A Survey on the Nature Human Trafficking Based on
criminal law in Iran

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ABSTRACT: Today human trafficking has taken a new catastrophic form and thousands of victims are being smuggled each year. In spite of the vast increase in this crime on international level, there is a very low level of academic work as well as research has been conducted in this field. Iran's internal law as compared to the international transactions is also affected and is going under significant changes. Before these changes our law regarding human trafficking was in dark. In this article we discuss about human trafficking, sale and purchase of humans with respect to the Iranian law and also put a light on its importance features. In this research work we have used descriptive and analytical information which have been gathered via libraries and valid websites.

Key Words: human trafficking, person trafficking, abuse, sexual assault/abuse/slavery, sale and purchase.

INTRODUCTION

One of the latest challenges to the modern world is that criminals are getting international and well organized. This is the reason that Kofi Annan the former united nation secretary general said that the threats of the 21st century is not war between neighbors but is disease and organized crime.

Educational and industrial growth worldwide, increase in rural construction and population, new advancement in communications, goods transportation and travelling of peoples between different countries has cause the devastating increase in organized crime. According to this the 21st century has been named as "Century of the organized crime". This organized crime has a deep negative impact on cultural, economic, political and traditional aspects of society; therefore talks have been started regarding organized crime from the last couple of decades both on regional and international levels. One of the major crimes, human trafficking has a significant growth amongst the other organized crime. According to some the main reason behind human trafficking is imperialistic in the 19th century and the cold war of 20 century. That's why international community must stop the rapid growth and progress of this organized crime. Despite all the efforts of the international community in order to stop and destroy the roots of this crime no fruitful results have been yet achieved but unfortunately this organized crime has developed and taken many different forms. On the basis of the following the United Nations acts on its own and passed a Resolution 55/25 on November 15, 2000 in Palermo Conference to stop this organized crime on international basis. This resolution approved two basic protocols, 1st consists of prevention of trafficking (specially children's and women), punishment and elimination of human trafficking while the second part consists of preventing migration trafficking. Afterwards the third protocol was approved to fight against arm smuggling. The three protocols of this convection must be used by all countries as the base for putting a stop to this organized crime; in third chapter of this research we will discuss briefly the three protocols. More than hundred governments' participated in this convection which is a proof that this organized crime of human trafficking must be eliminated and that these countries consider this as a threat to their economic, social, Cultural and political environment of their country. Iran as one of the countries involved in trafficking cycle, in recent years has seen growth and expansion of this phenomenon. In criminal law of Iran, up before (2007), nospecific Regulation was assign to this case. In this year, parliament affected by international event and also several reports of woman trafficked abroad of Iran, passed legislation to combat human trafficking.
The nature and element of human trafficking crimes

Human from different dimension is subject of different sciences and about this, there is discuss and talks, but must notice that discussion about human in different scientific area is branch of knowing its nature, in other word, question about nature and reality of human surely is from important questions that was proposed for all and is proposed; because of things is dependent to illustration of nature of human. There are many theories about nature and essence of human that often are conflicted. We believe that reasons of behaviors of adult with deep understanding must be searched within them.

These theories can be put into two general categories: material and the divine. Those who see essence equal to material, or at least treat human as a purely material phenomenon, are from first category. Against, those who believe non-material aspects of human in addition to material dimension and in addition to body believe soul for human, belong to second category; for example, Plato views is one of the source of <dualism> about human. Appearance conclusions that according to the above, it can be concluded that but meanwhile human is free creature, this discretion is not absolute, but also there is limitation for him, of course this limitation never cause removal of freedom of human. After this short introduction, we will describe main nature that is essence, nature and origin from type, category and kind. Questions that are proposed in this area include:

What is human? According to scientific findings and with use of religious text, it can be said: human is free creature, having free will, logical and intellectual. Furthermore, meanwhile human is in influence of genetic and heredity factors, but is more affected by environmental and educational factors and he can change himself with disposed to be affected by personal experiences and mental factors and likewise is affected by physical and environmental factors, but which part is more, is dependent to diverse factors like level of knowledge, age condition and environmental and educational condition that people are; to the extent that knowledge and analysis power of individual is more, people prefer influence of mental factors and internal reaction and to the extent he has lower age, influence from environment will be more.

