

Conceptual Approach to Trafficking of Children for Domestic Work

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Abstract

Trafficking of children for domestic work is a serious issue in the world. It results in many crimes such as domestic work, forced labor, sexual exploitation and removal of body organs. It is also a legal, economic, health as well as gender problem. The findings of this paper that how to identify and explain the conceptual approach to trafficking of children for domestic work: 1) definition of trafficking of persons; and 2) phases of trafficking in person including recruitment and consent, smuggling and trafficking. This paper is investigated the above approach to understand the issue and the phenomena of smuggling. It is significant to have an obvious thoughtful of the concept of this problem in turn to make sure that effectual procedures are intended and executed to prevent it.

Keywords: Conceptual Approach, Trafficking of Persons, Trafficking of Children, Domestic Work

Introduction

This paper analyzes the main conceptual approach to trafficking of children for domestic work. It examines how researcher, legal experts and states have envisaged of trafficking of children. The paper study the famous approach in child trafficking studies, arguing that a variety of approach assist research scholars in pursuing new areas regarding the trafficking of children for domestic work.

Each year, millions of men, women and children around the globe fall prey to human traffickers for various purposes e.g. domestic work, forced labor, sexual exploitation and other activities, both internally and cross border. Sometimes it also engages in removing organs of body. The children and women's trafficking is amongst the big challenges faced by every country. This phenomenon is being taken on such proportions that it can be explained as modern form of slavery. United Nations Office on Drugs and Crime (UNODC) reports that human trafficking stands third for profits making after tracking in weapons and drugs(UN.GIFT).It is a high-income and low-peril

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business enterprise that ranks it among the most worthwhile forms of international organized crime.

Trafficking of persons is a terrible complicated illegal occurrence with worldwide extent (Altink Stolen Lives, 1995). It is not a stagnant occurrence, other than a range with various interplaying causes, with severe types of force and coercion at one end and intended features from side to side fiscal need on the other (Archavanitkul, 2000). Economic gains are the driving force behind human trafficking as traffickers exploit the economic ambitions of the innocent people, trying to escape poverty, with their false promises. This issue also involves health problems, while the trafficked persons are nearly all at danger of various diseases. In addition, trafficking of children for domestic work is a gender problem as well, because unequal gender consideration reinforces girl's secondary status in society. Finally and most importantly, this research study will emphasis on the legal aspects of the issue, depriving victims of their rights and judicial forums to redressing the grievances against the 'committed' crimes to them (USAID, 1999).

The paper explains the understanding of the children exploitation and its conceptualization through its evolution as trafficking of persons. Various definitions of 'trafficking in persons' are according to the United Nations Protocol and its essentials. This is vital to understand apparently the concept of traffic in persons in line of effectual actions, planned and executed for its prevention. The notion of trafficking of children for domestic work is as well explicate by highlighting its connection with linked phenomena for instance recruitment, human being smuggling, slavery and migration. The current conceptual approach to trafficking of children for domestic work requires to be reassessed in particular alongside a broad interdisciplinary milieu. It is helpful for understanding the notions related to the trafficking of children, as well give the solid basis on which to build up polices to prevent the trafficking of children for domestic work.

This research article identifies primary approach in trafficking of persons (Child trafficking): 1) definition of trafficking; 2) stages of trafficking. This main approach overlaps with vast literature on "illegal and "irregular" trafficking of persons as well as trafficking of children for domestic work and short introduction to proceeding conclusion will highlight where these over laptake place. This paper is categorized into several parts by conceptual approach. After a summary the definition of trafficking, the paper outlines the

main approach. The article concludes with views on enlarging the main approach for prospect study.

Definition of Trafficking of Persons in International Law

Therefore, it is needed and prevalent to initiate with the definition of the illegal behavior, as with all transnational criminal projects which Countries are legally bound to criminalize in their domestic legal system. So as to lunch a logically multi-prong attacked on trafficking of persons, mainly one summoning criminal law, there is anawful requirement to arrive at accord as regards what trafficking of persons in fact is in a legal sagacity, with the intention that at hand is precision as the meaning and purpose of the trafficking and State's corresponding obligations, who are members of the treaties, laws and agreements in this regard. UN TIP Protocol (2000) brought the first legally internationally recognized and decided definition of trafficking in persons. This segment of the research discusses the definition and concept of the trafficking under the UN Protocol (2000) with an effort to distinguish it from smuggling of persons. Therefore, a smuggled person is criminal under the law, while a person who is being trafficked, is victim under the control of the perpetrator of the crime.

