INVESTIGATION OF WOMEN AND CHILDREN TRAFFICKING IN IRAN'S LAW AND INTERNATIONAL DOCUMENTS

Mohamadreza Marandi, Rokhsana Mousaviyan Khayavi, Seyyedeh Leyla Ebadi, Narin Nedayi, Reza Hagzadeh Ajirlu
Department of Law, Germi Branch, Islamic Azad University, Germi, Iran

Abstract
Human trafficking as a punishable criminal act is not an old issue in the Iran law history, but due to the lack of detailed crime statistics one cannot talk about real or near-real rate of trafficking of women. But what is common in newspapers and everyday conversation of the people; express an alarming rate of human trafficking in Iran. One of these signs is anti-trafficking law passed in 2004 that at the same time clarifies evidences of this phenomenon and indicates lawmakers' suitable reaction to it. Along with this, the present paper attempts to analyze the structure of this phenomenon in the international legal system, as well as beyond it, a glance to the strategies and national and international criminal policy against this phenomenon.

Keyword: women and children, trafficking, women trafficking

Introduction
Iran, as one of the other countries in the cycle of human trafficking in recent years has been witnessed the growth of this phenomenon. Reported cases of trafficking of girls and women out of the country and formation of a different criminal cases in the different judicial authorities, made the government to introduce the parliament a bill to combat human trafficking, provide legal instruments to fight with. The Government effort in this regard was the anti-trafficking law which passed in 2004. The law filled the gaps to somehow. But left many ambiguities and couldn't answer problems such as trafficking of women and children for prostitution to the touristic countries in the world such as the Persian Gulf surroundings and some European and American countries. The international community's paid attention to this issue, the documents of international conventions such as the First Additional Protocol to the UN Convention against Transnational Organized Crime as to prevent, prohibit and punish trafficking of persons especially women and children and also regional documents such as the Convention East Asian Union was approved. However, questions can be raised in this regard such as; is the internal law of Iran about the women in line with international documents? Or to what extent the legislator has managed to maintain efforts to combat this phenomenon?
A) The definition of trafficking
The word "ghachagh" is a word originated from Turkish word "ghachmakh" meaning "slave" and "kidnapped" and it also refers to whatever that its arrival to the country or the transaction is prohibited by the government (Dehkhoda, 1994, Moein 1997). In the Oxford dictionary trafficking is defined as "Taking, sending or bringing secretly illegal goods or people into or out of the country" (Oxford, 2002).
In another trafficking definition is expressed as follows: "Trafficking is the illegal exportation or importation of materials and goods, for example, without duty payment" (Jafari Langroodi, 1991).

B) The definition of women trafficking
Persons trafficking often are discussed by trafficking women for sexual exploitation. Trafficking generally has severe impact on women and girls and this kind of trafficking is often done for the sex trade. Trafficking is a broad phenomenon in the world. Now the trafficking includes "exchange of immigrants for work who work hard to pay for domestic or agricultural labor, forced marriages or fraudulent works by recommendations or by mail, as well as buying and selling young women for prostitution houses and Striptease clubs" (trafficking Hamman, 1999).
In the prevention protocols, people repression and punishment especially women and children, approved in 2000, in third Article, women trafficking is defined as follows: "The employment, transfer, harboring or other forms of imposition, abduction, fraud, deception, abuse of power or vulnerability position or of the giving or receiving of payments or benefits to achieve the personal consent that has control over another person for the purpose of exploitation."

C) Organized crimes
These are crimes done by especial people's support and control and their activity domain is a country or even in the international level (Pishgami, 2007).
Unit of the phenomenon of women trafficking: any crime in order to be achieved, it is necessary to meet the three units, this unit are:
Legal, financial and spiritual Units; Thus in order to punish a person firstly the crime must be proved by authorities and even if one of these three units didn't achieved, the person cannot be punished. In these section constituent elements of the crime of women trafficking is examined.

The legal unit of the phenomenon of women trafficking
1. The international treaties
Since the historical dimensions of the women trafficking in the contemporary world are considered and we know that a woman trafficking is not a phenomenon limited only to the current era or one of the last two decades, here we will pay to the international documents provided until 1980 to combat the women trafficking.

1-1 Convention May 18, 1904
A review of international human rights documents indicate the fact that the history of the development of approved international documents for the protection of women's rights have less than a century old. (Noorbaha, 2008) the first international document on women's rights signed on 18 May 1904 in Paris entitled "International Convention on the provision of an effective protection against criminal transaction that is called the white sales" in order to deal with sexual exploitation of women and girls for prostitution.
(Mostafa Pour, 2010) the above mentioned protocols considered because of efforts to protect women's rights, the final purpose of this Protocol, is committing member states to take strategies to prevent the transfer of women and girls abroad to debauchery and prostitution. (Ebadi, 1994).