Whether transition on human is right? According as stated in properly rights and ownership book: property is said to things that have two basic requirements: 1- be useful and fulfill a need, whether that need is material or non-material. 2- It can be assigned to a person or a nation and according to the description of properly: everything that has value in trade and for that, money properly is given to somebody. So actually human cannot be traded, since it isn’t a commodity and cannot be using from interests of person.

Legal basis

Main basis of any crime is legal basis of it. Until an action is not a crime according to law, we can’t speak about physical or mental basis of it. So to analyze a crime, first we search whether according to the regulations, cited behavior can be punished or not? Although section <b> of article 213 from general criminal law in 1304 wasn’t mentioned explicitly to human trafficking, but kind of writing was such that pointed to main forms of trafficking, that is, trafficking for sexual exploitation: <any one encourage a woman to go abroad, although knowing to abroad or hire her for going to abroad, will be condemned to correctional custody from one three years, although different actions that is fundamental of crime were happened in different countries.

This article has a lot of similarity with definition of human trafficking for sexual exploitation written in additional protocol to the redeployment and on the other hand, satisfaction of trafficked person has no significance in redeployment and if this is done for sexual exploitation, yet it is traceable. After Islamic Revolution, similar Regulation was not forecasted in deterrent punishment 1996 and Tazir law in 1983, since writers of law though that these are included in prostitution charge, while between prostitution and human trafficking, there is many difference and legislator can determine material and spiritual dements of them regardless of concerns of interference between prostitution crime and women trafficking and “forecast appropriate penalty according to degree of committed crime and characteristics of agility.”

MATERIAL BASIS

Component of material basis can be studied in 6 separated parts. Nature of criminal behavior, subject of crime and instrument to crime, effect of time and place, characteristics of parties and result of crime are main elements of material basis that we explain partly some of them.
Criminal behavior

Criminal behavior cited in article 1 of law to combat human trafficking, all appear in affirmative action of material. Sending out, bringing in, transit in, receiver, transferring, hiddening and preparing needs of hiddeningare behavior that need affirmative action of material from convict. In addition to do actions in sentence of human trafficking, there is need to affirmative action subject of Article 2. Establish or run a group or transfer, all are behaviors that with appearance of affirmative action's of material from convict are done. In addition to material action cited in article 1 and 2, behavior of convict must be associated with position of person. In another word, These are component of the nature of criminal behavior.

Subject of crime

Title of law and usage of words <person>, <victim> and <trafficked person> shows that this crime is against people initially. Unlike to some of international documents, like convention of East Asian Union for regional cooperation about prevention and combat women trafficking and children trafficking for prostitution that just is assigned to women and also unlike law of some countries like child trafficking and pornography act of Ireland that is assigned just to trafficking child, law to combat trafficking of Iran absolutely protect all people from trafficking and in note 1 of article 3, punishment of human trafficking under 18 years is intensified. Although, at first, human trafficking is crime against people, yet it can be included in crimes against security. Import of organized groups in this area support this idea, since in some cases, action of these groups and trafficking of citizen of country has such importance that can be treat against security of contry. Fight that is kind of crimes against security.

Criminal instrumentation

According to law of combat trafficking, using weapon is effectless both in occurrence of crime and in increase of penalties. Also trafficking from overland and by transport on the land or airway and by airplane or seaway and by ship, have same senence and punishment of convicts that different vehicle is same.

Characteristics of parties

Gender and nationality of convict and victim has not influence in occurrence of trafficking of human. Absolute usage of words <convict>, <every person> and <victim> shows that nationality and gender of none of parties has no influence in occurrence of crime, this crime from every person, both from Iran or abroad and woman or man can be committed to any person both from Iran or abroad and woman or man.