Last but not least, this part of the study discusses how the UN Protocol takes measures with problem of children being trafficked for domestic work. It argues that the children's trafficking for the purpose of domestic work primarily occurred internally, within country's borders and on ad hoc basis. However, trafficking of children lacks a transnational element but it is not covered by the UN TIP Protocol which limits its efficiency. The most current and significant legal definition and understanding of 'trafficking of persons' is in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Article 3). The UN Protocol Article 3(a) defines the trafficking as:

"Trafficking in person shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other form of coercion, of abduction or fraud, of deception or 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 the another person, for the purpose of exploitation (UN Trafficking Protocol, art. 3)."

Moreover Article 3(c) states that:

“The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article.”

Article 3(d) states that:

“Child” shall mean any person under eighteen years of age.”

The UN Protocol's definition regarding the humans trafficking, has taken the significant place and clearly necessary proof of three element of the offence. The three essentials consists the action, means and purpose about the exploitation: presents in turn for action to constitute trafficking in persons. The first element ‘action’ is typified by transportation, the recruitment, receipt or harboring of persons which would also be regarded the ‘*actus rea*’. The second element ‘means’ comprise of the force, threat and coercion or its use, fraud, abduction, deception, receiving or giving money or whatever benefits for getting the person's consent in this regard. The third element tells regarding exploitation i.e. prostitution, forced sex work, unwilling labor, putting someone to servitude slavery and amputation of body parts and organs, that is considered *asmens rea*.

Although it was mentioned earlier in the above study, all these three elements to prove the requirement which makes the offence of trafficking of persons quite difficult to prosecute. In particular it has proved to be rigid to find second element namely, the means used to recruit a victim. In the rare case of *Public Ministry v. Wang Li Kang, Wang Qi et al*(*Public Ministry v. Wang Li Kang, Wang Qi et al, 2007*)prosecution was capable to show trafficking of persons. In this case, a Chinese couple was living in Belgium who’s recruited two irregular Chinese national migrants. The Chinese migrant were accommodate in extremely toil and unhygienic conditions for living. They were doing work hard from 8am to 9pm per day counting weekend and holidays. They were not paid on usual basis and the amount of salary was also disputed. Furthermore, they were not fluent in French language with no identity papers of legal nature. The Chinese migrant were in high status stress, never to run off their house and told run away if the police came to the building. The Court of Appeal of Liege found that all these three elements of trafficking in person were existed.

The Belgium court found it easy to prove the offence of trafficking of persons in the mentioned case as the offence was defined. The Belgium court definition as provided in Article 433 of the Law of (13th April 1995), containing Provisions regarding 'Child Pornography' and 'Combat Trafficking in Human Beings', is found on the United Nation's Protocol. However, under this Belgium law, it excludes the requirement of the need to prove the 'means' employed for trafficking, such as coercion, threat, violence or abuse and vulnerability. Instead the use of these 'means' have been listed separately provoked conditions.

The immunity of the requirement to prove means is applied to the children's trafficking under the UN Protocol. The Protocol provides in the Article 3(c) which by degrading the need to prove the means used for requirement of victims, this provision places focus on the element of exploitation related to the offence of trafficking of children making it easier to prosecute perpetrators and protecting children.