1-2 International Convention May 4, 1910

The worth noting issue about the contract is that only the women trafficking for the purpose of sexual exploitation has assumed as a crime and other forms of women smuggling by which they may be exploited, has a legislative violation. For example, if the women trafficking is for forced and compulsory marriage and forced into hard labor, would be especially out of the inclusion of the contract (Golan, 2000). International agreements on dealing abolition of women and children 1921

On 30 September 1921 another international agreements entitled "The International Covenant on the abolition of the buying and selling of women and children, with the aim of completing and reaffirming the previous two international document", was passed by the significant number of governments in accordance with its provisions, the countries agreed to take measures to investigate and punish those who are engaged in the trade of women and children. On 14 Day 1310 this covenant was passed by Iran National Assembly.

2. The United Nations conventions and conferences

In 1972, Secretary-General of the United Nations asked the Commission on the Status of Women to consider the Member States opinions in relation to the content of the international document on the rights of women. The following year a work group of the Economic and Social Council appointed to setting up such a convention, Commission on the Status of Women in 1974 began regulating it and in 1977 the prepared draft convention was dedicated to the United Nations General Assembly. The General Assembly appointed a special work group for the Convention's final set and finally the project as "the Convention on the Elimination of All Forms of Discrimination against Women," which one of the form of discrimination was violence against women and also was preventing trafficking of them, on 18 December 1979 was approved by the United Nations General Assembly. An important point of this document that distinguishes it from previous international documents in this field is the comprehensive definition of the term "discrimination against women" in issuing the Convention. This Convention, in contrast to other international documents in this field, is the most comprehensive document on women's rights and the elimination of discrimination against women has paid to the important points. Important point about the final document of the Fourth Convention is the elimination of discrimination of "World Conference on Women" which from 4 to 15 September 1995 was held in Beijing with active presence of Iran (Arian and Ghazi, 1996).

3. The Protocol to prevent, stop punishment the staff of human trafficking, especially women and children, supplementing the United Nations Convention on Transnational Organized Crime

After the final approval of the convention on the elimination of all forms of discrimination against Women that was the last Maraliban Convention and was adopted in 1979, it can be said that any other international treaties to combat the phenomenon of women trafficking was not developed and was not approved. Finally the United Nations General Assembly on 9 December 1998 by Resolution 111/55 decided to create a special committee to prepare an international convention against transnational organized crimes, the trafficking of women and children (Ashtari, 2007). The protocols also entered into force on 25 December 2003, which
is regarded as the most comprehensive approach by the international community in dealing with human trafficking (Sadeghi, 2003).

**Material unit**

For the formation of a crime, the mere existence of a legal unit will not result in the realization of the crime, but there should be physical acts so that it can be achieved. Now, we will examine the issue of material unit of trafficking crime. Material unit of the crime of criminal behavior of persons trafficking is in two ways: 1) export, import or transit of the people from the country frontiers; 2) receiving or transferring or hiding or papering the cause of subterfuge.

Thus all of this action is all the exercise and basically trafficking is not realized from them or the omission of the action cannot be realized. Some of the lawyers mentioned the material behavior in the trafficking of women as coercion, duress, threat, deceit, taking advantage of the wealth of oneself or their positions or misuse of the mentioned people (Zaqholi, 2010).

**Spiritual unit**

Trafficking of women is assumed as deliberate crimes, and therefore, unlike the mere material crimes, it is necessary to obtain ill and bad intention of the committer of the crime, spiritual unit of the crime, like many other crimes is formed of ill and special bad intention generally.

World statistics about human trafficking:

The most important problems in the fight against trafficking, is the lack of precise information on the prevalence and extension of it, so that in all the data presented in this context, the words "estimated" or "thousands" is used. According to United Nations statistics, about 2 million people worldwide are trafficked each year. The countries of Southeast Asia with more than 700 thousands people have the most statistics in source regions, and Western Europe accepting 500 thousands as the most destination of the human trafficking (Iran parliament Research Center, No. 168172). (Among countries, the three countries of Thailand, Philippines and Brazil have been identified as the most important source countries of trafficking.

(Global report on crime and justice united nations, 1999, p225. international agreement 18 may 1904 for the white slave traffic)

Human trafficking in Iran

Human trafficking in Iran is not limited to the present days, the historical documents talk about the trafficking of women in the Qajar period. In National Library there are 3 thousand documents on human trafficking (particularly women trafficking) at the Qajar period that of those 40 documents are related to the second period of Pahlavi and other documents related to Qajar and the first Pahlavi periods. Among these documents, the sales of girls and women in the region of the Persian Gulf and Afghanistan more reported, and of course in some parts of the provinces of Sistan and Baluchestan and Khorasan were also common (Iran News, No. 840122).

Iran's law on human trafficking, as noted, Iran was not immune from the phenomenon of trafficking. In reports on the situation of human trafficking that every year the American government publishes, Iran is included and has been proposed among the countries of transit, origin and destination of human trafficking. In addition, the report of the United Nations Commission publishes on the Status of Women in different countries, it points out the trafficking of women and children in Iran and the need to combat it.

