution\\_10\\_15.pdf](https://www.theadvocatesforhumanrights.org/uploads/sextrafficking_and_prostitution_10_15.pdf) as visited on 10.10.2019

<sup>4</sup> [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/forum\\_magazine\\_on\\_medical\\_effects\\_1.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/forum_magazine_on_medical_effects_1.pdf) as visited on 10.10.2019

<sup>5</sup> Material from Caring for Trafficked Persons: A Guide for Health Providers - IOM, UN.GIFT and London School of Hygiene and Tropical Medicine.

<sup>6</sup> [https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296\\_tool\\_9-2.pdf](https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_9-2.pdf) as visited on 10.10.2019

patterns or cases. One such factor is that the desire of potential victims to migrate is exploited by offenders to recruit and gain initial control or cooperation, only to be replaced by more coercive measures once the victims have been moved to another State or region of the country, which may not always be the one to which they had intended to migrate.

Some of the common factors are local conditions that make populations want to migrate in search of better conditions: poverty, oppression, lack of human rights, lack of social or economic opportunity, dangers from conflict or instability and similar conditions. Political instability, militarism, civil unrest, internal armed conflict and natural disasters may result in an increase in trafficking. The destabilization and displacement of populations increase their vulnerability to exploitation and abuse through trafficking and forced labour. War and civil strife may lead to massive displacements of populations, leaving orphans and street children extremely vulnerable to trafficking.

These factors tend to exert pressures on victims that “push” them into migration and hence into the control of traffickers, but other factors that tend to “pull” potential victims can also be significant. Poverty and wealth are relative concepts which lead to both migration and trafficking patterns in which victims move from conditions of extreme poverty to conditions of less-extreme poverty. In that context, the rapid expansion of broadcast and telecommunication media, including the Internet, across the developing world may have increased the desire to migrate to developed countries and, with it, the vulnerability of would-be migrants to traffickers.

The practice of entrusting poor children to more affluent friends or relatives may create vulnerability. Some parents sell their children, not just for the money, but also in the hope that their children will escape a situation of chronic poverty and move to a place where they will have a better life and more opportunities.

Common Health Issues experienced by Victims of Human Trafficking<sup>7</sup>

Trafficking victims may suffer from an array of physical and psychological health issues stemming from inhumane living conditions, poor sanitation, inadequate nutrition, poor personal hygiene, brutal physical and emotional attacks at the hands of their traffickers, dangerous workplace conditions, occupational hazards and general lack of quality health care. Preventive health care is virtually non-existent for these individuals. Health issues are typically not treated in their early stages, but tend to fester until they become critical, even life-endangering situations. In many cases, health care is administered at least initially by an unqualified individual hired by the trafficker with little, if any, regard for the well-being of their 'patients' - and even less regard for disease, infection or contamination control. Health issues seen in trafficking victims include the following: • Sexually transmitted diseases, HIV/AIDS, pelvic pain, rectal trauma and urinary difficulties from working in the sex industry; • Pregnancy, resulting from rape or prostitution; • Infertility from chronic untreated sexually transmitted infections or botched or unsafe abortions; • Infections or mutilations caused by unsanitary and dangerous medical procedures performed by the trafficker's so-called 'doctor'; • Chronic back, hearing, cardiovascular or respiratory problems from endless days toiling in dangerous agriculture, sweatshop or construction conditions; • Weak eyes and other eye problems from working in dimly lit sweatshops; • Malnourishment and serious dental problems. These are especially acute with child trafficking victims who often suffer from retarded growth and poorly formed or rotted teeth; • Infectious diseases like tuberculosis; • Undetected or untreated diseases, such as diabetes or cancer; • Bruises, scars and other signs of physical abuse and torture. Sex-industry victims are often beaten in areas that won't damage their outward appearance, like their lower back; • Substance abuse problems or addictions either from being coerced into drug use by their traffickers or by turning to substance abuse to help cope with or mentally escape their desperate situations

### DESIGNING A RESPONSE MODEL

There are many important things to consider when designing a response model. One of the first steps, and a key distinction amongst the four models, is recognizing prostitution as innately harmful and, therefore, a human rights abuse. When governments fail to recognize prostitution as harmful, the human rights elements of victim safety and offender accountability are lost. When governments do recognize the harms in prostitution, it triggers the need for a victim-centered human rights based response. Furthermore, in the design of any response, it is imperative that unintended consequences are considered.

Any policy intervention should consider unintended consequences and prioritize victim centered interventions. Entrance to and exit from commercial sex work occurs in a context of racial, gender, and economic oppression, unreliable access to health care and child care, limited affordable housing, and a general

<sup>7</sup> Details taken from National Symposium on the Health Needs of Human Trafficking Victims - PostSymposium Brief - US Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation

lack of resources, options, and opportunities, combined with often insurmountable barriers. Policy approaches must acknowledge these realities, including the loss of income as well as the real risk of violence and exploitation by buyers, facilitators and institutional authorities. Prostitution and trafficking do not occur in a vacuum, therefore, policy strategies must be comprehensive, culturally and contextually relevant, and multi-systemic. A HUMAN RIGHTS APPROACH A human rights approach to any issue involves ensuring methods of response both protect victims and hold offenders accountable. Applying this approach creates the core principles to address trafficking: • Prosecution of traffickers; • Punishment with appropriate sanctions; • Protection of trafficked persons from prosecution and access to legal counsel, witness protection, reparation, rehabilitation, and other protections. ENSURE A VICTIM-CENTERED RESPONSE “This approach is defined as the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner. A victim-centered approach seeks to minimize retraumatization associated with the criminal justice process by providing the support of victim advocates and service providers, empowering survivors as engaged participants in the process, and providing survivors an opportunity to play a role in seeing their traffickers brought to justice.” (Office of Justice Programs, Human Trafficking Task Force e-Guide, [ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/](https://ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/)) CONSIDER UNINTENDED CONSEQUENCES All policies have unintended consequences. While it is impossible to anticipate the full impact of a change in policy, it is essential to consider policy interactions, social context, and the variances in power and privilege of the target population(s). Without these considerations, a policy could negatively impact marginalized populations or create additional problems • Think about equity and equality • Social problems do not happen in a vacuum • You can’t punish a poverty fueled problem away • There is no such thing as a quick fix