Phases of Trafficking in Persons

In addition to three elements, the offence of trafficking of persons is the one that occurs with the victims in stages; their recruitment, transporting and consequent exploitation. In the presence of these phases that do differentiate the offence of trafficking of persons from analogous offences such as smuggling of persons. The following three elements are explained in detail internationally.

a. Recruitment and Consent

The definition gives wide-ranging coverage to the means of recruitment, that includes not only coercion, force and threat, deception, abduction, but also the stated less clear mean, i.e. the misuse of power and authority or the victims vulnerability, accrediting or receiving benefits and money for influencing the consent of a person and placing the 'him' under the 'control of another person'. The main issue regarding the recruitment whether one can consent being trafficked or not. The question of consent on different occasion made it difficult during the drafting phase of the Protocol to adopt a definition of trafficking in persons. Since trafficking had been traditionally amalgamated with victim of prostitution, the discussion on the consent and the definition of trafficking in persons was centered mainly on how to deal with the issue of prostitution. Janice Raymond quoted that at the

heart of the argues was the question whether actionable circumstances under which trafficking takes put could be restricted to force, coercion, abduction or whether it could be enlarged to include other related means. For example, if women consented for prostitution and being transported from one state to another state, could this still be defined as trafficking? (Janice G Raymond, 2000).

The Coalition against Trafficking in Women supported that definition of trafficking in person, should comprise all form transportation and recruitment for prostitution, in spite of whether any fraud or force took place. This was in turn with their understanding that prostitution constituted violation of women's human rights. On the other side, the Human Rights Caucus, which sees the practice and profession of prostitution a sort of work activity, suggest that deception and use of force was essential to the definition of trafficking for other types of labor and for sex work. They as well argued that trafficking for prostitution ought not to be deal like a different type in relation to trafficking for other type of work. This was placed on the acknowledgment that men, children and women are being trafficked for a large and numerous varieties of services composing sweatshop, begging, child soldier and agriculture (Jo Doezema, 2002).

The negotiation parties settled their differences and issues by including the provision of article 3(b) of the Protocol states that:

“The consent of a victim of trafficking in persons to the intended exploitations set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.”

This article aims that victim's consent requirement for the purposes of trafficking are not connected where any of the means of recruitment as indicated in Article 3 are used. Only 'consent' is required whereas none of the means depicted in Article 3 is used. This approach acknowledges a degree of individual choice or discretion. However, such a degree of individual choice or individual margin of appreciation does not apply where the victim is a child as children lack the legal capacity to give consent. Thus under the UN Protocol a child will be considered as trafficked even wherever the parent and guardian of such child consents to the trafficking (UN Trafficking Protocol, art. 3(c)).

b. Transportation, Smuggling and Trafficking

Both the trafficking of persons and smuggling is accepted as offences that include an aspect of transportation of persons from one place to another, it is undisputed that they constitute various crimes. The trafficking in persons engages facilitated movement of form, which according to the definition may comprise carrying, transferring, receipt or harboring of person. Smuggling migrants is defined under the concerned Protocol against the Smuggling of Migrant by Land, Sea and Air (UN Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000). It states that:

“the procurement, in order to obtain, directly or indirectly, a financial or other material benefits, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident (UN Protocol against the Smuggling of Migrants by Land, Sea and Air, art.3, 2000).”

The transnational nature of trafficking in persons and smuggling makes it hard to differentiate the two phenomena. However, it is important the distinction of these offences in the light of fact that a person who is being trafficked, is a victim whereas a smuggled person is a criminal under international law as show in Fig. 1



Figure 1: Trafficking and Smuggling: Similarities and Differences, Designed by Shinzou, copyright IOM 2004

Aronowitz presents that there are four elements that can be used for distinguishing between smuggling and trafficking. In his judgment, the different elements include the fact that, firstly a smuggled persons for all time travel voluntary, while a trafficked persons can either commence their travel voluntary or may have been kidnap or coerce; secondly, unlike smuggled persons, trafficked persons are exploited and used over a long time; thirdly, unlike smuggled persons, an inter dependency happens between the trafficked persons and organized groups and fourthly, trafficked persons are entitled for further set-up (recruitment for criminal purposes)(Alexis. Aronowitz,2001).

Even though such efforts of Aronowitz to set out the key four elements that constitute the main differences between smuggling and trafficking, in this practice such a differentiation is vague and obvious. Gallagher provides some additional elements which comprising of use of coercion and force for exploitation purposes, may be asserted to distinguish trafficking from migrant smuggling. This position seems to be the most suitable to uphold when considering the differences between these offences. It will be difficult to prove the use of any of the additional elements without active investigation as it appears that international law puts the load of evidence squarely on the individual seeking protection (Anne Gallagher, 2001). The difficulty deals the fact that a person may begin his career as smuggled migrant, and compelled at the end in to some kind of exploitative condition, which falls within the definition of trafficking.