Criminal policy against the phenomenon of women trafficking in some countries:

**England:**
England in criminal laws of England, there is no distinction between trafficking, migration or sex exploitation because of the lack of specific legislation to punish these crimes such as rape, assault, and ... Can be extended to sex trafficking. Recent legislation on Immigration and asylum (2002), has considered 14 years’ imprisonment for women trafficking.

United States of America: Institute of "stand against global exploitation" in San Francisco address to John Dewey School the issue of sexual abuse of women and asked men who act so to think a little about their sexual behavior and its results. This is a positive trend to see some change in the gender issue (Alesan, 2005).

3-jurisdiction

On the way to deal with crimes of human trafficking, because of the lack of procedure and specific laws for them there is no difference and according to the general rules of criminal procedure these crimes are investigating. But the dispute point is determining the competent authority to deal with this crime. The question is that; has the court inherent jurisdiction to deal with crimes of human trafficking? As well as which are crimes in human trafficking?

Iranian judicial procedures strictly consider goods and drug smuggling in the jurisdiction of the Enghelab court and addresses human trafficking to the general Courts. But (Zaqoli, 2005), with regard to paragraph 5 of Article 5 of the Public and Enghelab Courts trial approved in 1381, says that Enghelab court has jurisdiction that all crimes related to trafficking be referred to it. We can say crime of human trafficking according to the above article refers to the inherent jurisdiction of the court.

Women trafficking statistics

Currently, the women criminals compared to the women all crime statistics is 54 percent in drug trafficking while among the men this statistics is 43 percent compared to all the men crimes. The Chief of prisons in the country stressed that it is necessary to replace prison sentences where it is possible so that the prisons itself are not used to development other crimes. Statistics of 54 percent of women in drug dealing and trafficking is something that should not be simply passed.

Because drug trafficking domain has not only addiction and criminal problems for women and girls but also the psychological problems would lead to the destruction of all their life. So that sometimes with a mistake their return to normal life experience is impossible, While this is rare in men, and they are more likely to return to normal life.

Conclusion

Women Trafficking is very complicated that organized criminal groups are increasingly involved in it. As well as the exploitation of women is not limited to sexual exploitation but in any way and many dimensions which are including forced labor, forced marriage, domestic hard work and other procedures. Of course, the women trafficking for the purpose of prostitution or still other forms of sexual exploitation forms the most important purpose of trafficking. One of the most common types of human trafficking, because of its full interest to the groups and organized gangs, is women and girls trafficking to use them in place of corruption, and forcing them into prostitution and sometimes using them as a servant and waitress. Currently trading young girls and women by band of human trafficking from around the world to Europe and other parts of the world has larger dimensions. Traffickers deceive job seeker women and girls with promises of jobs and income and behave them like slaves and captives as past centuries hide them in the stock of ships to deliver them to the destination countries. But many of these illegal immigrants fall into the hands of the mafia and became slaves of corruption centers. An increase in trafficking of women and girls to traffickers because of the huge benefits has become a global catastrophe. Governments
despite of efforts and implementation of plans to combat this phenomenon still have not been able to achieve success in the prevention of women trafficking. Limited available information suggests that women trafficking are a truly global problem that nearly no region of the world is safe from its harmful effects. The simplest reason that could explain the increase in trafficking in women in recent years is the overall profitability of it. The traffickers are well aware that the potential benefits from these activities which is called "modern day slavery", is very high and the risk of their charges is relatively low. From the beginning of the twentieth century several international documents has been developed for the suppression of women trafficking and were approved by the governments. But none of the international documents have not been able to have success on repression or prevention of these crimes. The main weak points in these documents are the main obstacle to achieving the goals they have set for them. Convention May 18, 1904 that is the first human rights document that has been approved for women is not free of default and racial prejudice, covers only white women. Islamic Republic of Iran has felt the threat of this transnational crime and actions has done in the field of legislation to combat human trafficking in July 2004. Legislation to combat human trafficking by the Parliament on 04.28.2004 while in the domestic laws before the adoption of this law that it is related to this specific law as criminal, was not approved, it is a major step that largely covers the gaps. In addition, according to the definition in this law, human trafficking which is remarkably similar to the definition provided in the Convention 2000, in fact the legal framework for the definition of the crime to some extent handed to the authorities that it itself is considered a major obstacle to rape the rights of public freedoms and freedom of movement. It is one of the main objections against the law of combatting with human trafficking can be related to the issue of protection for victims and prevent crime. The support of the people suffered from the crime in this law is to some extent ignored and are not mentioned legally which creates doubts that the trafficked people are not only crime victims but criminals. This worry would lead to the fact that the crime victims refrain from going to the courts for pleading their rights. On the other hand it leads to the fact that not only prevention from the crime was not achieved but also a way to identify criminal gangs through the guidance of crime victims became completely blocked.

References
5. Ebadi, Sh., (1993), History and Documentation of Human Rights in Iran, Tehran, Roshangaran Publishing
9. Mostafa Pour, K., (2012), women's rights, international instruments, Iran's position, WWW.HaghGostar.ir