CRIMINAL RESULTS

According to law of combat trafficking, trafficking of human is from absolute crime in segmentations of crimes from prespective of need or no need to occure the criminal results, since what is important and necessary, is bring out and bring in, transit, receiving, transferring, hiddening and cause hide a person. Occurance or non-occurrence of other results is not affected, that is merely with bring out a person from border of contry for prostitution, crime is committed, however, trafficker immediately after entering to another country be captured and has no time to sexual exploitation from victim.

Spiritual basis

For realization of crime, beside material basis, spiritual basis is needed. Spiritual basis in international crime is different from unintentional crime. Spiritual of intentional crime, in addition to do criminal behavior, has intention to occurrence of criminal results, while in unintentional crime, spiritual basis, in addition to intention for doing forbidden behavior is occurrence of criminal error.

General ill will

<i>ill will is personal self conscious determination in committing criminal behavior or depending of will subject to do forbidden behavior</i> In crime of human trafficking, general ill will of convict include: intention of victim to transfer victim to transfer victim from border of country, intention to receivey or intention to hide a person or intention to prepare a cause to hide after passing from border, and arguments that intention to prostitution, picking member and organs of body, slavery, marriage are, general ill will, does not seem correct.
Specific ill will

Basically in intentional crimes, in addition to general ill will, there is specific ill will in condition. Specific ill will is intention of occurrence result from behavior of convict, apart from this, that result happen or doesn’t happen. Specific ill will is different dependent to type of a crime. Specific ill will of human trafficking, is intention to sexual exploitation from person in sexual actions, intention to picking member and organs of body, intention of slavery and intention of marriage. From this view, if movement, transferring of people has another purpose except those cited, like a time that a person bring someone to vacation recreation out of a country, trafficking crime is not occurred. Low of combat to trafficking know satisfaction of trafficked person unaffected with differentiation of trafficking for sexual exploitation and other kind of it, That is, if convict has intention of sexual exploitation and victim was satisfied, this also included in trafficking law. However in other cases, for example when trafficking is for picking face member or in cases that trafficking is for marriage or slavery, if victim was satisfied, this is not included in this law. In this case, satisfaction is not affected when organized trafficking is committed. Legislator look at two criteria in case of inaffect satisfaction:

1. Trafficking for prostitution
2. Trafficking for any intention on organized way.

It seems that no influence in satisfaction of victim in first state is because of severe bad unlawful sexual activity and sexual exploitation in Islamic doctrine. In second state, it seems that because danger of committing crime by organized group is more so legislator with knowing ineffective satisfaction of victim in both state of above, it was appropriate that satisfaction of victim became ineffective in all of trafficking state. And procedure written in section <b> of article 3 of additional protocol to convention of Palermo be regarded that satisfaction of victim has no effect in occurrence of trafficking. Cited procedure despite of some opposition some countries, was added to find document with insist of lots of other countries for serious combat and full prosecute traffickers.

Punishment of human trafficking and dealing

Article 3 to 5 law to combat human trafficking is pointed to punishment of convict in different state. According to Article 3: if action of trafficking be from examples in Islamic penal code, he will be sentenced according to determined punishment in law or otherwise will be imprisoned from 2 to 10 years and payment of fines equal to double the funds or assets resulting from crime or funds and properties that victim or third person has promised to pay to convict. This article is opponent with main reason of legislation of law to combat human trafficking, because according to this article during considering this, judge must attention to this point better determine sentence, whether action of convict is included in other part of Islamic penal code or no. If this was so, according to cited article and otherwise according to law of combat human trafficking will be sentenced. While, main purpose of legislation of this law is to combat severely with human trafficking, legislator without any base in determining criminal title, give priority to sentences in Islamic penal code. Even in cases that action of convict is according to one title of Islamic penal code and simultaneously is according to human trafficking, it must be according to principal of intellectual diversity (article 47 BC.A) and legislator must not explicitly give priority to Islamic principle. It seems that predicting this, preference is on titles like prostitution rather human trafficking that legislator actually opposed intellectual diversity with making Islamic Penal code, constant. According to note in this article, if trafficked person is under 18 years old, if action committed is not example of fight and corruption on earth, convict will be sentence to maximum punishment in article 3. If intention of legislator in cited note is state that convict simultaneously for making fear and deprivations of freedom and security use weapon, there was no need to state sentence again, since in some cases, judge can sentence according to article 183, but if intention of legislator be that trafficking is example of high and corruption on earth, it can be criticized since generalization of fight and corruption is from crime cause punishment (Hudud), trafficking is crime cause tazir, is without any clear reason and it is opposed to intellect of sentence of crime resulting Hadd. Legislator in cited note, like lots of rules after revolution, expand range of fight crime and corruption on earth and knew some crimes as a component of fight corruption on earth and threatening people with weapon.