Whereas the phenomena of trafficking in persons may arise within the territorial borders of a country, smuggling involves the crossing borders. However, in the UN Protocol were not properly addressed the conditions involving internal trafficking. The scope of the Protocol, mentioned in its 4thArticle, provides that it shall apply to offences of transnational nature in nature and which involve a crime, committed by organized group. When this provision is read out, it is clear that the protocol limits itself to transnational or cross border trafficking of persons and does not cover the situations where trafficking is happens within borders. While discussing the concept of trafficking of persons, Bhabha views that the transportation of victims is not the main element of the offence across the borders of a country. She submits that what is the significance under this Protocol is that victim is subjected to some sort of exploitation and the fact coercion is asserted (Jacqueline Bhabha, 2005).

Bhabha again arguing that the crime of trafficking does not necessarily require the transportation of the victims across the border of a country seems to be the most appropriate. However, this position does not overlap the fact that the UN Protocol removes internal trafficking by limiting its scope to transnational crimes. Furthermore, in the UN Trafficking Protocol the position is clear that it defines the nature of this crime include the fact that it is committed (a) in more than one States; (b) in one State but substantial part of its preparation, planning, direction or control takes place in another State; or it (c) while it is committed in one State it involves an organized criminal group that engage in criminal activities in more States and countries; or (d) the crime is committed in one state but has sizeable effects in another state (UN Trafficking Protocol, art. 3).

In addition, the UN Trafficking Protocol of sub paragraph (c) of Article 3 requires that the transnational component of the offence includes an organized criminal group that involves in criminal activities in more than one State. The UN Convention against the Transnational Organized Crime is provided the definition of “organized criminal group,” it states that:

“a structure group of three or more persons existing for period of time and acting concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly, or indirectly, a financial or other material benefit (UN Convention against Transnational Organized Crime, art.2(1)).”

The Article 3 of UN Trafficking Protocol is clear from the reading that any kind of trafficking in persons that is not committed in more than one State, or where the planning, preparation or control takes place in a State and country, and has no greater influence in other State or does not involve the possibility of an organized criminal group is not a transnational crime and thus is excluded from the operation of Protocol. There is no doubt that the internal trafficking of children for domestic and household work is expelled from the scope of the UN TIP Protocol.

The SAARC Convention (2002) on Preventing and Combating the Trafficking in Women and Children for Prostitution provides that Convention is “to promote cooperation amongst Member States to efficiently deal with different aspects of prevention, interdiction and suppression of trafficking in

women and children, repatriation and rehabilitation of victims of trafficking, and preventing the use of women and children in international prostitution networks, especially where the SAARC member countries are the countries of origin, transit and destination”.

Conclusion

The phenomenon of trafficking of children for domestic work has merely been addressed while an international societal issue creating it a contemporary main concern for human rights institutions and global law making organizations. Though, former to the execution of effectual counter-trafficking policies, an obvious understanding of what the concept of trafficking of persons as well as trafficking of children for domestic work involvement is required. Therefore, the definition of trafficking of persons, linked phenomena, and various types of trafficking that constrain trafficking in human beings are explained.

This paper in addition exemplifies that a broad understanding of the concept “trafficking of children for domestic work” has for an extensive been a notorious and anxious problem at global stage as of the lack of crystal-clear meaning and scope of this issue. While a definition in that respect was given in the Palermo Protocol in 2000, at hand is still doubt relating to the concept. The essentials composed in the definition of this Protocol on trafficking of persons are unsuccessful to assurance an obvious difference between various kinds of trafficking of children. This definition focuses primarily on trafficking of children and women but it is lacking the exploitation of men for the purpose of trafficking and also other types of trafficking. Several labels all domestic workers as trafficked children, considering so as to nobody would eagerly go into or live in this work. Others do not differentiate between victims trafficked inside a specific state and those trafficked across international borders. Few argue that the definition of trafficking in persons must be widened to cover the intricate issues connected with trafficking of children and the varied circumstances of girls and contain in their investigation of trafficking for domestic work.

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