Note 3 article 3:<punishment of participation in crime> human trafficking is prison from 2 to 5 year according to case and is paying funds and properties earned from crime or funds and properties that victim or third person has promised <to pay>. As a general principle participation in organized crime is not separated from participation of these crimes and all of convicts are known as participate in crimes. Thus it was more proper that in this law, sentence of participation be like partner in case of human trafficking in organized trafficking.

Note 2 from Article 3 state beginning a crime is sentenced from 6 month to 2 year prison. It is innovation of legislator to predict criminal liability for legal entities. According to article 5: <if an institute and private companies is established for committing these crimes even with another title, in addition to prescribed penalties, license will be revoked and company will be closed with judicial order. Apparently, intention to do prescribed penalties is for
individuals (managers), since it is clear that sentence can not be done for legal entities, but fines sentence for legal entities is possible, so court can receive fines from sources and income of legal entities, cited article speak about closing of institute according to judicial order, but it didn't explain the way of issuance and execution of it. Because court order isn't adjust like a letter and it isn't communicated to complainant and they can't complain, it is void judgement and it is not included in rule hearing. Because closing an institute is limited sentence that jude wrote in letter, so using of <decision> expression is more appropriate. In law to combat trafficking, appropriate reference to consider this crime is not determined. In first view, according to basic principle, general appropriate court consider these crimes, but by adding section 5 in article 5 of establishment of general and revolutionary court that know handling of trafficking crime appropriate in revolutionary court so it must notice that revolutionary court has competence to handling human trafficking. This view support idea that human trafficking is component of crimes against security.

**Characteristics of human trafficking system**

Development and stability of human trafficking is from complicated items that in study, we must consider it as a system to comprehend better and represent ways to effective prevention. Human trafficking as a continuous stream by choosing people will start and end with exploitation and variety of abuse from victims and even their death. System are set of elements that have 3 conditions:

Any element is effective on behavior or characteristics of whole system
There is dependency between elements of systems in behavior and kind of influence on whole system
Anytime subset is established from element, it is effective on whole system and this effect is dependent to at least another subset. In another word, component of system are related in a way that no subset can be established dependently. According to theory of system, a system is successful that is dynamic, that is in way to dealing with problem and issues that happen to system, it doesn’t stop and it can adopt quickly with environment. It can reject injury or minimize injury to body.

**CONCLUSION**

Today, however trafficking crime in law of Iran and International criminal law and law of most country is criminal negligence and heavy sentence is considered for them but it isn't sufficient just to approve rule and it need high ambiton to work with each other to cut hands of trafficker in source and destination and don't neglect from any try to combat with this in comprehensive policy. All must remove area of increasing and expanding trafficking that are cultural and economical poverty and week supervision of security guard and prevent sacrifice of innocent people our country is one of victims of human trafficking and since it is Islamic society and is more under magnifier of media of the mind of the so must show more endeavor. Increase of human trafficking that is bas for dignity of Islamic society needs that authorities, to decrease this problem, prepare situation to remove poverty and unemployment, because until the crime is not prevented, fight with that is result less.

**REFERENCES**